

HB

73

<TARGET><BILL>HB 73</BILL><SUBJECT>HB
73</SUBJECT><COMM>HJUD28</COMM></TARGET>

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 16, 2013

FURTHER REFERRALS: Finance

Date of Committee Action: 3/27/13

The JUDICIARY Committee considered:

HB 73

HOUSE BILL NO. 73

"An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking; relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to procedures for granting immunity to a witness in a criminal proceeding; relating to consideration of sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in detention in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of 'sex offense' regarding sex offender registration; relating to protective orders for stalking and sexual assault and for a crime involving domestic violence; relating to the definition of 'victim counseling centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to the subpoena power of the attorney general in cases involving the use of an internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

HB 73-CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

Recommends it be replaced with HCS or CS for HB 73 (JUD)

For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

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

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

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

<u>PREVIOUS FISCAL NOTES</u>				
FN#	List by Dept(s):	Fiscal	Indet.	Zero
2	DPS			✓
5	ADM		✓	
6	ADM		✓	
7	DHS			✓

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Millett	X			
	Bruenberg	✓			
	Pruitt	✓			
	Foster	✓			
	LeDoux	✓			
	LYNN	X			
Chair:	Keller	X			
Chair:					

CS FOR HOUSE BILL NO. 73(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to 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, sexual abuse of a minor, or
9 incest to obtain legal and equitable remedies for injuries arising from the conduct of a
10 perpetrator; relating to the definition of 'sexual assault' for the purpose of adoption and
11 the termination of parental rights in certain proceedings; relating to remission of
12 sentences for certain sexual felony offenders; relating to forms for sexual assault,
13 stalking, and domestic violence protective orders; relating to the subpoena power of the
14 attorney general in cases involving the use of an Internet service account; relating to
15 reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender
16 registration; relating to mandatory reporting by athletic coaches of child abuse or
17 neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a),
18 Alaska Rules of Criminal Procedure, and Rules 404(a) and (b), Alaska Rules of
19 Evidence; and providing for an effective date."

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

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

23 **LEGISLATIVE FINDINGS AND INTENT FOR SECS. 21 AND 22 OF THIS ACT.**

24 (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA

1 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

2 (b) The legislature finds that

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

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

10 (c) It is the intent of the legislature in AS 12.55.165, as amended by sec. 21 of this
11 Act, and AS 12.55.175, as amended by sec. 22 of this Act, to overturn the majority decision in
12 *Collins v. State*, 287 P.3d 791 (Alaska App. 2012), and to endorse the dissenting opinion in
13 the same case.

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

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

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

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

23 (a) An offender commits the crime of sexual assault in the third degree if the
24 offender

- 25 (1) engages in sexual contact with a person who the offender knows is
26 (A) mentally incapable;
27 (B) incapacitated; or
28 (C) unaware that a sexual act is being committed;

29 (2) while employed in a state correctional facility or other placement
30 designated by the commissioner of corrections for the custody and care of prisoners,
31 engages in sexual penetration with a person who the offender knows is committed to

1 the custody of the Department of Corrections to serve a term of imprisonment or
2 period of temporary commitment;

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

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

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

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

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

21 (b) In this section,

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

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

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

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

29 (5) "probation officer" includes a

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

31 (B) person who supervises a participant in a specialty court,

1 including a therapeutic or wellness court addressing alcohol or drug use, a
 2 court addressing the needs of veterans, an adult or juvenile mental health court,
 3 a fetal alcohol spectrum disorder court, or a family care or preservation court.

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

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

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

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

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

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

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

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

29 (b) In this section,

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

31 (2) "juvenile probation officer" has the meaning given in AS

1 11.41.425;

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

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

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

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

6 (a) It is a defense to a crime charged under AS 11.41.410(a)(3),
7 11.41.420(a)(2), 11.41.420(a)(3), [OR] 11.41.425, or 11.41.427 that the offender is

8 (1) mentally incapable; or

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

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

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

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

17 (a) A person commits the crime of unlawful contact in the first degree if the
18 person

19 (1) has been ordered

20 (A) by the court not to contact a victim or witness of the
21 offense

22 (i) as [(A)] part of a sentence imposed under AS
23 12.55.015;

24 (ii) as [OR (B)] a condition of [(i)] release under AS
25 12.30 or [(ii)] probation under AS 12.55.101; or

26 (iii) while under official detention; or

27 (B) as a condition of parole not to contact a victim or
28 witness of the offense under AS 33.16.150 [PAROLE UNDER AS
29 33.16.150]; and

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

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

2 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
3 received or derived from, a violation of AS 11.66.100 - 11.66.135 may [AS
4 11.66.100(c) OR 11.66.110 - 11.66.135 SHALL] be forfeited at sentencing.

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

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

8 (1) murder;

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

11 (3) felony sexual abuse of a minor;

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

14 (5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458, AS
15 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person
16 who, at the time of the offense, was under 18 years of age;

17 (6) kidnapping;

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

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

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

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

26 (1) 10 years after the commission of a felony offense in violation of
27 AS 11.41.120 - 11.41.330 [AS 11.41.120 - 11.41.370], 11.41.425(a)(1),
28 11.41.425(a)(5), 11.41.425(a)(6), or 11.41.450 - 11.41.458; or

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

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

31 (e) In a prosecution charging the crime of stalking that is not a crime involving

1 domestic violence, a judicial officer may order the person to

2 (1) follow the provisions of any protective order to which the person is
3 respondent;

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

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

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

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

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

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

20 (2) [, AND] may impose any of the conditions authorized under AS
21 12.30.011;

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

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

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

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

2 (e) A person arrested for a crime involving domestic violence or for violation
 3 of a condition of release in connection with a crime involving domestic violence
 4 may not be released from custody until the person has appeared in person before a
 5 judicial officer or telephonically for arraignment.

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

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

13 (1) murder in the first or second degree under AS 11.41.100 -
 14 11.41.110;

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

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

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

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

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

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

1 HEARING]. After the application is made, the court shall conduct a hearing in camera
2 to determine the admissibility of the evidence. If the court finds that evidence offered
3 by the defendant regarding the sexual conduct of the complaining witness is relevant,
4 and that the probative value of the evidence offered is not outweighed by the
5 probability that its admission will create undue prejudice, confusion of the issues, or
6 unwarranted invasion of the privacy of the complaining witness, the court shall make
7 an order stating what evidence may be introduced and the nature of the questions that
8 may be permitted. The defendant may then offer evidence under the order of the court.

9 * Sec. 17. AS 12.55.025 is amended by adding new subsections to read:

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

20 (l) If a defendant intends to claim credit under AS 12.55.027 toward a
21 sentence of imprisonment for time spent in a treatment program as a condition of bail
22 while pending appeal, the defendant shall file notice with the court and the prosecutor
23 not later than 90 days after return of the case to the trial court following appeal. The
24 notice shall include the number of days the defendant is claiming. The defendant must
25 prove by a preponderance of evidence that the requirements of AS 12.55.027 are met
26 before credit may be awarded. Except for good cause, the court may not consider a
27 request for credit made under this subsection after the deadline.

28 * Sec. 18. AS 12.55.027 is amended by adding a new subsection to read:

29 (e) If a defendant intends to claim credit toward a sentence of imprisonment
30 for time spent in a treatment program either as a condition of probation or as a
31 condition of bail release after a petition to revoke probation has been filed, the

1 defendant shall file notice with the court and the prosecutor 10 days before the
 2 disposition hearing. The notice shall include the amount of time the defendant is
 3 claiming. The defendant must prove by a preponderance of the evidence that the credit
 4 claimed meets the requirements of this section. A court may not consider, except for
 5 good cause, a request for credit made under this subsection more than 90 days after the
 6 disposition hearing.

7 * Sec. 19. AS 12.55.085(f) is amended to read:

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

9 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260
 10 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR] AS
 11 11.61.125 - 11.61.128, or AS 11.66.110 - 11.66.135:

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

14 (3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony
 15 and the person has one or more prior convictions for a misdemeanor violation of AS
 16 11.41 or for a felony or for a violation of a law in this or another jurisdiction having
 17 similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in
 18 this state; for the purposes of this paragraph, a person shall be considered to have a
 19 prior conviction even if that conviction has been set aside under (e) of this section or
 20 under the equivalent provision of the laws of another jurisdiction.

21 * Sec. 20. AS 12.55.127 is amended by adding a new subsection to read:

22 (e) If the defendant is being sentenced for two or more crimes of distribution
 23 of child pornography under AS 11.61.125, possession of child pornography under AS
 24 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a
 25 consecutive term of imprisonment shall be imposed for some additional term of
 26 imprisonment for each additional crime or each additional attempt or solicitation to
 27 commit the offense.

28 * Sec. 21. AS 12.55.165 is amended by adding a new subsection to read:

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

1 in combination, has

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

3 (2) a history free of unprosecuted, undocumented, or undetected sexual
4 offenses.

5 * Sec. 22. AS 12.55.175 is amended by adding a new subsection to read:

6 (f) A defendant being sentenced for a sexual felony under AS 12.55.125(i)
7 may not establish, nor may the three-judge panel find under (b) of this section or any
8 other provision of law, that manifest injustice would result from imposition of a
9 sentence within the presumptive range based solely on the claim that the defendant,
10 either singly or 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 12.55.185(16) is amended to read:

15 (16) "sexual felony" means sexual assault in the first degree, sexual
16 abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault
17 in the second degree, sexual abuse of a minor in the second degree, unlawful
18 exploitation of a minor, distribution of child pornography, sexual assault in the third
19 degree, incest, indecent exposure in the first degree, possession of child pornography,
20 online enticement of a minor, and felony attempt, conspiracy, or solicitation to
21 commit those crimes;

22 * Sec. 24. AS 12.63.100(6) is amended to read:

23 (6) "sex offense" means

24 (A) a crime under AS 11.41.100(a)(3), or a similar law of
25 another jurisdiction, in which the person committed or attempted to commit a
26 sexual offense, or a similar offense under the laws of the other jurisdiction; in
27 this subparagraph, "sexual offense" has the meaning given in AS
28 11.41.100(a)(3);

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

- 1 (i) sexual assault in the first degree;
 2 (ii) sexual assault in the second degree;
 3 (iii) sexual abuse of a minor in the first degree; or
 4 (iv) sexual abuse of a minor in the second degree; or

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

- 7 (i) AS 11.41.410 - 11.41.438;
 8 (ii) AS 11.41.440(a)(2);
 9 (iii) AS 11.41.450 - 11.41.458;
 10 (iv) AS 11.41.460 if the indecent exposure is before a
 11 person under 16 years of age and the offender has a previous conviction
 12 for that offense;
 13 (v) AS 11.61.125 - 11.61.128;
 14 (vi) AS 11.66.110 or 11.66.130(a)(2) if the person who
 15 was induced or caused to engage in prostitution was under 20 [16 OR
 16 17] years of age at the time of the offense;
 17 (vii) former AS 11.15.120, former 11.15.134, or assault
 18 with the intent to commit rape under former AS 11.15.160, former AS
 19 11.40.110, or former 11.40.200; [OR]
 20 (viii) AS 11.61.118(a)(2) if the offender has a previous
 21 conviction for that offense; or
 22 (ix) AS 11.66.100(a)(2) if the offender is subject to
 23 punishment under AS 11.66.100(c);

24 * Sec. 25. AS 18.65.865(b) is amended to read:

25 (b) The Alaska Court System shall prepare forms for petitions and protective
 26 orders and instructions for their use by a person seeking a protective order under AS
 27 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil
 28 Procedure, except that information on the forms may be filled in by legible
 29 handwriting. Filing fees may not be charged in any action seeking only the relief
 30 provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the
 31 following warning in boldface type: "Violation of this order may be a misdemeanor,

1 punishable by up to one year of incarceration and a fine of up to \$10,000 [\$5,000]."

2 * Sec. 26. AS 18.66.130(d) is amended to read:

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

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

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

12 * Sec. 27. AS 18.66.250(5) is amended to read:

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

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

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

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

23 * Sec. 28. AS 18.67.101 is amended to read:

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

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

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

- 1 (A) murder in any degree;
 2 (B) manslaughter;
 3 (C) criminally negligent homicide;
 4 (D) assault in any degree;
 5 (E) kidnapping;
 6 (F) sexual assault in any degree;
 7 (G) sexual abuse of a minor;
 8 (H) robbery in any degree;
 9 (I) threats to do bodily harm;
 10 (J) driving while under the influence of an alcoholic beverage,
 11 inhalant, or controlled substance or another crime resulting from the operation
 12 of a motor vehicle, boat, or airplane when the offender is under the influence
 13 of an alcoholic beverage, inhalant, or controlled substance; [OR]
 14 (K) arson in the first degree;
 15 (L) sex trafficking in violation of AS 11.66.110 or
 16 11.66.130(a)(2);
 17 (M) human trafficking in any degree; or
 18 (N) unlawful exploitation of a minor.

19 * Sec. 29. AS 22.10.150 is amended to read:

20 Sec. 22.10.150. Approval or rejection. Each superior court judge is subject to
 21 approval or rejection as provided in AS 15 (Alaska Election Code). The judicial
 22 council shall conduct an evaluation of each judge before the retention election and
 23 shall provide to the public information about the judge and may provide a
 24 recommendation regarding retention or rejection. The information and any
 25 recommendation shall be made public at least 60 days before the retention election.
 26 The information shall include the judge's consideration of victims when imposing
 27 sentence on persons convicted of felony offenses where the offenses involve
 28 victims. The judicial council shall also provide the information and any
 29 recommendation to the office of the lieutenant governor in time for publication in the
 30 election pamphlet under AS 15.58.050. If a majority of those voting on the question
 31 rejects the candidacy of a judge, the rejected judge may not for a period of four years

1 thereafter be appointed to fill any vacancy in the supreme court, court of appeals,
2 superior court, or district courts of the state.

3 * Sec. 30. AS 25.23.180(i) is amended to read:

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

8 * Sec. 31. AS 25.23.240(10) is amended to read:

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

11 * Sec. 32. AS 33.20.010(a) is amended to read:

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

18 (1) to a mandatory 99-year term of imprisonment under AS
19 12.55.125(a) after June 27, 1996;

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

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

22 (A) and has one or more prior sexual felony convictions as
23 determined under AS 12.55.145(a)(4); or

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

25 * Sec. 33. AS 44.23.080(a) is amended to read:

26 (a) If there is reasonable cause to believe that an Internet service account has
27 been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125
28 - 11.61.128, and that the identity, address, and other information about the account
29 owner will assist in obtaining evidence that is relevant to the offense, a law
30 enforcement officer may apply to the attorney general or the attorney general's
31 designee for an administrative subpoena to obtain the business records of the Internet

1 service provider located inside or outside of the state.

2 * Sec. 34. AS 44.23.080(b) is amended to read:

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

6 (1) the name and other identifying information of the account holder;

7 (2) the address and physical location associated with the account;

8 (3) a description of the length of service, service start date, and types
9 of service associated with the account.

10 * Sec. 35. AS 44.23.080(e) is amended to read:

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

16 * Sec. 36. AS 44.23.080 is amended by adding a new subsection to read:

17 (i) For purposes of this section, the attorney general's designee may be the
18 deputy attorney general of the division of the Department of Law that has
19 responsibility for civil cases or the division of the Department of Law that has
20 responsibility for criminal cases.

21 * Sec. 37. AS 47.10.086(c) is amended to read:

22 (c) The court may determine that reasonable efforts of the type described in
23 (a) of this section are not required if the court has found by clear and convincing
24 evidence that

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

28 (2) the parent or guardian has

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

31 (B) aided or abetted, attempted, conspired, or solicited under

1 AS 11.16 or AS 11.31 to commit a homicide described in (A) of this
2 paragraph;

3 (C) committed an assault that is a felony under AS 11.41.200 -
4 11.41.220 and results in serious physical injury to a child; or

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

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

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

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

20 (6) the parent or guardian has previously been convicted of a crime
21 involving a child in this state or in another jurisdiction and, after the conviction, the
22 child was returned to the custody of the parent or guardian and later removed because
23 of an additional substantiated report of physical or sexual abuse by the parent or
24 guardian;

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

29 (8) the parental rights of the parent have been terminated with respect
30 to another child because of child abuse or neglect, the parent has not remedied the
31 conditions or conduct that led to the termination of parental rights, and the parent has

1 demonstrated an inability to protect the child from substantial harm or the risk of
2 substantial harm;

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

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

10 (11) the parent or guardian

11 (A) has sexually abused the child or another child of the
12 parent or guardian; or

13 (B) is registered or required to register as a sex offender or
14 child kidnapper under AS 12.63.

15 * Sec. 38. AS 47.17.020(a) is amended to read:

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

21 (1) practitioners of the healing arts;

22 (2) school teachers and school administrative staff members of public
23 and private schools;

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

25 (4) administrative officers of institutions;

26 (5) child care providers;

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

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

31 (8) members of a child fatality review team established under AS

1 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created under
2 AS 47.14.300;

3 **(9) athletic coaches.**

4 * Sec. 39. AS 47.17.290 is amended by adding a new paragraph to read:

5 (17) "athletic coach" means a paid leader or assistant of a sports team
6 in a public or private school, in a public or private postsecondary institution, or
7 sponsored by a municipality of the state or other local government organization, or of
8 a sports team that receives public funding.

9 * Sec. 40. The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

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

13 (9) Restriction on Availability of Certain Material. Notwithstanding
14 (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy,
15 photograph, duplicate, or otherwise reproduce any material prohibited under AS
16 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the
17 prosecuting attorney makes the material reasonably available for inspection by the
18 defendant and defense counsel. The material shall be considered to be made
19 reasonably available to the defendant or defense counsel if the prosecuting attorney
20 provides, at a law enforcement or prosecution facility, ample opportunity for
21 inspection, viewing, and examination of the material by the defendant and the
22 defendant's attorney. If the defendant is not represented by counsel and demonstrates a
23 need to view the material, the court shall make arrangements for the defendant to be
24 supervised while viewing the material. If the defendant or the defendant's attorney
25 identifies an expert who must view the material, the court shall make arrangements for
26 the court or the law enforcement agency that possesses it to send the material directly
27 to the expert.

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

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

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

12 The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 -
 13 12.61.150 and AS 12.55.022.

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

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

18 (a) **Consideration of Victim's Statement.** If a victim as defined in AS
 19 12.55.185 prepares and submits a written statement, gives sworn testimony or makes
 20 an unsworn oral presentation under AS 12.55.023, the court shall take the content of
 21 the statement, testimony, or presentation into consideration when preparing those
 22 elements of the sentencing report required by AS 12.55.025 that relate to the effect of
 23 the offense on the victim, and when considering the need for restitution under AS
 24 12.55.045. The court shall also take the content of the victim's impact statement
 25 in the presentence report into consideration in preparing the sentencing report
 26 required under AS 12.55.025. The court also may take the content of the statement,
 27 testimony, victim's impact statement, or presentation into consideration for any other
 28 appropriate purpose.

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

31 DIRECT COURT RULE AMENDMENT. Rule 404(b)(2), Alaska Rules of

1 Evidence, is amended to read:

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

6 (i) [OCCURRED WITHIN THE 10 YEARS
7 PRECEDING THE DATE OF THE OFFENSE CHARGED;

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

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

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

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

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

20 **APPLICABILITY.** (a) Sections 2 - 15, 19, 20, 24, and 32 of this Act apply to offenses
21 committed on or after the effective date of this Act.

22 (b) Sections 16, 21 - 23, 27, and 28 of this Act apply to offenses committed before,
23 on, or after the effective date of this Act.

24 (c) Section 17 of this Act applies to sentencing hearings occurring on or after the
25 effective date of this Act.

26 (d) Section 18 of this Act applies to disposition hearings occurring in proceedings on
27 petitions to revoke probation filed on or after the effective date of this Act.

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

30 **CONDITIONAL EFFECT.** Section 16 of this Act, amending AS 12.45.045(a), takes
31 effect only if sec. 44 of this Act receives the two-thirds majority vote of each house required

1 by art. IV, sec. 15, Constitution of the State of Alaska.

2 * Sec. 47. This Act takes effect July 1, 2013.



THE STATE
of **ALASKA**

GOVERNOR SEAN PARNELL

Department of Law

CRIMINAL DIVISION
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January 16, 2013

The Honorable Wes Keller, Chair
House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 73 – relating to crimes; victims; child abuse and neglect

Dear Chairman Keller:

I am writing to request that you schedule House Bill 73 for a hearing in the House Judiciary Committee at your earliest convenience. House Bill 73 builds on and refines legislation adopted by the legislature in the past several years to address the serious problems of sexual exploitation and domestic violence in our state.

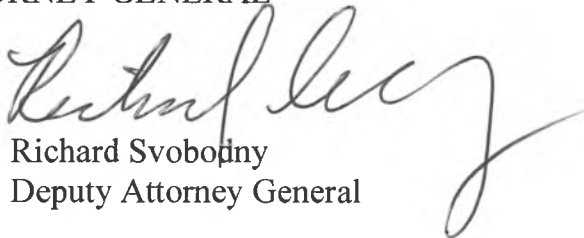
The bill refines several criminal procedures in Alaska law so that prosecution is more efficient, but at the same time is fair to all participants. The bill also addresses a problematic decision by the Alaska Court of Appeals regarding the referral of sex offense defendants to the three-judge panel for sentencing.

A sectional analysis is attached that describes each provision of the bill. Thank you for your consideration of this request.

Sincerely,

MICHAEL C. GERAGHTY
ATTORNEY GENERAL

By:


Richard Svobodny
Deputy Attorney General



HOUSE BILL 73

Relating to crimes; victims; child abuse and neglect

SECTIONAL ANALYSIS

Sections 1, 20 and 21 are designed to overturn the majority decision in *Collins v. State*, 287 P. 3d 791 (Alaska App. 2012). *Collins* used a mistaken interpretation of legislative intent to adopt lower standards for referring sex offenders to a three-judge sentencing panel. In 2006 the legislature adopted increased penalties for persons convicted of sexual felonies. The legislature adopted specific findings, among others, that sexual 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 sexual felonies, it did not intend that different standards be applied to referral of a case involving a sexual felony to a three-judge panel than for other felony offenses. **Section 1** adopts legislative findings and intent to address the *Collins* decision. **Sections 20 and 21** adopt new provisions to the law addressing the transfer of a case from the sentencing judge to a three-judge panel in a case involving a sexual felony. These three sections overturn the majority decision and endorse the dissent in *Collins v. State*, 287 P. 3d 791 (Alaska App. 2012).

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 sex trafficking and 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 and parole officer are defined; the definition of probation officer includes a person who supervises therapeutic court participants.

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 on in a juvenile facility. This conduct is a class A misdemeanor.

Section 7 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 8 allows the state to forfeit property of a patron of a prostitute if the property was used to institute, aid, or facilitate prostitution, or was received or derived from prostitution.

Section 9 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.

Section 10 allows the court the discretion, in releasing on bail a person in connection with a crime involving domestic violence, 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 Public Safety.

Section 11 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 12 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 13 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 13** also requires the defendant to make the request to admit this evidence at least five days before trial, unless the request is based on evidence that was not available to the defendant before the request was made.

Sections 14, 15, 43, and 44 strengthen the procedure for determining whether a witness who claims a Fifth Amendment right not to testify actually is entitled to constitutional protection and a grant of immunity from prosecution if the person testifies. The prosecution does not participate in the procedure to determine whether a person has a valid Fifth Amendment claim and should be awarded immunity from prosecution. The court in a closed hearing with the witness and counsel for the witness makes the decision. **Sections 14 and 15** require the court to personally interview the witness at this closed hearing; the testimony is privileged and cannot be used for any other purpose. The court must then make written findings of fact and conclusions of law in a sealed order. **Sections 43 and 44** amend Rule 216(a) and (b) to allow the state the right to an immediate appeal of the decision to the Court of Appeals.

Section 16 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 request for credit for that time may not be made after the sentencing hearing.

Section 17 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 request for credit for that time may not be made after the disposition hearing.

Section 18 makes a person convicted for sex trafficking ineligible for a suspended imposition of sentence.

Sections 19 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 20 and 21 – please refer to discussion at **Section 1**.

Section 22 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 sexual felonies, including sex trafficking in the first degree and online enticement of a minor.

Section 23 adds the felony of being a patron of a prostitute who is under 20 years of age in violation of AS 11.66.100 to those crimes that require registration as a sex offender. It also corrects a reference to the crime of sex trafficking in the first degree and the third degree.

Section 24 allows a court the discretion to include in a protective order for sexual assault or stalking (that is not a domestic violence protective order) an order that the respondent participate in an electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Public Safety.

Sections 25 and 26 allow a court the discretion to include in a domestic violence protective order a provision requiring the respondent to participate in an electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Public Safety.

Section 27 makes a conforming amendment to the warning on domestic violence protective orders. Certain violations of a domestic violence protective order 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. **Section 27** updates the warning to describe the maximum fine.

Section 28 adds to the definition of victim counseling centers to include victim counseling centers in military organizations. The effect of this change is to extend to privilege for confidential communications between a victim of sexual assault or domestic violence and their counselors to counseling organizations that provide services to victims on military bases.

Section 29 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 30, 40, and 41 strengthen and make more explicit statutes and court rules that require a court to consider the crime's impact on the victim. **Section 40** 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 41** requires the court to take the victim's impact statement into account when preparing the sentencing report and for other purposes. **Section 30** requires the Alaska Judicial Council to collect data on a judge's compliance with AS 12.55.025(a)(5), which requires a court in preparing the sentencing report to include information about the financial, emotional, and medical effects of the crime on the victim, and the victim's need for restitution. It also requires that the Council include data on a judge's compliance with these provisions in their recommendations regarding the judge's retention.

Section 31 provides that a person convicted of an unclassified or class A sexual felony is not eligible for mandatory parole (also called good time).

Sections 32 -- 35 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 another attorney in the Department of Law 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 36 adds to those 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.

Sections 37 and 38 add coaches to those persons who are required to report to authorities if the coach has reasonable cause to believe that a child has suffered harm from child abuse or neglect. Athletic coach is defined to include both paid and volunteer coaches.

Section 39 adopts a court rule that limits the publication of child pornography that is required 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 40 and 41 – please refer to discussion at **Section 30**.

Section 42 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 42** 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.

Sections 43 and 44 – please refer to discussion at **Sections 14. and 15.**

Section 45 adopts applicability provisions.

Section 46 provides an effective date of July 1, 2013.

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January 15, 2013

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

Dear Speaker Chenault,

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.

The Honorable Mike Chenault

January 15, 2013

Page 2

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 HOUSE BILL 73(JUD)

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 athletic coaches to report to authorities if there is reasonable cause to believe that a child has been abused or neglected.



CS FOR HOUSE BILL 73(JUD)

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. It also adds the defense that the offender was mentally incapable 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, 40, and 41 strengthen and make more explicit statutes and court rules that require a court to consider the impact of the crime on the victim. **Section 40** 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 41** 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, 37, and 38 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 to include paid leaders and their assistants and volunteer leaders of sports teams.

A volunteer coach would only be required to report if the coach volunteers more than four hours a week for four consecutive weeks or more than 20 hours in a one month period; has been trained in identifying child abuse and neglect; and has signed a form that acknowledges that the volunteer coach is required to report abuse or neglect.

Section 39 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 40 and 41 – please refer to discussion at **Section 29**.

Section 42 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 42** 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 43 notes that the proposed amendments to the rape shield law would have the effect of changing a court rule.

Section 44 adopts applicability provisions.

Section 45 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 46 provides an effective date of July 1, 2013.

28-GH1587U
Strasbaugh
3/20/13

CS FOR HOUSE BILL NO. 73(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

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

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to 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 remission of sentences for certain sexual felony offenders; relating to forms
9 for sexual assault, stalking, and domestic violence protective orders; relating to the
10 subpoena power of the attorney general in cases involving the use of an Internet service
11 account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual
12 abuse or sex offender registration; relating to mandatory reporting by athletic coaches
13 of child abuse or neglect; making conforming amendments; amending Rules 16,
14 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, and Rules 404(a) and (b),
15 Alaska Rules of Evidence; and providing for an effective date."

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

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

19 **LEGISLATIVE FINDINGS AND INTENT FOR SECS. 21 AND 22 OF THIS ACT.**

20 (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA
21 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

22 (b) The legislature finds that

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

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

4 (c) It is the intent of the legislature in AS 12.55.165, as amended by sec. 21 of this
5 Act, and AS 12.55.175, as amended by sec. 22 of this Act, to overturn the majority decision in
6 *Collins v. State*, 287 P.3d 791 (Alaska App. 2012), and to endorse the dissenting opinion in
7 the same case.

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

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

- 11 (1) felony sexual abuse of a minor;
- 12 (2) felony sexual assault; [OR]
- 13 (3) unlawful exploitation of a minor;
- 14 (4) felony sex trafficking; or
- 15 (5) felony human trafficking.

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

17 (a) An offender commits the crime of sexual assault in the third degree if the
18 offender

- 19 (1) engages in sexual contact with a person who the offender knows is
 - 20 (A) mentally incapable;
 - 21 (B) incapacitated; or
 - 22 (C) unaware that a sexual act is being committed;
- 23 (2) while employed in a state correctional facility or other placement
24 designated by the commissioner of corrections for the custody and care of prisoners,
25 engages in sexual penetration with a person who the offender knows is committed to
26 the custody of the Department of Corrections to serve a term of imprisonment or
27 period of temporary commitment;
- 28 (3) engages in sexual penetration with a person 18 or 19 years of age
29 who the offender knows is committed to the custody of the Department of Health and
30 Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of
31 the person; [OR]

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

6 (5) while employed by the state or a municipality of the state as a
7 probation officer or parole officer, or while acting as a probation officer or
8 parole officer in the state, engages in sexual penetration with a person with
9 reckless disregard that the person is on probation or parole; or

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

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

15 (b) In this section,

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

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

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

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

23 (5) "probation officer" includes a

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

25 (B) person who supervises a participant in a specialty court,
26 including a therapeutic or wellness court addressing alcohol or drug use, a
27 court addressing the needs of veterans, an adult or juvenile mental health court,
28 a fetal alcohol spectrum disorder court, or a family care or preservation court.

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

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

31 (1) while employed in a state correctional facility or other placement

1 designated by the commissioner of corrections for the custody and care of prisoners,
2 the offender engages in sexual contact with a person who the offender knows is
3 committed to the custody of the Department of Corrections to serve a term of
4 imprisonment or period of temporary commitment;

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

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

14 (4) while employed by the state or a municipality of the state as a
15 probation officer or parole officer, or while acting as a probation officer or
16 parole officer in the state, engages in sexual contact with a person with reckless
17 disregard that the person is on probation or parole; or

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

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

23 (b) In this section,

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

25 (2) "juvenile probation officer" has the meaning given in
26 AS 11.41.425;

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

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

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

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

31 (a) It is a defense to a crime charged under AS 11.41.410(a)(3),

1 11.41.420(a)(2), 11.41.420(a)(3), [OR] 11.41.425, or 11.41.427 that the offender is

2 (1) mentally incapable; or

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

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

6 (c) It is an affirmative defense to a crime charged under AS 11.41.425(a)(5) or
7 11.41.427(a)(4) that the offender and the person on probation or parole had, before the
8 person was placed on probation or parole, a dating relationship or a sexual
9 relationship, and the relationship continued until the date of the alleged offense.

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

11 (a) A person commits the crime of unlawful contact in the first degree if the
12 person

13 (1) has been ordered

14 (A) by the court not to contact a victim or witness of the
15 offense

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

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

20 (iii) while under official detention; or

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

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

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

27 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
28 received or derived from, a violation of AS 11.66.100 - 11.66.135 may
29 [AS 11.66.100(c) OR 11.66.110 - 11.66.135 SHALL] be forfeited at sentencing.

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

31 **Sec. 12.10.010. General time limitations.** (a) Prosecution for the following

1 offenses may be commenced at any time:

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

17 (b) Except as otherwise provided by law or in (a) of this section, a person may

18 not be prosecuted, tried, or punished for an offense unless the indictment is found or

19 the information or complaint is instituted not later than

20 (1) 10 years after the commission of a felony offense in violation of

21 **AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370], 11.41.425(a)(1),

22 **11.41.425(a)(5), 11.41.425(a)(6),** or 11.41.450 - 11.41.458; or

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

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

25 (e) In a prosecution charging the crime of stalking that is not a crime involving

26 domestic violence, a judicial officer may order the person to

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

28 respondent;

29 (2) refrain from contacting, in any manner, including by telephone or

30 electronic communication, the victim;

31 (3) engage in counseling; if available in the community, the judicial

1 officer shall require that counseling ordered include counseling about alternatives to
2 aggressive behavior;

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

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

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

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

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

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

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

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

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

27 (e) A person arrested for a crime involving domestic violence or for violation
28 of a condition of release in connection with a crime involving domestic violence
29 may not be released from custody until the person has appeared in person before a
30 judicial officer or telephonically for arraignment.

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

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

7 (1) murder in the first or second degree under AS 11.41.100 -
8 11.41.110;

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

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

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

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

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

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

1 an order stating what evidence may be introduced and the nature of the questions that
2 may be permitted. The defendant may then offer evidence under the order of the court.

3 * Sec. 17. AS 12.55.025 is amended by adding new subsections to read:

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

14 (l) If a defendant intends to claim credit under AS 12.55.027 toward a
15 sentence of imprisonment for time spent in a treatment program as a condition of bail
16 while pending appeal, the defendant shall file notice with the court and the prosecutor
17 not later than 90 days after return of the case to the trial court following appeal. The
18 notice shall include the number of days the defendant is claiming. The defendant must
19 prove by a preponderance of evidence that the requirements of AS 12.55.027 are met
20 before credit may be awarded. Except for good cause, the court may not consider a
21 request for credit made under this subsection after the deadline.

22 * Sec. 18. AS 12.55.027 is amended by adding a new subsection to read:

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

1 * Sec. 19. AS 12.55.085(f) is amended to read:

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

3 (1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260
4 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR]
5 AS 11.61.125 - 11.61.128, or AS 11.66.110 - 11.66.135;

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

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

15 * Sec. 20. AS 12.55.127 is amended by adding a new subsection to read:

16 (e) If the defendant is being sentenced for two or more crimes of distribution
17 of child pornography under AS 11.61.125, possession of child pornography under
18 AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a
19 consecutive term of imprisonment shall be imposed for some additional term of
20 imprisonment for each additional crime or each additional attempt or solicitation to
21 commit the offense.

22 * Sec. 21. AS 12.55.165 is amended by adding a new subsection to read:

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

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

28 (2) a history free of unprosecuted, undocumented, or undetected sexual
29 offenses.

30 * Sec. 22. AS 12.55.175 is amended by adding a new subsection to read:

31 (f) A defendant being sentenced for a sexual felony under AS 12.55.125(i)

1 may not establish, nor may the three-judge panel find under (b) of this section or any
2 other provision of law, that manifest injustice would result from imposition of a
3 sentence within the presumptive range based solely on the claim that the defendant,
4 either singly or in combination, has

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

6 (2) a history free of unprosecuted, undocumented, or undetected sexual
7 offenses.

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

9 (16) "sexual felony" means sexual assault in the first degree, sexual
10 abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault
11 in the second degree, sexual abuse of a minor in the second degree, unlawful
12 exploitation of a minor, distribution of child pornography, sexual assault in the third
13 degree, incest, indecent exposure in the first degree, possession of child pornography,
14 online enticement of a minor, and felony attempt, conspiracy, or solicitation to
15 commit those crimes;

16 * Sec. 24. AS 12.63.100(6) is amended to read:

17 (6) "sex offense" means

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

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

26 (i) sexual assault in the first degree;

27 (ii) sexual assault in the second degree;

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

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

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

1 (i) AS 11.41.410 - 11.41.438;

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

3 (iii) AS 11.41.450 - 11.41.458;

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

7 (v) AS 11.61.125 - 11.61.128;

8 (vi) AS 11.66.110 or 11.66.130(a)(2) if the person who
9 was induced or caused to engage in prostitution was under 20 [16 OR
10 17] years of age at the time of the offense;

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

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

16 (ix) AS 11.66.100(a)(2) if the offender is subject to
17 punishment under AS 11.66.100(c);

18 * Sec. 25. AS 18.65.865(b) is amended to read:

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

27 * Sec. 26. AS 18.66.130(d) is amended to read:

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

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

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

6 * Sec. 27. AS 18.66.250(5) is amended to read:

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

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

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

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

17 * Sec. 28. AS 18.67.101 is amended to read:

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

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

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

26 (A) murder in any degree;

27 (B) manslaughter;

28 (C) criminally negligent homicide;

29 (D) assault in any degree;

30 (E) kidnapping;

31 (F) sexual assault in any degree;

1 (G) sexual abuse of a minor;

2 (H) robbery in any degree;

3 (I) threats to do bodily harm;

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

8 (K) arson in the first degree;

9 (L) sex trafficking in violation of AS 11.66.110 or
10 11.66.130(a)(2):

11 (M) human trafficking in any degree; or

12 (N) unlawful exploitation of a minor.

13 * Sec. 29. AS 22.10.150 is amended to read:

14 Sec. 22.10.150. Approval or rejection. Each superior court judge is subject to
15 approval or rejection as provided in AS 15 (Alaska Election Code). The judicial
16 council shall conduct an evaluation of each judge before the retention election and
17 shall provide to the public information about the judge and may provide a
18 recommendation regarding retention or rejection. The information and any
19 recommendation shall be made public at least 60 days before the retention election.
20 The information shall include the judge's consideration of victims when imposing
21 sentence on persons convicted of felony offenses where the offenses involve
22 victims. The judicial council shall also provide the information and any
23 recommendation to the office of the lieutenant governor in time for publication in the
24 election pamphlet under AS 15.58.050. If a majority of those voting on the question
25 rejects the candidacy of a judge, the rejected judge may not for a period of four years
26 thereafter be appointed to fill any vacancy in the supreme court, court of appeals,
27 superior court, or district courts of the state.

28 * Sec. 30. AS 33.20.010(a) is amended to read:

29 (a) Notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner
30 convicted of an offense against the state or a political subdivision of the state and
31 sentenced to a term of imprisonment that exceeds three days is entitled to a deduction

1 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner
2 follows the rules of the correctional facility in which the prisoner is confined. A
3 prisoner is not eligible for a good time deduction if the prisoner has been sentenced

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

6 (2) to a definite term under AS 12.55.125(f); or

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

8 (A) and has one or more prior sexual felony convictions as
9 determined under AS 12.55.145(a)(4); or

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

11 * Sec. 31. AS 44.23.080(a) is amended to read:

12 (a) If there is reasonable cause to believe that an Internet service account has
13 been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125
14 - 11.61.128, and that the identity, address, and other information about the account
15 owner will assist in obtaining evidence that is relevant to the offense, a law
16 enforcement officer may apply to the attorney general or the attorney general's
17 designee for an administrative subpoena to obtain the business records of the Internet
18 service provider located inside or outside of the state.

19 * Sec. 32. AS 44.23.080(b) is amended to read:

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

23 (1) the name and other identifying information of the account holder;

24 (2) the address and physical location associated with the account;

25 (3) a description of the length of service, service start date, and types
26 of service associated with the account.

27 * Sec. 33. AS 44.23.080(e) is amended to read:

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

1 subpoena.

2 * Sec. 34. AS 44.23.080 is amended by adding a new subsection to read:

3 (i) For purposes of this section, the attorney general's designee may be the
4 deputy attorney general of the division of the Department of Law that has
5 responsibility for civil cases or the division of the Department of Law that has
6 responsibility for criminal cases.

7 * Sec. 35. AS 47.10.086(c) is amended to read:

8 (c) The court may determine that reasonable efforts of the type described in
9 (a) of this section are not required if the court has found by clear and convincing
10 evidence that

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

14 (2) the parent or guardian has

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

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

20 (C) committed an assault that is a felony under AS 11.41.200 -
21 11.41.220 and results in serious physical injury to a child; or

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

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

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

31 (5) the parent or guardian is the sole caregiver of the child and the

1 parent or guardian has a mental illness or mental deficiency of such nature and
2 duration that, according to the statement of a psychologist or physician, the parent or
3 guardian will be incapable of caring for the child without placing the child at
4 substantial risk of physical or mental injury even if the department were to provide
5 family support services to the parent or guardian for 12 months;

6 (6) the parent or guardian has previously been convicted of a crime
7 involving a child in this state or in another jurisdiction and, after the conviction, the
8 child was returned to the custody of the parent or guardian and later removed because
9 of an additional substantiated report of physical or sexual abuse by the parent or
10 guardian;

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

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

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

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

27 (11) the parent or guardian

28 (A) has sexually abused the child or another child of the
29 parent or guardian; or

30 (B) is registered or required to register as a sex offender or
31 child kidnapper under AS 12.63.

1 * Sec. 36. AS 47.17.020(a) is amended to read:

2 (a) The following persons who, in the performance of their occupational
3 duties, [OR] with respect to (8) of this subsection, in the performance of their
4 appointed duties, or, with respect to (9) of this subsection, in performance of their
5 occupational or volunteer duties, have reasonable cause to suspect that a child has
6 suffered harm as a result of child abuse or neglect shall immediately report the harm to
7 the nearest office of the department:

8 (1) practitioners of the healing arts;

9 (2) school teachers and school administrative staff members of public
10 and private schools;

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

12 (4) administrative officers of institutions;

13 (5) child care providers;

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

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

18 (8) members of a child fatality review team established under
19 AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created
20 under AS 47.14.300;

21 (9) athletic coaches.

22 * Sec. 37. AS 47.17.020 is amended by adding a new subsection to read:

23 (j) This section does not require an athletic coach who is an unpaid volunteer
24 to report child abuse or neglect under (a)(9) of this section unless the coach

25 (1) volunteers for more than

26 (A) four hours a week for four consecutive weeks; or

27 (B) 20 hours in a one-month period;

28 (2) has received the training required under AS 47.17.022 or other
29 training that is similar to the training required under AS 47.17.022; and

30 (3) has signed a form acknowledging that the coach is required to
31 report child abuse or neglect under this section.

1 * Sec. 38. AS 47.17.290 is amended by adding a new paragraph to read:

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

6 * Sec. 39. The uncodified law of the State of Alaska is amended by adding a new section to
7 read:

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

10 (9) Restriction on Availability of Certain Material. Notwithstanding
11 (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy,
12 photograph, duplicate, or otherwise reproduce any material prohibited under
13 AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the
14 prosecuting attorney makes the material reasonably available for inspection by the
15 defendant and defense counsel. The material shall be considered to be made
16 reasonably available to the defendant or defense counsel if the prosecuting attorney
17 provides, at a law enforcement or prosecution facility, ample opportunity for
18 inspection, viewing, and examination of the material by the defendant, the defendant's
19 attorney, and any individual the defendant may seek to qualify to furnish expert
20 testimony at trial. If the defendant is not represented by counsel and demonstrates a
21 need to view the material, the court shall make arrangements for the defendant to be
22 supervised while viewing the material. If the defendant or the defendant's attorney
23 identifies an expert outside the state who must view the material, the court shall make
24 arrangements for the court or the law enforcement agency that possesses it to send the
25 material directly to the expert.

26 * Sec. 40. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

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

30 (1) Contents and Filing. If the court directs the Department of
31 Corrections to prepare a presentence report, the report shall be filed with the court and

1 served on counsel at least 30 days before the sentencing hearing, or 30 days before the
2 presentencing hearing, if one is scheduled. The report shall contain all of the
3 defendant's prior criminal convictions and findings of delinquency and any other
4 information about the defendant's characteristics, financial condition, and the
5 circumstances affecting the defendant's behavior that may be helpful in fashioning the
6 defendant's sentence, a victim impact statement, and any other information required by
7 the judge. If the crime involved a victim, the court may not accept a report that
8 does not include a victim's impact statement, unless the report explains the
9 reason why the victim or the victim's representative could not be interviewed.

10 The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 -
11 12.61.150 and AS 12.55.022.

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

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

16 (a) **Consideration of Victim's Statement.** If a victim as defined in
17 AS 12.55.185 prepares and submits a written statement, gives sworn testimony or
18 makes an unsworn oral presentation under AS 12.55.023, the court shall take the
19 content of the statement, testimony, or presentation into consideration when preparing
20 those elements of the sentencing report required by AS 12.55.025 that relate to the
21 effect of the offense on the victim, and when considering the need for restitution under
22 AS 12.55.045. The court shall also take the content of the victim's impact
23 statement in the presentence report into consideration in preparing the
24 sentencing report required under AS 12.55.025. The court also may take the content
25 of the statement, testimony, victim's impact statement, or presentation into
26 consideration for any other appropriate purpose.

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

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

31 (2) In a prosecution for a crime involving a physical or sexual assault

1 or abuse of a minor, evidence of other acts by the defendant toward the same or
2 another child is admissible if admission of the evidence is not precluded by another
3 rule of evidence and if the prior offenses

4 (i) [OCCURRED WITHIN THE 10 YEARS
5 PRECEDING THE DATE OF THE OFFENSE CHARGED;

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

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

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

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

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

18 APPLICABILITY. (a) Sections 2 - 15, 19, 20, 24, and 30 of this Act apply to offenses
19 committed on or after the effective date of this Act.

20 (b) Sections 16, 21 - 23, 27, and 28 of this Act apply to offenses committed before,
21 on, or after the effective date of this Act.

22 (c) Section 17 of this Act applies to sentencing hearings occurring on or after the
23 effective date of this Act.

24 (d) Section 18 of this Act applies to disposition hearings occurring in proceedings on
25 petitions to revoke probation filed on or after the effective date of this Act.

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

28 CONDITIONAL EFFECT. Section 16 of this Act, amending AS 12.45.045(a), takes
29 effect only if sec. 43 of this Act receives the two-thirds majority vote of each house required
30 by art. IV, sec. 15, Constitution of the State of Alaska.

31 * Sec. 46. This Act takes effect July 1, 2013.

28-GH1587U.3
Strasbaugh
3/23/13

AMENDMENT

#1
— year
passed
unanimously

OFFERED IN THE HOUSE

BY REPRESENTATIVE LEDOUX

TO: CSHB 73(JUD), Draft Version "U"

add Max

1 Page 20, lines 18 - 20:

2 Delete ", the defendant's attorney, and any individual the defendant may seek to
3 qualify to furnish expert testimony at trial"

4 Insert "and the defendant's attorney"

5

6 Page 20, line 23:

7 Delete "outside the state"

AMENDMENT

#2
passed unanimously

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 73(JUD), Draft Version "U"

add as
co-sponsors
LeDax
Pinnitt
Millett
Keller

1 Page 19, line 3:

2 Delete "[OR]"

3 Insert "or"

4

5 Page 19, lines 4 - 5:

6 Delete "or, with respect to (9) of this subsection, in performance of their
7 occupational or volunteer duties."

8

9 Page 19, lines 22 - 31:

10 Delete all material.

11

12 Renumber the following bill sections accordingly.

13

14 Page 20, line 2:

15 Delete "includes a paid or volunteer"

16 Insert "means a paid"

17

18 Page 22, line 29:

19 Delete "sec. 43"

20 Insert "sec. 42"

*conceptual amendment #3
withhold*

28-LS8002\A.1
Strasbaugh
3/22/13

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO:

1 Page _____, line _____:

2 Insert "**relating to the rights of certain victims of sexual assault, sexual abuse of a**
3 **minor, or incest to obtain legal and equitable remedies for injuries arising from the**
4 **conduct of a perpetrator;**"

5

6 Page _____, line _____:

7 Insert a new bill section to read:

8 "*** Sec. A. AS 25.23.180(i)** is amended to read:

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

AMENDMENT

#4
Passed unanimously

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 73(JUD), Draft Version "U"

1 Page 2, line 7, following "felonies;":

2 Insert "relating to the rights of certain victims of sexual assault, sexual abuse of a
3 minor, or incest to obtain legal and equitable remedies for injuries arising from the
4 conduct of a perpetrator;"

5

6 Page 15, following line 27:

7 Insert a new bill section to read:

8 "** Sec. 30. AS 25.23.180(i) is amended to read:

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

13

14 Renumber the following bill sections accordingly.

15

16 Page 22, line 18:

17 Delete "30"

18 Insert "31"

19

20 Page 22, line 29:

21 Delete "sec. 43"

22 Insert "sec. 44"

LEGAL SERVICES

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MEMORANDUM

March 22, 2013

SUBJECT: Amendment to Governor's Crime Bill
(Work Order No. 28-LS8002\A.1)

TO: Representative Max Gruenberg
Attn: Miles Brookes

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed an amendment to the governor's crime bill that you requested, amending AS 25.23.180(i), an adoption statute, which permits a person who is a victim of sexual abuse of a minor or incest to seek legal and equitable remedies against the perpetrator, even if the perpetrator's parental rights have been terminated as to a child conceived by the illegal relationship. The amendment would expand the coverage of AS 25.23.180(i) to allow the victim such remedies for all forms of sexual abuse. The amendment is blank so that you can adapt it to whatever version of the bill is available at the time you wish to offer it.

I did not eliminate the phrase "of a minor," because the term "sexual abuse of a minor" is a defined term. See AS 25.23.140. Instead I added "sexual assault," also a defined term.

Questions about the effect of AS 25.23.180(i) and about the amendment. I reviewed the case you referred me to, *S.J. v. L.T.*, 727 P.2d 789 (Alaska 1986), which held, among other things, that parental rights could only be terminated under the adoption or child in need of aid statutes.¹ I also reviewed the minutes of the 1987 committee hearing that you described to me in which the committee discussed SB 30, which made changes to the law on the termination of the parental rights of a person who caused the conception of a child by sexual abuse of a minor or sexual assault. Officials of the Department of Health and Social Services sought to assure that the parental rights of such a person could be terminated in connection with an adoption. The testimony by a Mr. Sanderson was that section 10, now AS 25.23.180(c)(3), was the heart of the bill, and that the passage of the bill would assure that the perpetrator's rights would be terminated. Minutes, *Hearing on C/SSB 30 (JUD) before the House Health, Education and Social Service Committee*, 15th

¹ The trial court had terminated parental rights on the grounds of public policy - the child had been conceived as a result of sexual abuse of a minor.

Legislature, Second Session (May 17, 1987) (testimony of Jack Sanderson) The balance of the testimony seems to be about this concern.

AS 25.23.180(i) seems to cover an issue, retaining the right to sue a perpetrator, that is resolved by AS 09.10.065,² which provides that a person may bring an action based on sexual offenses at any time.³ The matter of legal claims based on the right to inherit are addressed in AS 25.23.130, which provides at subsection (d) that the termination of parental rights under AS 25.23.180(c)(3) renders the child a stranger to the parent for most purposes except inheritance. Under AS 25.23.130(e), the child's inheritance rights are not voided unless the decree terminating parental rights so provides.⁴

There also appears to be some confusion about which person's claims AS 25.23.180(i) is designed to protect. AS 25.23.180(i) appears to be saving claims that the parent who was abused might have, not the claims of the child who was conceived. It does not appear to me that the termination of the parental rights to a child conceived in an illegal relationship would in any way affect a claim that the victim of sexual abuse or incest might have against the perpetrator.

Thus it is not clear what additional effect the existing statute, or the amendment, might have.

Single subject concerns. As we discussed, the amendment may pose a single subject problem. The governor's crime bills, SB 22 and HB 73, concern primarily crime and criminal procedure. There are provisions amending sections from Title 47 concerning child abuse in each bill. However, these provisions, secs. 35 - 38 of CSSB 22(JUD) (now pending in the Senate Judiciary Committee) and secs. 36 - 38 of HB 73 (now pending in the House Judiciary Committee), do not appear to fit within the criminal law subject matter of the bill. These sections concern the standards for determining reasonable effort by parents in child in need of aid proceedings under AS 47.10.086(c), and the persons required to report child abuse under AS 47.17.020. There is a criminal penalty for failure to report as required under AS 47.17, so these sections impose criminal liability on two new groups. But neither of the statutes being amended involve changes to criminal law and procedure, a broad, but single, subject. See *Galbraith v. State*, 693 P.2d 880, 885 - 86 (Alaska App. 1985). The amendment to AS 25.23.180(i) is similarly outside of the general subject of criminal law. However, the bill does have a focus on amendment of statutes regarding protection against abuse, and thus it is possible to identify a unifying theme for the bills, and one which would include your amendment and the amendments of Title 47.

² It appears that AS 09.10.065 was enacted after the 1987 modifications to AS 25.23.

³ Likewise, criminal charges for such offenses can be brought at anytime. AS 12.10.010.

⁴ AS 25.23.130(d) and (e) were enacted with AS 25.23.180(i).

Representative Max Gruenberg
March 22, 2013
Page 3

The courts have given the single subject requirement a liberal interpretation, adopting, in *Gellert v. State*, 522 P.2d 1120 (Alaska 1974), the position stated by the Minnesota Supreme Court in 1891:

All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

Id. at 1123, quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891). As a result, the courts rarely strike legislation down for violation of the rule. Five years after *Gellert*, the Alaska Supreme Court stated that the test

requires no more than that the various provisions of [a] single legislative enactment fairly relate to the same subject, or have a natural connection therewith.

Short v. State, 600 P.2d 20, 24 (Alaska 1979). Thus a court might hold that the general theme of the bills is sufficient under the single subject rule to encompass your amendment.

Title change. Addition of your amendment will require a title change to the bill. If you offer the amendment to the Senate version of the bill, you will need a concurrent resolution to suspend the uniform rules that apply to prohibit the change in the second house.

KJS:ljw
13-194.ljw

Enclosure

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MEMORANDUM

March 26, 2013

SUBJECT: Amendment to HB 73 concerning adoption statute:
Amendment to AS 25.23.180(i) (Work Order No. 28-GH1587\U.7)

TO: Representative Max Gruenberg

FROM: 
Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the amendment to AS 25.23.180(i) you have requested, adding sexual assault to the list of rights of a victim not affected by the termination of parental rights of a perpetrator.

This amendment is based on work order no. 28-LS8002\A.1. In the memo accompanying that amendment, I discussed the single subject issue that the amendment raises. You asked me to note that there is a similar provision in the original bill. Section 2 of HB 73 adds two types of criminal conduct to AS 09.10.065(a), a statute of limitations for civil cases. AS 25.23.180(i) is another statute that saves claims.

Please let me know if I can be of further assistance in this matter.

KJS:lnd
13-184.lnd

Enclosure

(1) for a person born in the United States, to the appropriate vital statistics office of the place, if known, where the adopted person was born and a copy of the decree to the department for statistical purposes; and

(2) for a person born outside the United States to the state registrar of vital statistics (§ 1 ch 84 SLA 1974; am § 5 ch 76 SLA 1982; am § 9 ch 50 SLA 1987)

Revisor's notes. — Formerly AS 20.15.170(a). Renumbered in 1982. As amended by § 5, ch. 76, SLA 1982, this section contained a subsection (b), which has been redesignated AS 25.23.175.

Cross references. — For modification of support order by the child support services agency, see AS 25.27.193.

NOTES TO DECISIONS

Tribal court adoption decrees. — For case discussing law applicable to Indian tribal court adoption decrees, see *Native Village of Venetie I.R.A. Council v.*

Alaska, 918 F.2d 797 (9th Cir. 1990). Cited in *In re K.L.J.*, 813 P.2d 276 (Alaska 1991); *In re Adoption of Bernard A.*, 77 P.3d 4 (Alaska 2008).

Sec. 25.23.173. Indian child adoption reports. After entering a final decree or order in an Indian child adoptive placement, the court shall send to the Secretary of the Interior a copy of the decree or order and other information required by 25 U.S.C. 1961 (sec. 301(a) of the Indian Child Welfare Act of 1978). (§ 17 ch 140 SLA 1986)

Sec. 25.23.175. Findings concerning persons born outside the United States. In the case of the adoption of a person born outside the United States, if requested by the adoptive parents, the court shall make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date and place of birth and parentage of the adopted person. The findings shall be certified by the court and included with the report of adoption filed with the state registrar of vital statistics under AS 18.50.210. (§ 5 ch 76 SLA 1982)

Revisor's notes. — Enacted as AS 20.15.170(b). Renumbered in 1982.

Sec. 25.23.180. Relinquishment and termination of parent and child relationships. (a) The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or before an adoption proceeding as provided in this section.

(b) All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by the parent, regardless of the age of the parent, a copy of which shall be given to the parent,

(1) in the presence of a representative of an agency taking custody of the child, whether the agency is within or outside of the state or in the presence and with the approval of a court within or outside of this state in which the minor was present or in which the parent resided at the time it was signed, which relinquishment may be withdrawn within 10 days after it is signed or the child is born, whichever is later; and the relinquishment is invalid unless it states that the parent has this right of withdrawal; or

(2) in any other situation if the petitioner has had custody of the minor for two years, but only if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the long continued custody by the petitioner, that the best interest of the child requires the granting of adoption.

(c) The relationship of parent and child may be terminated by a court order issued in connection with a proceeding under this chapter or a proceeding under AS 47.10 on the grounds

(1) specified in AS 47.10.080(o) or 47.10.088;

(2) that a parent who does not have custody is unreasonably withholding consent to adoption, contrary to the best interest of the minor child; or

(3) that the parent committed an act constituting sexual assault or sexual abuse of a minor under the laws of this state or a comparable offense under the laws of the state where the act occurred that resulted in conception of the child and that termination of the parental rights of the biological parent is in the best interests of the child.

(d) For the purpose of an adoption proceeding under this chapter, a decree issued by a court of competent jurisdiction in this or another state terminating all rights of a parent with reference to a child or the relationship of parent and child dispenses with the required

(1) consent by that parent to an adoption of that child; and

(2) notice of a proceeding to that parent unless otherwise required by this section.

(e) A petition for termination of the relationship of parent and child made in connection with an adoption proceeding or in an independent proceeding for the termination of parental rights on grounds set out in (c)(3) of this section may be made by

(1) either parent if termination of the relationship is sought with respect to the other parent;

(2) the petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;

(3) an agency; or

(4) another person having a legitimate interest in the matter.

(f) Before the petition is heard, notice of the hearing on the petition and opportunity to be heard shall be given the parents of the child, the guardian of the person of the child, the person having legal custody of the child, and, in the discretion of the court, a person appointed to represent any party.

(g) Notwithstanding the provisions of (b) of this section, a relinquishment of parental rights with respect to a child, executed under this section, may be withdrawn by the parent, and a decree of a court terminating the parent and child relationship on grounds set out in (c)(1) and (2) of this section may be vacated by the court upon motion of the parent, if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

(h) The respondent to a petition filed for the termination of parental rights on grounds set out in (c)(3) of this section is entitled to representation in the proceedings by an attorney. If the respondent is financially unable to employ an attorney, the court shall appoint the office of public advocacy to represent the respondent in the proceedings.

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

(j) In a relinquishment of parental rights executed under (a) of this section, a parent may retain privileges with respect to the child, including the ability to have future contact, communication, and visitation with the child. A retained privilege must be stated in writing with specificity. Not less than 10 days after the relinquishment is signed, the court may enter an order terminating parental rights if the court finds that termination of parental rights under the terms of the agreement is in the child's best interest. If a parent has retained one or more privileges, the court shall incorporate the retained privileges into the termination order with a recommendation that the retained privileges be incorporated in an adoption or legal guardianship decree.

(k) A voluntary relinquishment may not be withdrawn and a termination order may be vacated on the ground that a retained privilege has been withheld from the

relinquishing parent or that the relinquishing parent has been unable, for any reason, to act on a retained privilege, except as provided in Rule 60(b), Alaska Rules of Civil Procedure.

(l) After a termination order is entered, a person who has voluntarily relinquished parental rights under this section may request a review hearing, upon a showing of good cause, to seek enforcement or modification of or to vacate a privilege retained in the termination order. The court may modify, enforce, or vacate the retained privilege if the court finds, by clear and convincing evidence, that it is in the best interest of the child to do so.

(m) After a termination order is entered and before the entry of an adoption or legal guardianship decree, a prospective adoptive parent or a guardian of a child who is the subject of an adoption decree may request, after providing notice as specified under this subsection, that the court decline to incorporate a privilege retained in a termination order and recommended for incorporation in an adoption or guardianship decree under (j) of this section. The request made under this subsection may only be considered by the court after providing at least 20 days' notice by certified mail to the last known address of the person who has voluntarily relinquished parental rights to the child. The notice under this subsection must describe the request and explain that the recipient of the notice may submit a written statement under penalty of perjury to the court that the recipient either agrees with or opposes the request. The notice must also include the deadline for submitting the statement and the mailing address of the court. The court may decline to incorporate a retained privilege if the person who retained the privilege agrees with the request or if the court finds that it is in the child's best interest.

(n) A person who relinquished parental rights is entitled to the appointment of an attorney if a hearing is requested under (l) or (m) of this section to the same extent as if the parent's rights had not been terminated in a child-in-need-of-aid proceeding. (§ 1 ch 84 SLA 1974; am § 32 ch 21 SLA 1985; am §§ 10 — 13 ch 50 SLA 1987; am § 12 ch 89 SLA 1998; am § 4 ch 64 SLA 2005)

Reviser's notes. — Formerly AS 20.15.180. Renumbered in 1982.

Cross references. — For the text of Rule 9(a), Alaska Adoption Rules, amending the content of the consent or relinquishment form to be used in a voluntary termination of parental rights to conform to the requirement of (j) of this section that a retained privilege be stated with specificity, see § 56, ch. 64, SLA 2005, in the 2005 Temporary and Special Acts.

Effect of amendments. — The 2005 amendment, effective July 1, 2005, added subsections (j) — (n).

Editor's notes. — Section 60(b), ch. 64, SLA 2005, provides that the 2005 enactment of (j) — (n) of this section has the effect of amending Rules 9 and 13, Alaska Adoption Rules, by requiring retained privileges to be set out in the relinquishment form and order and by providing additional procedures related to the relinquishment. Section 60(e), ch. 64, SLA 2005, provides that the 2005 enactment of (k) — (n) of this section has the effect of amending Rule 13, Alaska Adoption Rules, by authorizing review hearings for voluntary relinquishments.

NOTES TO DECISIONS

Substantial compliance with consent requirements. — When it is clear that the statutory purpose has been fulfilled, substantial compliance with the requirements governing consent to adoption is sufficient. *S.O. v. W.S.*, 643 P.2d 987 (Alaska 1982), overruled on other grounds, *Rosen v. State Bd. of Pub. Accountancy*, 689 P.2d 478 (Alaska 1984).

Unreasonable refusal to consent to adoption. — The trial court did not err in finding that the father's refusal to consent to the adoption of his child by the maternal grandparents was unreasonable where the father's conviction of the murder of the child's mother had been affirmed and he had only slight chance of prevailing on further appeals. *R.F. v. S.S.*, 928 P.2d 1194 (Alaska 1996).

Applicability of requirement to include statement of right to withdraw. — The inclusion of a statement of right to withdraw requirement of para-

graph (b)(1) is not applicable to a consent to adoption. *B.J.B.A. v. M.J.B.*, 620 P.2d 652 (Alaska 1980).

Denial of Rita T. hearing. — Where a father voluntarily relinquished his parental rights and subsequently attempted to withdraw his relinquishment, the superior court did not abuse its discretion in denying him a Rita T. hearing because the record demonstrated that the father did not have the ability to properly care for the special needs of his children. *Alden H. v. Office of Children's Servs.*, 106 P.3d 234 (Alaska 2005).

Termination of parental rights. — The language in subsection (a) stating that termination of parental rights can occur "before an adoption proceeding" must be read in conjunction with the "relinquishment" language of subsection (b), which does not contemplate involuntary termination actions, but instead refers to cases in which parents choose to give up their

(1) paid for a specified length of time not to extend after the child's 18th birthday; and
 (2) a deferred subsidy; in this paragraph, "deferred subsidy" means that no monetary reimbursement is paid to a family but other benefits are paid for the child.

(c) A subsidy granted under this section may not

(1) exceed the existing rate for foster care; or

(2) be changed without the written request or consent of the person caring for the child.

(d) The department shall review whether the amount of a subsidy granted for a child is appropriate on request of the person caring for the child.

(e) Subsidies shall be paid from the same public funds and in the same manner as foster care payments. (§ 1 ch 84 SLA 1974; am § 4 ch 36 SLA 1977; am § 1 ch 31 SLA 2003; am § 3 ch 38 SLA 2008)

Reviser's notes. — Formerly AS 20.15.210. Re-numbered in 1992.

Effect of amendments. — The 2008 amendment, effective May 23, 2008, rewrote the section.

Sec. 25.23.220. Annual reevaluation of subsidy. [Repealed, § 4 ch 31 SLA 2003.]

Sec. 25.23.230. Regulations. The department shall adopt regulations necessary to implement the provisions of AS 25.23.185 — 25.23.240. (§ 1 ch 84 SLA 1974; am § 19 ch 140 SLA 1986)

Reviser's notes. — Formerly AS 20.15.230. Re-numbered in 1992.

Sec. 25.23.240. Definitions. In this chapter, unless the context otherwise requires,

(1) "adult" means an individual who has reached the age of majority;

(2) "agency" means any person certified, licensed, or otherwise specially empowered by law or regulation to place minors for adoption;

"child" means a son or daughter, whether by birth or by adoption;

"commissioner" means the commissioner of health and social services;

"court" means the superior court of this state, and, when the context requires, the court of another state empowered to grant petitions for adoption or guardianship or to terminate parental rights;

"department" means the Department of Health and Social Services;

"hard-to-place child" means a minor who is not likely to be adopted or to obtain a permanent placement by reason of physical or mental disability, emotional disturbance, recognized chronic condition of physical or mental disease, age, membership in a sibling group, racial or ethnic factors, or any combination of these conditions;

"minor" means a person who has not reached the age of majority;

"sexual abuse of a minor" means a sexual offense defined in AS 11.41.434, 11.41.438, or 11.41.440;

"sexual assault" means a sexual offense defined in AS 11.41.410 or 11.41.420;

"stepparent" means the spouse of a natural parent of the child residing in the household. (§ 1 ch 84 SLA 1974; am § 5 ch 36 SLA 1977; am § 20 ch 140 SLA 1986; am § 15 ch 50 SLA 1987; am §§ 4, 5 ch 204 SLA 1990)

Notes. — Formerly AS 20.15.240. Re-numbered in 1992. Reorganized in 1997 to alphabetical order.

Cross references. — For age of majority, see AS 25.20.010 — 25.20.020.

NOTES TO DECISIONS

Paramata v. Occhipinti, 602 P.2d 442

Cited in *Dep't of Health & Soc. Servs. v. Native Village of Curyung*, 151 P.3d 388 (Alaska 2006).

AMENDMENT

#5

passed unanimously

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 73(JUD), Draft Version "U"

1 Page 2, line 7, following "felonies;":

2 Insert "relating to the definition of sexual assault for the purpose of adoption and
3 the termination of parental rights in certain proceedings;"

4

5 Page 15, following line 27:

6 Insert a new bill section to read:

7 "** Sec. 30. AS 25.23.240(10) is amended to read:

8 (10) "sexual assault" means a sexual offense defined in AS 11.41.410 -

9 11.41.427 [AS 11.41.410 OR 11.41.420];"

10

11 Renumber the following bill sections accordingly.

12

13 Page 22, line 18:

14 Delete "30"

15 Insert "31"

16

17 Page 22, line 29:

18 Delete "sec. 43"

19 Insert "sec. 44"

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MEMORANDUM

March 26, 2013

SUBJECT: Amendment to CSHB 73(JUD): Definition of "Sexual Assault" in Adoption Statutes (Work Order No. 28-GH1587\U.8)

TO: Representative Max Gruenberg

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the amendment you requested changing the definition of sexual assault in AS 25.23, the adoption statutes. Third degree sexual assault has been added. As we discussed, these definitions apply to all of AS 25.23. The changes would have the effect of allowing a court to terminate parental rights under AS 25.23.180(c)(3), if the child was conceived as a result of an act in violation of AS 11.41.425, as well as AS 11.41.410 and 11.41.420 (first and second degree sexual assault).

For your information, here are the four statutes in question:

Sec. 11.41.410. Sexual assault in the first degree.

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

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

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

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

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

(B) who is in the offender's care

(i) by authority of law; or

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

(4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and

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

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

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.420. Sexual assault in the second degree.

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

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

(2) the offender engages in sexual contact with a person

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

(B) who is in the offender's care

(i) by authority of law; or

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

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

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed; or

(4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and

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

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

(b) Sexual assault in the second degree is a class B felony.

Sec. 11.41.425. Sexual assault in the third degree.

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

(1) engages in sexual contact with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

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

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

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is

Representative Max Gruenberg

March 26, 2013

Page 3

in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency.

(b) In this section, "peace officer" has the meaning given in AS 01.10.060.

(c) Sexual assault in the third degree is a class C felony.

If I may be of further assistance, please advise.

KJS:ljw

13-209.ljw

Enclosure

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MEMORANDUM

March 26, 2013

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For your information, here are the four statutes in question:

Sec. 11.41.410. Sexual assault in the first degree.

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

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

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

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

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

(B) who is in the offender's care

(i) by authority of law; or

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

(4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and

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

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

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.420. Sexual assault in the second degree.

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

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

(2) the offender engages in sexual contact with a person

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

(B) who is in the offender's care

(i) by authority of law; or

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

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

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed; or

(4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and

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

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

(b) Sexual assault in the second degree is a class B felony.

Sec. 11.41.425. Sexual assault in the third degree.

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

(1) engages in sexual contact with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

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

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

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is

Representative Max Gruenberg
March 26, 2013
Page 3

in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency.

(b) In this section, "peace officer" has the meaning given in AS 01.10.060.

(c) Sexual assault in the third degree is a class C felony.

If I may be of further assistance, please advise.

KJS:ljw
13-209.ljw

Enclosure

— P.3d — (Alaska Ct. App. Sept. 23, 2009),
 memorandum opinion).

Sec. 11.41.425. Sexual assault in the third degree. (a) An offender commits the crime of sexual assault in the third degree if the offender

- (1) engages in sexual contact with a person who the offender knows is
 - (A) mentally incapable;
 - (B) incapacitated; or
 - (C) unaware that a sexual act is being committed;
- (2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;
- (3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; or
- (4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency.

(b) In this section, "peace officer" has the meaning given in AS 01.10.060.
 (c) Sexual assault in the third degree is a class C felony. (§ 3 ch 96 SLA 1988; am § 9 ch 4 SLA 1990; am § 7 ch 79 SLA 1992; am § 1 ch 33 SLA 2000; am §§ 3, 4 ch 20 SLA 2011)

Revisor's notes. — Subsection (b) was enacted as (e). Relettered in 2011, at which time former subsection (b) was relettered as (c).
Cross references. — For punishment, see AS 12.55.125(i) for imprisonment and AS 12.55.035 for fines.
Effect of amendments. — The 2011 amendment,

effective July 1, 2011, added (a)(4), and made a related stylistic change; added (b) (now (c)).
Legislative history reports. — For governor's transmittal letter concerning the amendment of subsection (a) by § 1, ch. 33, SLA 2000 (HB 99), see 1999 House Journal 256.

NOTES TO DECISIONS

Cited in *Herreid v. State*, 89 P.3d 507 (Alaska Ct. App. 2003); *Simon v. State*, 121 P.3d 815 (Alaska Ct. App. 2005).

Sec. 11.41.427. Sexual assault in the fourth degree. (a) An offender commits the crime of sexual assault in the fourth degree if

- (1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;
- (2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; or
- (3) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, the offender engages in sexual contact with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency.

(b) In this section, "peace officer" has the meaning given in AS 01.10.060.

(1) paid for a specified length of time not to extend after the child's 18th birthday; and
 (2) a deferred subsidy; in this paragraph, "deferred subsidy" means that no monetary reimbursement is paid to a family but other benefits are paid for the child.

(c) A subsidy granted under this section may not

(1) exceed the existing rate for foster care; or

(2) be changed without the written request or consent of the person caring for the child.

(d) The department shall review whether the amount of a subsidy granted for a child is appropriate on request of the person caring for the child.

(e) Subsidies shall be paid from the same public funds and in the same manner as foster care payments. (§ 1 ch 84 SLA 1974; am § 4 ch 36 SLA 1977; am § 1 ch 31 SLA 2003; am § 3 ch 38 SLA 2008)

Revisor's notes. — Formerly AS 20.15.210. Re-numbered in 1982.

Effect of amendments. — The 2008 amendment, effective May 23, 2008, rewrote the section.

Sec. 25.23.220. Annual reevaluation of subsidy. [Repealed, § 4 ch 31 SLA 2003.]

Sec. 25.23.230. Regulations. The department shall adopt regulations necessary to implement the provisions of AS 25.23.185 — 25.23.240. (§ 1 ch 84 SLA 1974; am § 19 ch 140 SLA 1986)

Revisor's notes. — Formerly AS 20.15.230. Re-numbered in 1982.

Sec. 25.23.240. Definitions. In this chapter, unless the context otherwise requires,

(1) "adult" means an individual who has reached the age of majority;

(2) "agency" means any person certified, licensed, or otherwise specially empowered by law or regulation to place minors for adoption;

(3) "child" means a son or daughter, whether by birth or by adoption;

(4) "commissioner" means the commissioner of health and social services;

(5) "court" means the superior court of this state, and, when the context requires, the court of another state empowered to grant petitions for adoption or guardianship or to terminate parental rights;

(6) "department" means the Department of Health and Social Services;

(7) "hard-to-place child" means a minor who is not likely to be adopted or to obtain a placement by reason of physical or mental disability, emotional disturbance, recognized condition of physical or mental disease, age, membership in a sibling group, racial or ethnic factors, or any combination of these conditions;

(8) "minor" means a person who has not reached the age of majority;

(9) "sexual abuse of a minor" means a sexual offense defined in AS 11.41.434, 11.41.438, or 11.41.440;

(10) "sexual assault" means a sexual offense defined in AS 11.41.410 or 11.41.420;

(11) "stepparent" means the spouse of a natural parent of the child residing in the household. (§ 1 ch 84 SLA 1974; am § 5 ch 36 SLA 1977; am § 20 ch 140 SLA 1986; am § 15 ch 50 SLA 1987; am §§ 4, 5 ch 204 SLA 1990)

Revisor's notes. — Formerly AS 20.15.240. Re-numbered in 1982. Reorganized in 1987 to alphabetical order.

Cross references. — For age of majority, see AS 25.20.010 — 25.20.020.

NOTES TO DECISIONS

Granato v. Occhipinti, 602 P.2d 442

Cited in *Dep't of Health & Soc. Servs. v. Native Village of Curyung*, 151 P.3d 388 (Alaska 2006).

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 73
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB073CS(JUD)-DOC-OC-03-23-13
Title: CRIMES; VICTIMS; CHILD ABUSE AND
NEGLECT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: House 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	FY 2014	FY 2014					
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	0.0	***	***	***	***	***

Fund Source (Operating Only)

None							
Total	***	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:

Updated to reflect amended sections which require program development by DOC.

Prepared By:	Kevin Worley, Director	Phone:	(907)465-4641
Division:	Department of Corrections - Administrative Services	Date:	03/23/2013 02:30 PM
Approved By:	Leslie Houston, Deputy Commissioner	Date:	03/23/13
	Department of Corrections		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 73(JUD)

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

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 73(JUD)

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: HB 73
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB073CS(JUD)-LAW-CRIM-03-22-13
Title: CRIMES; VICTIMS; CHILD ABUSE AND
NEGLECT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: (H) Judiciary

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	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:

This fiscal note reflects the most recent committee substitute.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division	Administrative Services	Date:	03/22/2013 12:00 AM
Approved By:	Michael C. Geraghty, Attorney General	Date:	03/22/13
	Department of Law		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB 73

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: HB 73
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB073CS(JUD)-DPS-DET-03-22-13
Title: CRIMES; VICTIMS; CHILD ABUSE AND
NEGLECT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: (H) 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 committee substitute for HB 73 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
Division: Office of the Commissioner
Approved By: Joseph A. Masters, Commissioner
Department of Public Safety

Phone: (907)465-4336
Date: 03/22/2013 04:38 PM
Date: 03/22/13

FISCAL NOTE ANALYSIS

**STATE OF ALASKA
2013 LEGISLATIVE SESSION**

BILL NO. HB073

Analysis

The committee substitute for HB 73 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 CSHB073(JUD)
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) CSHB073(JUD)-ACS-TRC-3-27-13 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)

This fiscal note revises the Analysis section of the prior note to accurately reflect the changed section numbers of the Committee Substitute and to delete references to sections that were eliminated from the initial version. The CS revised former Section 30 (now Section 29) so that the Judicial Council can comply with the bill without relying on the Court System to enter and download data for each felony sentencing, and the Court will not need to modify its case management system to capture that data. Therefore, the Court deleted the services costs shown in the initial version of the fiscal note.

Prepared by Nancy Meade, General Counsel Phone 907-463-4736
Division Alaska Court System Date/Time 3/27/13 1:00 PM
Approved by Nancy Meade for Christine Johnson, Administrative Director Date 3/27/2013
Alaska Court System

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB073(JUD)

Analysis

Expanded crime definitions: The House Judiciary Committee Substitute for House Bill 73, 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 CSHB 73 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 CSHB 73 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: CSHB 73 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

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSHB073(JUD)

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 CSHB 73 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 HB 73
Fiscal Note Number _____
() Publish Date _____

Identifier (file name) HB73-AJC-2-6-13 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	65.4		65.4	65.4	65.4	65.4	65.4	65.4
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	65.4	0.0	65.4	65.4	65.4	65.4	65.4	65.4

FUND SOURCE		(Thousands of Dollars)						
		FY14	FY15	FY16	FY17	FY18	FY19	
1002	Federal Receipts							
1003	GF Match							
1004	GF	65.4	65.4	65.4	65.4	65.4	65.4	
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		65.4	0.0	65.4	65.4	65.4	65.4	

POSITIONS							
	FY14	FY15	FY16	FY17	FY18	FY19	
Full-time	1	1	1	1	1	1	
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)

Initial version.

Prepared by E. J. Pavsek, Fiscal Officer
Division Alaska Judicial Council
Approved by Larry Cohn, Executive Director
Alaska Judicial Council

Phone 279-2526 Ext. 5
Date/Time 2/6/13 2:30 PM
Date 2/6/2013

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 73

Analysis

Section 30 of HB 73 requires the Alaska Judicial Council to provide information to the public before a judge's retention election about the judge's compliance with requirements to consider particular victim information when sentencing the defendant. In FY 12, there were 4,832 felony sentencings statewide. The number of felony sentencings increases every year. If the legislature intends for the Judicial Council to independently monitor judges' compliance (as opposed to relying on court system data), the Council will need to obtain audio recordings of all felony sentencings; listen to the recordings; assess judges' compliance; and enter and analyze data for each judge. The Council would need to hire one full-time employee to accomplish this work. This fiscal note estimates the cost of a full-time Range 11 employee.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB073
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB073-ACS-TRC-1-25-13 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				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14					
Personal Services							
Travel							
Services	20.0						
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	20.0	***	***	***	***	***	***

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF	20.0						
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		20.0	***	***	***	***	***	***

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)

Initial version.

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

Phone 907-463-4736
 Date/Time 1/25/13 11:00 AM
 Date 1/25/2013

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB073

Analysis

Expanded crime definitions: House Bill 73, among other changes, extends the statutes of limitations for felony sex trafficking, human trafficking, and child pornography cases (sec. 2 and 9), categorizes certain conduct by probation and parole officers as sexual assaults (sec. 3-6), expands the definition of unlawful contact in the first degree (sec. 7), provides that certain property used by patrons of prostitutes will be forfeited (sec. 8), and expands the definitions of "sexual felony" and "sexual offense" (sec. 22-23). 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 30 of HB 73 would require the Alaska Judicial Council to provide information to the public before a judge's retention election about a judge's compliance with requirements that he or she consider particular victim information when sentencing felony defendants. The court system is uncertain what mechanism would be used to capture data that the Council may need to comply with the requirement, but it is probable that the court would need to change its judgment forms and seek a modification to its electronic case management system in order to capture this information in a form that is retrievable and usable. Based on costs of past modifications, the court estimates that a modification to CourtView to record and use data on this issue would be \$20,000.

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 12 of HB 73 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, 20, and 21 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: HB 73 also allows a judicial officer to order a person charged with or convicted of a crime involving domestic violence to participate in a GPS monitoring program (sec. 10) and allows a protective order issued for stalking, sexual assault, or domestic violence to include an order that the respondent participate in a GPS monitoring program (sec. 24-26). The protective order must contain a specific warning that the penalty for violation could be up to \$10,000 (sec. 27). These revisions will have no fiscal impact on the court.

Section 11 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 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. 13), change the process for a defendant being sentenced to claim credit for time spent in treatment (sec. 16 - 17), disallow a suspended imposition of sentence for sex trafficking crimes (sec. 18), require the judge to impose some consecutive term of imprisonment for multiple child pornography crimes (sec. 19), 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

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB073

Analysis Continued

her child or is a sex offender (sec. 36), 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.

Immunity and privilege claims: Sections 14, 15, 43, and 44 revise the process determining whether a witness has a valid claim of a privilege against self-incrimination, and allow for an immediate appeal of a court's decision that a witness has a valid claim of privilege. The court will not have a fiscal impact from implementing these changes.

Provisions with no direct impact: Finally, certain sections of HB 73 do not impact the court's day-to-day operations, and therefore have no fiscal impact on the court system. They clarify definitions (sec. 28), allow the Violent Crimes Compensation Board to compensate victims of human and sex trafficking and exploitation of minors (sec. 29), make certain prisoners ineligible for "good time" deductions (sec. 31), alter certain procedures concerning administrative subpoenas from the attorney general (sec. 32-35), and make certain persons mandatory reporters of suspected harm to a child (sec. 37-38).

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 73
 Fiscal Note Number 1
 (H) Publish Date 1/16/13

Identifier (file name) 0587-DPS-DET-01-11-13 Dept. Affected Public Safety
 Title Sex Trafficking and DVSA Crimes Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor Rules by Request of the Governor
 Requester Governor OMB Component Number 2325

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	1,693.1							
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	1,693.1	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	1,693.1						
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		1,693.1	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 (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? Yes
 If yes, by what date are the regulations to be adopted, amended, or repealed? 7/1/2014 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 Phone (907) 269-5591
 Division Office of the Commissioner Date/Time 1/11/13 3:38 PM
 Approved by Joseph A. Masters, Commissioner Date 1/11/2013
Department of Public Safety

FISCAL NOTE ANALYSIS #1

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 73

Analysis

Sections 24 and 26 of the bill allow the court to order the respondent of a long-term domestic violence or stalking/sexual assault protective order to participate in a monitoring program using a global positioning device or similar technological means that meet the guidelines for a monitoring program adopted by the Department of Public Safety (DPS).

DPS does not have guidelines for a monitoring program and anticipates the need to adopt new administrative regulations to implement these guidelines. It is expected that work on the regulation project would begin once the bill is passed and regulations would be adopted by July 1, 2014.

In implementing a monitoring program, DPS envisions following a similar process to that of the Department of Corrections (DOC) whereby it would contract with a third-party vendor to conduct the monitoring. DOC reports an approximate daily cost of \$32.45 for electronic monitoring, which uses radio frequency technology to monitor offenders but does not track them. It is expected that the daily cost of monitoring of respondents using satellite-based technology to include tracking will be higher.

At any time, there are approximately 1200 active long-term domestic violence protective orders (valid for up to 12 months) and 250 active stalking/sexual assault protective orders (valid for up to six months). Assuming approximately 10 percent of respondents would be ordered to participate in the monitoring program, and assuming DPS would cover the costs of the monitoring, the calculation is as follows:

Calculation

$\$35/\text{day} \times 365 \text{ days} = \$12,775 \text{ cost per domestic violence protective order respondent} \times 120 \text{ respondents} =$
 $\$1,533,000 \text{ annual cost}$

PLUS

$\$35/\text{day} \times 183 \text{ days} = \$6,405 \text{ cost per stalking/sexual assault protective order respondent} \times 25 \text{ respondents} =$
 $\$160,125 \text{ annual cost}$

TOTAL ESTIMATED ANNUAL COST = \$1,693,125

The true fiscal impact will be affected by the actual number of respondents that are ordered to participate in a monitoring program, and whether the court orders the respondent to pay for the cost of monitoring.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 73
 Fiscal Note Number 2
 (H) 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

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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. HB 73

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 HB 73
Fiscal Note Number 3
(H) Publish Date 1/16/13

Identifier (file name) 0587-DOC-OC-01-14-13 Dept. Affected DOC
Title "An act relating to sex trafficking and DVSA crimes" Appropriation Admin and Support
Allocation Commissioner's Office
Sponsor Rules Committee
Requester Governor OMB Component Number 694

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)

This is the original version of the bill.

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/Time 1/14/13 2:00 PM
Date 1/14/2013

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 73

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).

The bill adds contact of a victim or witness while under official detention to the crime of unlawful contact in the 1st degree. 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 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 requires a defendant who is requesting credit for time served, to submit the request to the court no later than 10 days before the sentencing or disposition hearing. 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.

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.

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 is 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 HB 73
 Fiscal Note Number 4
 (H) Publish Date 1/16/13

Identifier (file name) 0587-LAW-CRIM-01-10-13 Dept. Affected Law
 Title An Act relating to sex trafficking and DVSA crimes. Appropriation Criminal
 Allocation Criminal Justice Litigation
 Sponsor Rules by Request of the Governor
 Requester Governor OMB Component Number 2202

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	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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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 Loretta Withington, Division Operations Manager Phone 465-5427
 Division Administrative Services Date/Time 1/10/13 12:00 AM
 Approved by Michael C. Geraghty, Attorney General Date 1/10/2013
Department of Law

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 73

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 improves the procedure for determining whether a witness has a valid claim of privilege not to incriminate him or herself in a particular prosecution; and 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.

Additionally, the bill would give a court the authority to order a defendant, as a condition of bail release in a matter charging a domestic violence crime, or to order a respondent, as part of a protective order for stalking, sexual assault, or domestic violence, to participate in an electronic monitoring program under guidelines adopted by the Department of Public Safety.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version HB 73
Fiscal Note Number 5 **CORRECTED**
(H) 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. HB 73

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 HB 73
Fiscal Note Number 6 **CORRECTED**
(H) Publish Date 1/17/13

Identifier (file name) 0587-DOA-PDA-1-14-13 Dept. Affected Administration
Title An act relating to sex trafficking and DVSA crimes Appropriation Legal and Advocacy Services
Allocation Public Defender Agency
Sponsor Rules by Request of the Governor
Requester Governor OMB Component Number 1631

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)

Not applicable, initial version.

Prepared by Quinlan Steiner Phone 907 334-4414
Division Public Defender Agency Date/Time 1/10/13 12:12 AM
Approved by Curtis Thayer, Deputy Commissioner Date 1/14/2013
Department of Administration

FISCAL NOTE ANALYSIS #6 **CORRECTED**

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB 73

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 OCS 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.

Additionally, this bill requires the court to conduct a direct personal inquiry under oath of a witness claiming a Fifth Amendment privilege and makes several changes to the Criminal Rules, including the guidelines regarding discovery, presentence and sentencing procedures, and the rules of evidence.

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 HB 73
 Fiscal Note Number 7
 (H) 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					
			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)						
1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

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. HB 73

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.



February 11, 2013

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The Honorable Wes Keller, Chair
The Honorable Bob Lynn, Vice-Chair
House Judiciary Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801

via email: Rep.Wes.Keller@akleg.gov
Rep.Bob.Lynn@akleg.gov

Re: **House Bill 73 – Omnibus Crime Bill**
Constitutional Review

Chair Keller, Vice-Chair Lynn:

Thank you for the opportunity to submit written testimony regarding House Bill 73, the Omnibus Crime Bill.

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, we appreciate the opportunity to provide the Committee with our constitutional analysis of the proposed legislation.

We would be happy to work with the Committee and the Department of Law to answer any questions you may have, or propose or review revisions to the Bill.

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 HB 73. 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, HB 73 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 HB 73 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 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 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

¹ Alaska Judicial Council, Alaska Felony Process: 1999, Table C-1 at <http://www.aic.state.ak.us/reports/Fel99FullReport.pdf>.

² *Id.*

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 FY 2004 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 improves 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 point 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.

HB 73 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, 20, 21: 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); *see supra* note 3. 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.

Sections 2 & 9: 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 9 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.

³ Alaska Judicial Council, Criminal Recidivism in Alaska, at 4, *available at* <http://www.correct.state.ak.us/admin/docs/2011Profile06.pdf>; *id.* at 8; *id.* at 12.

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.

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 9 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 and 6: Sexual Contact with Supervisees by Probation/Parole Officers

The ACLU of Alaska generally supports the aims of Sections 3, 4, 5, and 6 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 7: Barring Contact Between Victims and Offenders

The ACLU suggests the language in section 7 could be refined to clarify the law. The existing statute makes it clear that the “order” being violated must be in a sentencing order, bail order, or condition of release, all of which must be set by a judge or (in the case of parole condition) the Parole Board.

The open-ended language in the bill states that a person may be convicted of the offense if he contacts a victim or witness he has been ordered not to contact while in official detention. The scope of *who* may order him not to contact the victim or witness is unclear. Certainly, a judge committing a prisoner to jail could order the prisoner not to contact the victim or witness; those orders are clear, made in a hearing-type setting, and typically either written down or audio-recorded.

However, the bill does not limit who can order the individual not to contact the witness or victim. Can someone be prosecuted for the offense merely because a correctional officer comes

by his cell and tells him not to call a witness? The bill is silent on this point and – unlike a sentence order, bail order, or condition of release – the number of people who could issue an order to a detainee during his detention is very long. To prevent ambiguity that could be fatal to the new amendment, Section 7 should be amended to state that any order giving rise to charges under this section must be issued on the record or in writing by a judge or the parole board.

Section 13: Limiting Admission of Evidence Relating to the Alleged Victim's Sexual Conduct

This section seeks to balance several important rights, including the right of the accused to a fair trial and the right of privacy for victims of sexual assault. The bill proposes that a criminal defendant should have to give notice that he wishes to introduce evidence relating to sexual conduct of the alleged victim at least five days prior to trial. This proposal has substantial value. While evidence of sexual conduct on other occasions may be relevant for some limited purposes at a trial, in many instances, improper use of information about the alleged victim's sexual history is used to assassinate the alleged victim's character.

The ACLU of Alaska would suggest a minor amendment to the language proposed in the bill. The bill mandates that the defendant file his motion five days before trial. However, the bill only permits the defendant to raise a motion to admit the evidence at trial if the evidence was unavailable prior to trial. This bill creates a legal lacuna, where the prosecution could provide evidence *two days* before trial, and the defendant would be helpless to introduce the evidence. He could not meet the standard that the evidence was not presented to him before trial, because it was presented before trial; however, it was presented after he could have filed any motion to admit it.

A bill thwarting a defendant from presenting relevant evidence would clearly violate the due process right to a fair trial. Obviously, the bill must allow the defendant to make a motion at trial to admit certain evidence about the sexual conduct of the alleged victim if the evidence is not disclosed to the defendant at least five days prior to trial. Given the seriousness of the charges at issue, a defense attorney should not have to scramble to present a motion in an hour or two.

In light of the affirmative duty of the prosecutor to disclose potentially exculpatory evidence and the desire to avoid trials by ambush, the language requiring that the evidence be admitted at trial should also be removed. Some evidence may be potentially exculpatory and only relevant to the defendant's theory of defense. The defendant should be free to introduce exculpatory evidence, even if the prosecution does not enter it at trial.

The ACLU of Alaska would suggest that the line "The defendant may apply for an order during trial if the request is based on evidence admitted at trial that was not available to the defendant before trial" be replaced with the line "The defendant may apply for an order during trial if the request is based on evidence that was not available to the defendant until 14 days before trial."

We read the term “available to the defendant” as including evidence independently discovered by defense investigation; otherwise, the statute would say too little. The prosecution has an affirmative constitutional and ethical duty to disclose exculpatory evidence, not merely to make it “available.” We trust that courts will read the statutory language “available to the defendant” without diminishing that prosecutorial obligation of affirmative disclosure. This section should also be read to set a basic minimum for announcing a defense. It should not be read to diminish a criminal court’s inherent authority to set its own deadlines for disclosure of evidence.

Sections 14, 15, 43, and 44: Examination of Witnesses Invoking the Right Against Self-Incrimination

The Fifth Amendment of the United States Constitution states that no one “shall be compelled in any criminal case to be a witness against himself.” U.S. Const., Amdt. V. The Alaska Constitution states a similar concept somewhat more broadly: “No person shall be compelled in any criminal proceeding to be a witness against himself.” Alaska Const., Art. I, Sec. 9.

Notwithstanding this very clear language, these sections propose that anyone who is compelled to appear in a criminal case, who invokes the right that two different constitutional conventions bestowed upon him, and whom the prosecutors decline to make immune, shall be compelled to testify before the court, so that the court can decide if there is a valid claim for immunity. No reason is given for compelling the testimony in question. It is unclear why a written proffer to the court would be inadequate, and nothing in the record shows that the proffer from the witness’s counsel has historically been inadequate.

The nominal protections against use of the information which is supposedly protected by the *in camera* nature of the hearing are destroyed by Section 15, which requires that the court write detailed statements of its findings of fact “explain[ing] the real or substantial danger that the proffer or testimony” would pose to the witness.

This proposed procedure wherein the witness’s *in camera* testimony would be “privileged and inadmissible for any purpose” but the Court would be required to write up its findings *based on that testimony and relaying the substance of the testimony*, obviously violates the constitutional protection against disclosure.

The only protection for the Court’s opinion – which contains the substance of the protected testimony – is that it is “sealed.” A “sealed” order is one which is “restricted to the judge and persons authorized by written order of the court.” Alaska R. Admin. 37.5(c)(5). It is unclear whether the statute even excludes the Department of Law from the scope of those authorized to obtain a copy of the trial court’s opinion reflecting the substance of the protected testimony.

Even assuming the Department of Law initially lacks access to the sealed opinion, the witness is compelled by law to testify and incriminate himself, knowing that the continued secrecy of his

testimony is protected only by the willingness of a judge to exclude every person other than the judge from the scope of his order sealing the document. The determination to unseal a document should be made by weighing whether the public interest in disclosure is outweighed by a legitimate interest in confidentiality. Alaska R. Admin. 37.6(b). The right of a person not to be compelled to incriminate himself is not subject to weighing tests. Constitutional protections must be respected by guarantees.

However, it is doubtful as to whether the bill even allows the Department to be excluded from the scope of those with access to this document. Section 15 guarantees that the Department of Law has a right to an immediate interlocutory appeal of the order. If the Department isn't entitled to obtain a copy of the order in the first place, it won't know that it has any decision to appeal. Moreover, the Department of Law could (and almost certainly would) argue that, in order to appeal the trial court's order, it would need to have a copy of the document to evaluate its claims. The only other alternative would be the absurd scenario in which the Department would somehow appeal an order that it was not allowed to read.

The bill suggests that one basis for appeal by the prosecution would be that the Court lacked a sufficient factual basis for its decision. If the Court fails to adequately explain the factual basis of its opinion, one presumes that the Department of Law will challenge the adequacy of the opinion. If the Court explains the factual basis for its reasoning in detail, the Court may be vindicated but the privilege would be lost. This proposal puts the right against self-incrimination in a vise from which it cannot escape.

The bill explicitly allows the compelled testimony of a person against himself. The only even plausible defense of such a process is that "the state has taken measures to remove the hazard of incrimination." *State v. Gonzalez*, 853 P.2d 526, 530 (Alaska 1993). HB 73 instead seems set up to ensure that incrimination takes place, whether the state wins or loses.

Sections 16 and 17: Time Served Credit for Rehabilitative Programs

This section mandates that a defendant provide notice 10 days before a sentencing hearing that he seeks time served credit for time spent in a residential rehabilitative program and disallows any claims for time credit requested after the date of sentencing.

The proposal doesn't have a clear basis in any obvious policy concern, and seems to fly in the face of others. The state certainly has an interest in encouraging detainees to attend treatment programs. If the state enacts policies that tend to *deter* people from seeking out substance abuse treatment and mental health treatment, how does that foster a legitimate state end? If this bill passes, a defense attorney would be required to inform his client that getting time served credit for treatment programs is very difficult, and that his client might be better off in jail, where at least he knows he'll get credit for his time served.

The bill also presents no real solution for what happens in the case where a person seeks to plead and be sentenced on the same day, such as for a minor misdemeanor case. It's not plausible or feasible for a person to send notice regarding sentencing prior to a plea being entered.

If the concern embodied in this section is a record-keeping one, clarity at the time of sentencing could be much better accomplished by ordering treatment facilities receiving bailees to provide a notice to the court, prosecutor, and defense counsel when someone is admitted, and notice to the court, prosecutor, and defense counsel when someone is released. That way, time credit could be easily calculated at the time of sentencing. Erecting procedural barriers to time served credit for treatment programs seems calculated to accomplish nothing more than discouraging participation in treatment. Stamps are cheap; alcoholism and drug addiction aren't.

Section 18: 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 23: Making Engaging in Prostitution with a Person Under 20 a Registrable Sex Offense

As stated above, one of the problems inherent in the over-prosecution of sex offenders is that current policy over-punishes many people unlikely to commit new crimes or pose a danger to the public. Section 23 illustrates the over-breadth of this movement. Our laws would classify a person who pays a 19-year-old for sex in the same category as a person who abducts, rapes, and murders children. Treating such dissimilar behavior similarly will diminish public trust in the registry.

Moreover, it will impose on an undeserving individual many presumptions and legal handicaps; Section 36 of this same bill would make it easier for the state to remove children from the home of a sex offender, yet patronizing a 19-year-old prostitute – while not morally laudable – does not necessarily make one an unfit parent. The effects of the sex offender registry are so sweeping that one should not casually add to the list of sex offenses on the registry.

No evidence is presented that a person who pays a 19-year-old for sex is somehow a dangerous individual. The ACLU of Alaska recognizes that prostitution is illegal. However, a 19-year-old is an adult in every jurisdiction in this country. The age of consent in Alaska is 16, and we house children as young as 16 in adult correctional facilities. A 19-year-old can vote, can be prosecuted as an adult for a criminal offense, can enlist in the army, and can make virtually every adult decision that a 50-year-old can (with a few exceptions like buying alcohol or running for the U.S. Senate). Without commending people who seek out prostitution, a reasonable person can readily recognize the relative moral difference between rape and prostitution with a consenting adult. Unfortunately, HB 73 does not.

Sections 24, 25, 26, 27 and 28: Allowing GPS Surveillance Under a Protective Order

HB 73 would allow the imposition of a requirement that the subject of a protective order or stalking/sexual assault order submit to GPS surveillance of his whereabouts for six months or a year, without any jury verdict, finding of probable cause, or even necessarily the attendance of the subject. Moreover, since a court granting emergency *ex parte* relief under AS 18.65.855 can grant any relief authorized by AS 18.65.850(c), the bill would also allow a judge to impose GPS monitoring on an individual for 20 days even without any notice or opportunity to be heard. It is unclear how the subject of an emergency order is supposed to comply with the GPS tracking provision of the order as soon as he is given notice of the order.

Protective orders impose real burdens on individuals, but generally they are *negative*: the subject of the order cannot contact the petitioner, threaten her, or must stay *away from* the petitioner's home or office. Generally, even if the allegations are false or exaggerated, avoiding contact with someone who is upset enough to seek such an order is a good idea. Requiring the *affirmative* participation of the subject of the order in the GPS program is thus a first for Alaska. It constitutes a substantial burden on the privacy of the individual subject to the order.

Allowing longstanding government surveillance of an individual on an *ex parte* basis and without notice to the individual is a shocking invasion of individual privacy. While there may be extreme cases of stalking, domestic abuse, or sexual assault where electronic surveillance might be appropriate, it is difficult to imagine any such compelling scenario where the state would not simply press criminal charges. If law enforcement or prosecutors are not promptly acting in response to victims of stalking, domestic abuse, or sexual assault with very credible, very compelling claims, the legislature should take that concern up with the Department of Law or the

Department of Public Safety rather than creating a private, *ex parte* avenue for long-term surveillance and subject to substantial abuse by private actors with their own grudges, biases, and ulterior motives.

The ACLU also notes that the statute puts no restriction on what use the state can make of the information obtained pursuant to GPS surveillance; law enforcement can use it for collateral purposes unrelated to the alleged stalking or abuse.

Section 31: 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.

Sections 32, 33, 34, and 35: Increased Authority for Administrative Subpoenas from Law Enforcement

The Department of Law continues to seek expanded administrative subpoena power for its criminal investigations, avoiding the trouble of complying with the warrant requirement in our Constitution. The original enactment was of dubious constitutionality, but this bill allows for far more abuse.

The bill appears on its face to allow any attorney in the Department of Law to send a letter legally compelling an internet provider to produce information about the internet use from a particular location. Formerly, only the Attorney General himself could sign such a letter. Under this bill, many more letters could be sent, by many more attorneys. As long as the Attorney General is the only person who can sign such letters, there would at least be some accountability within the Department of Law. Once any lawyer can sign such a letter, hundreds of Department lawyers will be able to demand information about internet usage without any oversight. The Attorney General will only be able to guess whether those letters issue for the purpose of criminal investigation, to find out what address unpopular on-line postings are coming from, or to track down some attorney’s ex-girlfriend.

The privacy of Alaskans deserves better than a rubber stamp inquiry before their personal information is seized. The authority to seize individual records should not be disseminated widely and without control or supervision.

Upon review of the statement in support of the bill from the Department of Law, it appears that the Department is taking the position that the attorney general may have only one designee. If so, that limitation should be clearly enunciated in statute. Section 35 could be rewritten to clarify that there may be only one attorney general's designee.

Section 39: 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 40: 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 Judiciary Committee will note the multiple constitutional infirmities with the proposed language in HB 73.

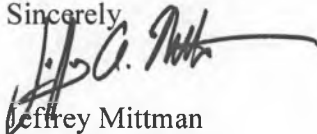
While the ACLU of Alaska **does not contest the State’s ability and duty to pass laws to protect public safety**, as drafted, **HB 73 goes far outside this permissible sphere.**

The issues raised above present substantial Constitutional problems and would entangle the state in lengthy, costly, and needless litigation, should HB 73 pass as currently written.

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,



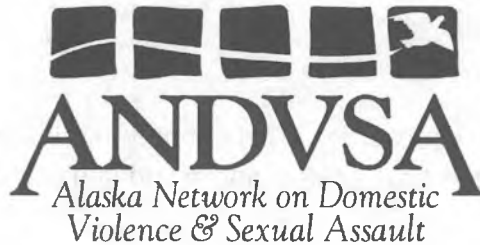
Jeffrey Mittman
Executive Director
ACLU of Alaska

House Judiciary Committee
Constitutional Analysis of H.B. 73
February 11, 2013
Page 15

cc: Representative Neal Foster, Rep.Neal.Foster@akleg.gov
Representative Max Gruenberg, Rep.Max.Gruenberg@akleg.gov
Representative Gabrielle LeDoux, Rep.Gabrielle.LeDoux@akleg.gov
Representative Charisse Millett, Rep.Charisse.Millett@akleg.gov
Representative Lance Pruitt, Rep.Lance.Pruitt@akleg.gov

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February 5, 2013

House Judiciary Committee
State Capitol
Juneau, AK 99801

Re: HB 73 – Governor’s Crime Bill

Dear House Judiciary Members:

For the record, my name is Peggy Brown and I am the Executive Director of the Alaska Network on Domestic Violence and Sexual Assault. The Network is a statewide, non-profit, membership organization representing 18 community based programs throughout the state that provide direct services to victims of domestic violence and sexual assault.

We thank the Governor for bringing forth HB 73 and support many of its provisions which will eliminate the civil and criminal statute of limitations for sex trafficking, close a gap in the unlawful contact statute, prohibit probation/parole officers from engaging in sexual activity with individuals under their supervision, expand the authority of the VCCB to include claims of compensation from victims of sex trafficking, human trafficking and unlawful exploitation of a minor, and expand the rape shield law, among others.

Victim Safety and Right to Privacy

However, we are concerned about Sections 24-26 of the bill which would allow judges to order GPS monitoring as a condition in a civil proceeding. While certainly not intended to do so, for us, this creates a significant safety concern for victims.

Victims seek protective orders when they are trying to leave abusers. It is well documented that at this time of separation, abusers are most likely to seriously injure or kill victims. Domestic violence program advocates are trained to work with victims to develop safety plans, identify safe locations that are unknown to the abuser. These can include staying with family and friends or by obtaining their own safe, affordable housing. The very essence of safety planning and working with victims to determine safe places is that they are unknown and not disclosed the abuser.

For GPS monitoring to work, victims must disclose these “safe places” so that they can be set as zones of exclusion from which the abuser is not allowed to enter. These locations must be disclosed to the abuser in

Member Programs

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

order for him to comply with this civil court order. This not only eliminates “safe places” for victims through disclosure to the defendant, but puts victims, their children and family and friends who are providing safe haven at risk.

Further, GPS monitoring systems that track victim’s real-time locations not only violates a victim’s right to privacy but has a significant unintended consequence. In our discussion with the National Network to End Domestic Violence, the director of victim safety and technology has found that companies retain the victim’s location data and abusers and their attorneys have used this to subpoena those records and use the information to harass and intimidate victims. The NNEDV has not found a monitoring company that does not retain this information.

Finally, the Governor of Maine’s Task Force report that we have provided to committee members made a specific finding that GPS monitoring is not appropriate in civil cases, and we agree. Allowing judges the discretion to add a condition to civil protective orders requiring GPS monitoring in this civil context eviscerates the safety that protective orders provide. Therefore, we ask that Sections 24-26 of the bill be removed and a new provision placed in sentencing/post-conviction statute(s).

Bail and Victim Consent

Section 10 of the bill adding GPS monitoring to bail conditions is also problematic for similar reasons. For a GPS monitoring program to be effective, victim safety must be paramount. As indicated above, to insure victim safety and privacy, victim consent is an absolute necessity BEFORE any GPS monitoring is ordered.

While a victim has a right to be present during a bail hearing, few often are present for various reasons ranging from relocating to a new “safe place” prior to the defendant’s release, seeking safety in shelter or other reasons that vary individual to individual. GPS monitoring should NEVER be ordered absent victim consent and this is unlikely to happen at a bail hearing.

In reviewing some other states that have passed legislation allowing judges to order GPS monitoring as a bond condition or as part of sentencing post-conviction, several common themes emerged. First, of the states we looked at CT (three judicial districts), NY (Staten Island), MA (Newburyport), MN Ramsey County), ME (one rural and one urban TBD) and TN (Davidson County) all took the prudent and less costly approach of piloting a GPS monitoring program for domestic violence offenders in discrete, smaller areas where there existed several necessary components that would potentially lead to favorable outcomes. Specifically, it was consistently found that the key to enhance victim safety was the existence of coordinated community response teams or high risk response teams in the piloted areas, ability for immediate law enforcement response, required risk assessments performed to determine whether the individual was a suitable candidate for GPS monitoring, and required pre-trial supervision services through either a third party or through a probation department for offender accountability. By establishing pilot sites, these states are able to evaluate the effectiveness of the program, document and address technological challenges, of which many have noted, especially in rural areas, develop performance measures on the efficacy and efficiency of the program, including cost benefit analysis and most importantly, the impact on victim safety.

Another commonality of note is that of those jurisdictions we have looked at: we have yet to find one where a law enforcement agency is the lead agency. In Connecticut, the GPS program is monitored and evaluated by the Judicial Branch, in the other states, the lead agency is the Department of Corrections/or Department of Probation. In fact, the Maine Taskforce Report indicates that after initially supposing that DPS would be the proper agency, after the taskforce completed their work, they found it more appropriate to sit in their Board of Corrections.

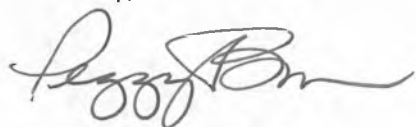
Recommendation: Post-Conviction Conditions of Probation

We believe that Alaska can benefit from the findings in other states by authorizing one rural and one urban pilot site, if the Governor and the Legislature wish to pursue some type of GPS monitoring, post-conviction. This approach makes sense in Alaska. It also makes sense to have the DOC as the lead agency.

DOC has authority over all defendants post-conviction and in fact, DOC has a pilot project it is currently administering in Fairbanks for domestic violence misdemeanants under the Governor's Initiative, the PACE project, where risk assessment tools have already been developed and staff trained on how to evaluate risks based on these assessments. Further, DOC has an existing "passive monitoring" system in place and would only need to work with their current monitoring contractor to explore expanding to "active monitoring". DOC works directly with the courts and provides the assessments necessary for the judge to consider in presentence reports.

Since DOC is doing assessments post-conviction, perhaps they are the appropriate agency to determine recommendations as to whether GPS monitoring should be an option. This change in lead agency would enhance Section 40 of the bill which provides that judges must insure victim input before considering a presentence report or document why victim input is not available. In any case, in cases where the victim is unwilling or unable to participate, then GPS monitoring should not be ordered.

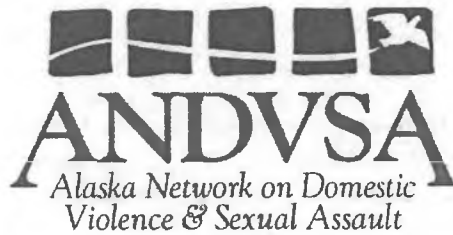
Sincerely,



Peggy Brown, Executive Director

cc: Lisa Mariotti, Policy Director

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January 30, 2013

Senator John Coghill, Jr., Chair
Senate Judiciary Committee
State Capitol
Juneau, AK 99801

Re: SB 22 – Governor’s Crime Bill – GPS Monitoring Provisions

Dear Senator Coghill:

In 1996, the Domestic Violence Prevention and Victim Protection Act provided victims of domestic violence with a powerful, victim-centered tool that has become the heart of victim safety planning: the civil protective order. Countless women and children have used this tool to secure their safety and many lives have been saved. Unfortunately, the proposal in HB 73 and SB 22 to add GPS monitoring as a possible condition in civil protective orders will eviscerate the very heart of the safety provided by civil protective orders. Therefore, for the reasons stated below, we would respectfully request that Sections 10, 24, 25, and 26 be removed from HB 73 and SB 22.

How GPS Technology Works

- There are two types of GPS tracking: **passive and active**. With passive tracking, an offender wears a device 24 hours a day but the monitoring official might only receive an offender’s location information once a day when the offender uploads it from home. Because domestic violence situations are uniquely dangerous, passive monitoring is neither safe nor recommended for domestic violence and stalking offenders.
- Active tracking is most often used with violent offenders since it provides real-time location of the offender 24 hours a day. Active monitoring is only effective if an administrator continually monitors the location of the offender, 24/7 and there are sufficient law enforcement resources to provide for an immediate response. In some places, monitoring is done by corrections or local police officers who know the offender and the victim and has found to be a best practice over other communities’ programs that outsource this function to an outside vendor that works elsewhere.
- In order to work, an electronic monitoring program sets up “exclusion zones” around the victim’s home, work, children’s school, etc. and an enrolled offender may not enter those

Member Programs

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geographic areas. If the offender enters those zones, an alert can be immediately sent to the monitor with notification to the victim. It is essential that these "exclusion zones" be large enough to provide enough time for law enforcement response to intervene, a likely challenge in most areas of the state.

- Some systems notify the victim with a pager if the offender enters any exclusion zone. Other systems track the *victim's* real-time location by using GPS on the victim's pager device. If the victim is not in the exclusion zone and the offender comes near the victim, the system will typically alert both the monitoring official and the victim. The offender can also be contacted and police can be dispatched.
- In order for GPS Technology to be effective, there must be a coordinated, community response and available law enforcement to immediately respond to GPS violations. Many communities in Alaska, especially municipalities with limited funding and resources, will not likely be able to meet this challenge, therefore negating victim safety and the effectiveness of GPS technology.

Safety Risks

Victims seek protective orders when they are trying to leave abusers. It is well documented that at this time of separation, abusers are most likely to seriously injure or kill victims. DV program advocates are trained to work with victims to develop safety plans, identify safe locations that are unknown to the abuser. These can include staying with family and friends or by obtaining their own safe, affordable housing. The very essence of safety planning and working with victims to determine safe places is that they are unknown and not disclosed to the abuser. The Network has done extensive work with the Court System to insure that protective orders are part of this safety planning by developing a system where a victim can apply for a protective order without disclosing her actual location to enhance her safety.

For GPS monitoring to work, victims must disclose these safety zones so that they can be set as zones of exclusion from which the abuser is not allowed to enter. These locations must be disclosed to the abuser in order for him to comply with this civil court order. This not only eliminates safety zones for victims but puts victims, their children and family and friends who are providing safe haven at risk.

Further, allowing judges the discretion to add a condition to civil protective orders without victim consent is problematic and violates a victim's right to privacy by requiring her to disclose her safe locations and is not something that we can support. However, even more problematic would be judges seeking victim consent as part of the protective order hearing placing the victim in the untenable position of being the one requesting that the abusers liberty interests be restrained, with financial impacts on him. If the judge then denies the long-term order, which is not uncommon, the unintended consequence could be deadly.

Finally, GPS monitoring systems that track victim's real-time locations not only violates a victim's right to privacy but has a significant unintended consequence. In our discussion with the National Network to End Domestic Violence, the director of victim safety and technology, has found that companies retain the victim's location data and abusers and their attorneys have used this to subpoena those records and use the information to harass and intimidate victims and

as evidence to overturn child custody determinations. The NNEDV has not found a monitoring company that does not retain this information.

Technological Challenges

GPS technology, even when working at optimum capacity, has known and substantial limitations. GPS technology is not fool-proof; satellite signals are subject to known limitations, so reliance on such fallible technology creates a false sense of security. Unlike the current Alaska Department of Corrections passive monitoring system, active monitoring systems must be monitored and provide real-time data 24/7. Other states have found that this technology often fails in hilly areas, valleys, and remote rural areas and in urban population centers with tall, concrete/stone buildings. For example, in one case shared with us from another state coalition, a violent abuser was being monitored and the victim was wearing the receiver while she was at the courthouse in a downtown area. She looked up and saw her abuser walking directly toward her, where he confronted her and began threatening her. The monitor never made a sound. It wasn't working due to the thick walls and interference from surrounding buildings.

In Alaska, technological challenges with active monitoring are likely to be exacerbated given our unique geological landscape where even cell phones relying on the same satellite technology have large gaps in coverage in rural hubs and very limited or no coverage in villages. Even in the urban populations centers of Anchorage, Fairbanks and Juneau, and frequent disruptions are common. Without reliable 24/7 coverage, at best GPS active monitoring only leaves victims with a false sense of security.

Costs

Active GPS monitoring is extremely expensive. Enforcing agencies must pay for the initial purpose or lease of equipment, cross-systems training, regular maintenance and replacement of devices, and additional staff law enforcement staff to provide 24/7 monitoring and immediately respond to violations.

In 2004, estimates in Pennsylvania showed it would cost \$3.5 million per year to monitor the violent sex predators and other sex offenders to enforce their Megan's Law registration rules. At that time, there were 31 people classified as sexually violent predators and 7,012 sex offenders subject to monitoring. Even with the option of charging offenders daily fees for monitoring, they found that many of those offenders would be unable to pay, leaving state to bear the brunt of the substantial cost. Similarly, in Connecticut, it was found that less than 1% of monitoring fees were paid by defendants, with the rest picked up by federal grant funds.

According to the Department of Public Safety's Fiscal Note, monitoring alone will burden the state with an ongoing monitoring liability of nearly \$1.7 million annually, each and every year. With Alaska facing deficit spending in the foreseeable future, we think this money could be better invested in solutions to issues with victim safety, rather than on something with questionable impact and significant unintended consequences. For example, for a fraction of this cost, a VINE module to the Central Protective Order Registry would allow victims to receive up-to-date notice of service of a protective order. All too often, despite law enforcement's best

attempts, it is not uncommon for days to pass before notification of service on an abuser is provided to the victim. This creates great anxiety on the part of victims by waiting periods of time between the issuance of a protective order and when it actually becomes effective. Adding a VINE component that links to a return of service and requiring that return of service be entered immediately would greatly enhance victim safety, would save local and state peace officers, dispatchers and advocates considerable time in tracking down confirmation of service of process so that victims know that protective orders are in effect.

Thank you for your consideration in removing Sections 10, 24-26 from SB 22. I would be happy to discuss this matter with you further, at your convenience.

Sincerely,

Peggy Brown, Executive Director

cc: Senator Lesil McGuire
Senator Bill Wielechowski
Senator Donny Olson
Senator Fred Dyson

FINAL REPORT



Governor's Task Force to
Reduce Domestic Violence
through Technology



OFFICE OF
THE GOVERNOR

NO. 2012-003
DATE February 22, 2012

**AN ORDER ESTABLISHING THE TASK FORCE TO REDUCE
DOMESTIC VIOLENCE THROUGH TECHNOLOGY**

WHEREAS, domestic violence is a scourge which harms the fabric of our State;

WHEREAS, many men and women have dedicated themselves to ending domestic violence and have offered their time and expertise;

WHEREAS, my Administration is dedicated to creatively using technology to protect victims; and

WHEREAS, a comprehensive examination will help create a system that works for all Maine people;

NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine, hereby order as follows:

1. The Task Force to Reduce Domestic Violence through Technology ("Task Force") is hereby established.
2. The membership of the Task Force shall consist of seven (7) persons appointed by the Governor, including representatives of the following:
 - a. The Department of Public Safety;
 - b. The Department of Corrections;
 - c. The Office of the Attorney General;
 - d. The Office of Information Technology;
 - e. A statewide organization dedicated to ending domestic violence;
 - f. A statewide organization representing prosecutors; and
 - g. A statewide organization representing chiefs of police.

The Governor shall appoint one member of the Task Force to serve as Chair, to serve at the pleasure of the Governor. Members shall serve without compensation.

3. The Task Force shall:

- a. Explore methods to utilize available technologies to track domestic violence offenders;
- b. Explore electronic assistance services for victims, to allow them to contact support personnel in an emergency;
- c. Develop models to implement the technologies explored in subsections (a) and (b), incorporating different approaches related to rural and urban areas as appropriate; and
- d. Apply for any grants on behalf of the State as the Task Force may deem necessary, including those offered by the United States Department of Justice, Office on Violence Against Women.

The Task Force shall undertake such other duties and responsibilities from time to time as may be required.

4. The Task Force shall submit a report to the Governor detailing their findings, along with any draft Legislation, on or before December 15, 2012, at which time the Task Force shall dissolve.

The effective date of this Executive Order is February 22, 2012.

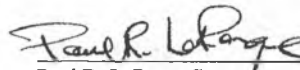

Paul R. LePage, Governor

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TASK FORCE MEMBERSHIP

Gregory Couture, Chairman
Assistant to the Commissioner
Department of Public Safety

Lisa Marchese, Assistant Attorney General
Office of the Attorney General

Captain Marsha Alexander, Corrections Administrator
Kennebec County Sheriff's Office
Maine County Sheriff's Association

Greg McNeal, Chief Technology Officer
Maine Office of Information Technology

Cynthia Brann, Associate Commissioner
Maine Department of Corrections

Katherine Tierney, Assistant District Attorney
Cumberland County District Attorney's Office

Julia Colpitts, Executive Director
Maine Coalition to End Domestic Violence

Chief Edward Tolan, Falmouth Police Department
Maine Chiefs of Police Association

Advisory Members:

Justice John Nivison
State of Maine Judicial Branch

Elizabeth Ward Saxl, Executive Director
Maine Coalition Against Sexual Assault

Commissioner John Morris
Department of Public Safety

Mary Ann Lynch
State of Maine Judicial Branch

DEFINITIONS

Electronic Monitoring (EM) - Daily activity electronically monitored with the use of electronic monitoring equipment.

Exclusion Zone - A zone established by an authorized body to prohibit specific activities in a specific geographic area.

Global Positioning System (GPS) - A global system of U.S. navigational satellites developed to provide precise positional and velocity data and global time synchronization for air, sea and land travel.

Active GPS - Monitoring on a continuous signal, utilizing a cellular communications network to report locations and violation status.

Passive GPS - GPS monitoring on a delayed or intermittent basis. Passive systems usually download information several times during a 24 hour period.

High Risk Response Team Model - A collaboration of multidisciplinary professionals who work to increase victim safety and provide victim services in a coordinated manner. The Team strives to interrupt the pattern of escalating violence by focusing equally on victim safety and offender accountability.

Home Confinement - A program for which qualified inmates are granted release from the facility to participate in a structured environment of community based education, work treatment, and/or rehabilitative programs.

Post-conviction – Any point in a criminal proceeding after a verdict or finding of guilt or after the acceptance of a plea of guilty or nolo contendere.

Pre-conviction – Any point in a criminal proceeding before a verdict or finding of guilt or before the acceptance of a plea of guilty or nolo contendere.

Stalking - 17-A M.R.S. §210-A (1)(A) defines stalking as the “Intentionally or knowingly engaging in a course of conduct directed at or concerning a specific person that would cause a reasonable person: (1) To suffer serious inconvenience or emotional distress; (2) To fear bodily injury or to fear bodily to a close relation; (3) To fear death or to fear the death of a close relation; (4) To fear damage or destruction to or tampering with property; or (5) To fear injury to or the death of an animal owned by or in the possession and control of that specific person.”

Victim –17-A M.R.S. § 1322 (7) defines a victim as “A person who suffers personal injury, death or economic loss as a result of a crime of the good faith effort of any person to prevent a crime.”

Victim Notification System - A computer controlled system by which victims of crimes are notified about the release of or the escape of the offender(s) who perpetrated that crime.

I. EXECUTIVE SUMMARY

A series of domestic violence homicides during the summer of 2011 created a tipping point of outrage in Maine communities, building wide-ranging support for domestic violence initiatives in the 125th Special session of the Maine legislative session, including bi-partisan legislative support and strong advocacy by Governor Paul LePage. In response to a call for greater use of Technology in protecting victims and holding defendants accountable, Maine's Governor Paul R. LePage issued an Executive Order dated February 22, 2012, entitled "An Order establishing the Task Force to Reduce Domestic Violence through Technology." The Task Force met numerous times from March 2012 through January 2013.

The Executive Order governing the Task Force authorized application for Grants. Accordingly, one of the first initiatives the Task Force undertook was to seek grant funding from ARREST (Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program) to implement Pilot Projects. The Task Force was not awarded funds from this grant source.

The first several meetings of the Task Force involved information gathering relative to the types of technology in existence. In addition to available technologies, the Task Force also examined studies, models and findings conducted by other jurisdictions related to GPS monitoring. While these studies and models were helpful in identifying issues related to technology, each State faces its own unique set of circumstances and Maine, of course, is no different.

A majority of time of the Task Force time was spent on the use of electronic monitoring. The task group focused on a subset of electronic monitoring technology, namely Global Positioning Systems (GPS).

There was consensus that Pilot Projects in two locations in Maine; one rural and one urban was the best way to test the effectiveness of electronic monitoring. Several issues were identified that needed to be addressed before Pilot Projects could be implemented. Although the Task Force members agreed that there would not be an immediate need for legislative modifications to the Maine Bail code to impose electronic monitoring as a condition of pre-conviction bail, there remained the outstanding issue of who would monitor the offender while using the device.

The Task Force determined that the most significant obstacle facing an electronic monitoring pilot project, other than funding, is the oversight of the pilot projects. The Task Force was advised by Department of Corrections (DOC) that there is no statutory authority for them to oversee pretrial defendants on electronic monitoring because DOC does not have jurisdiction over pretrial defendants. The Task Force recognized the necessity of having the Pilot Projects overseen by one agency. After careful consideration, the Task Force recommended that the Board of Corrections (established by 34-A M.R.S. §1801) be named as the central agency to oversee the Pilot Projects. Oversight of the pilot projects fits within the Board's purpose and falls within its statutory authority.¹

¹ The purpose and goals of the Board of Corrections include: Reducing recidivism, improving pretrial diversion, and ensuring the safety of surrounding communities. Title 34-A M.R.S. § 1803.

At the initial meeting, the Task Force recognized that an increase in the use of technology would require additional resources. The Executive Order governing the Task Force authorized application for Grants. Accordingly, one of the first initiatives the Task Force undertook was to seek grant funding from ARREST (Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program) to implement Pilot projects concerning the use of electronic monitoring in supervising offenders while on pre-conviction bail. Although the Task Force was not awarded funds from this grant source, the notion of Pilot Projects as a starting point for electronic monitoring became a focal point of the Task Force.

The technologies examined included Global Positioning Systems (hereinafter GPS), VARDA; phone applications; victim notification through an electronic system known as VINE; lifeline/panic buttons; intruder alarms, public awareness campaigns and surveillance video.

The Governor's Task Force on Technology follows a statewide, integrated plan of action that began two years ago focusing on homicide prevention and reduction of serious re-offense in situations involving domestic violence and stalking. Concerned that 50% of Maine's homicides and over 45% of all arrests for assault consistently involved domestic violence, Maine developed a Maine identified management of strangulation assault, bail processes, victim notification and risk-informed decision as priorities to improve safety for victims and accountability for offenders. Statutory change was part of a larger plan including policy change, public awareness, and heightened coordinated community responses, such as the development of regional high risk response teams. (see Appendix A and B)

II. TECHNOLOGIES EXAMINED

A. Victim Notification Technology

Observations and Recommendations: (See Appendix C and D)

Victims are considered to be at increased risk during the period when a defendant is released on bail following an arrest for a crime that involves domestic violence, sexual assault and/or stalking. Victims may also be at increased risk when an offender who has been committed to the DOC, a county jail, or is committed to the custody of the Commissioner of the Department of Health and Human Services, having been found not criminally responsible by reason of insanity or having been found incompetent to stand trial, is released back into the community. During this time of increased risk, victims need to know the defendant's status in order to make appropriate safety plans.

With this elevation of risk in mind, Maine has created statutory mandates concerning a defendant's pre-conviction release on bail or an offender's post-conviction conditional or unconditional release. Title 17-A M.R.S. §1175 requires that the Maine DOC, the state mental health institution or the county jail to which an offender is committed post conviction, notify any victim who requests to be notified of the offender's release from custody. This notification of release is to happen by mail to the address provided by the victim as soon as the release date is set.

Additionally, 17-A M.R.S. §1175-A, requires that attempts be made to notify the victim in a case involving domestic violence, sexual assault under chapter 11, or stalking, if and when an defendant is released on bail. This statute was changed in 2012 in response to concerns by the legislature that the mandate to notify victims and the notification processes were unclear in the existing statute. While the statute change does clarify a mandate for attempted notification, it does not provide a process of notification that ensures success; in fact the new process is unclear and has several points where victim notification failure is possible, even likely. (See appendix X)

Automated Victim Notification systems are considered best national practice. Only three states do not use some form of automated victim notification in some way in their systems, Maine being one of them. Automated victim notification utilizes software systems and technology to provide coordinated victim service notification that is triggered automatically by a pre or post conviction release decision. These systems are able to utilize text, phone, email as well as a data bank accessible to victims who choose not to leave their contact information due to security issues (such as being in a shelter placement or fleeing the jurisdiction). These automated systems

provide other resources, such as data management, live operators to respond to victims' inquiries, national applicability, and options for other linked service enhancements that build on the software.

Generally these automated notification systems are part of a larger group of technology solutions with a range of applications. For example, Maine utilizes a technology tracking solution now called Appriss which is the technology provider for NPLeX (National Precursor Log Exchange); an electronic tracking service used to track and block the illegal sale of over-the-counter cold medicines containing pseudoephedrine and also offers state of the art victim notification systems. Appriss also provides revenue enhancing strategies, using incarceration data to scan for benefits being received incorrectly as a cost saving mechanism. This example is used to demonstrate the interlocking data management strategies offered within providers.

SUMMARY OBSERVATIONS:

1. We support the effective, consistent and timely notification for victims of crimes of domestic violence, sexual assault under chapter 11, and/or stalking of a defendant's pre-conviction release on bail and/or an offender's post-conviction conditional or unconditional release from the DOC, county jail or state mental health facility. While we also support the notification for other crimes that are identified in Title 17-A, M.R.S. Chapter 11, our focus here is on the victims of intimate personal violence who can expect a particular set of risk factors related to the dynamics of those crimes.
2. We note that technology has progressed to provide automated notification systems that can utilize multiple notification strategies, provide live person support, provide a national platform for notification and tracking; provide data collection for quality management and accountability purposes, and be cost-effective. We note that Maine is one of only three states not currently involved in automated victim notification in some capacity.
3. Automated notifications systems are one subset of a larger set of integrated initiatives using the data that may provide other benefits to the State of Maine, such as revenue enhancement strategies.

SUMMARY RECOMMENDATIONS:

1. We recommend the use of a best practice, automated notification system, to provide effective, consistent and timely notification of pre and post conviction releases; to provide for national coordination of notification processes; to provide data collection for

process management and accountability, and to provide a cost-effective notification option.

2. We recommend that Maine consider an RFP for these services and as part of that process investigate the cost/benefit balance between the current inefficient, fragmented and personnel intensive system that is currently in place and an automated system. We support maintaining a victim advocacy-services capacity within Department of Corrections to complement the notification system. We also suggest that grant revenue options be explored, as there has been federal funding available previously to encourage the use of automated victim notification systems.

B. Electronic Monitoring in Crimes of Domestic Violence and Stalking:

Observations and Recommendations:

We observe that evidence-based and practice-informed reviews of electronic monitoring of offenders consistently note increased compliance with conditions of release, increased accountability for a significant number of offenders, increased and improved system collaboration and most importantly, improved safety outcomes for victims. The task group focused on a subset of electronic monitoring technology called Global Positioning Systems (GPS). We did not address other containment monitoring such as radio frequency monitoring (RFM).

The public is most familiar with GPS tracking via news stories or by the use of “smart phones.” All cellular phones are now equipped with GPS for activation in an emergency situation. In addition, most current phones offer the elective use of GPS location services when the owner authorizes that in a “settings” option. These GPS services rely on active, real-time tracking via a network of satellites and integrated software systems are known as “active GPS.” Most major cellular phone providers offer a service that provides GPS real time location for any phone. By choosing this service, one can have real time location information appear on his/her computer or via a mobile phone that shows any “family” member’s phone moving as a blinking light through a location map. The options of GPS tracking only become more complex from there. Applications such as Foursquare, Google Environments and many more provide location-based marketing services and/or social network links and services in ever more integrated ways. GPS and location-based software is a fact of life in the US and the larger world. This GPS capacity is only limited by ones device, the range of cellular service and the quality of software in the applications.

In addition to this active GPS monitoring, there is an older monitoring option that utilizes GPS to track the movements of an individual or object. But rather than relaying location information in real time to a monitoring source of some sort, it stores that information up on a device over a set period of time. That device is then connected at set time intervals with a central monitoring computer either by landline or wirelessly to download the location history of that individual. The data is all there, but is stored and transmitted later for review. This is defined as “passive GPS.”

One of the current uses of both active and passive GPS options is to monitor the movements of individuals in the criminal justice system, either pretrial or post conviction. There is an expectation that more offenders will be monitored in the future because the rising cost of incarceration. In 2011, the US Department of Justice estimated that the cost of incarceration is six times more than the cost of GPS monitoring. This type of monitoring involves tracking a person’s compliance with their conditions of bail or conditional release from a facility. The most frequent goals include reducing recidivism or revocation frequency for offenders; providing alternatives to incarceration for low-risk offenders; and/or monitoring offenders who may present a risk of re-offense. This compliance data can be obtained either through active or passive monitoring.

In addition to compliance monitoring, GPS can be used to provide an “alert” capacity for victims who are at ongoing risk. This goal requires active monitoring capacity. The goal of this is to track an offender in real time; to relay the location information to a constant monitoring site which then has the capacity to provide an alert when an offender crosses into a proscribed area and/or comes into geographic proximity to a victim who also has a GPS device. In order to do this, a containment circle is set up around a location(s) where a victim lives or works. If an monitored individual approaches that circle, an alert is triggered to the monitoring facility, then relayed to law enforcement for response and/or to the victim to take self-protective action. If the victim is willing to wear a device as well, then the alert can also be set off if the monitored individual comes within a certain distance of the victim’s device. In practice it is important to note that a very small percentage of victims were willing to wear this device for a variety of reasons, so the alert capacity was usually restricted to the static zones of work, school or home; reducing the effectiveness of the alert option. In addition there were both technical problems in rural and in urban environments, as well as response challenges that also diminished this potential alert capacity.

There are significant differences in cost between passive and active monitoring capacities. It is important to know what the goals of the monitoring are, the relative successes

and challenges of each implementation option and the cost/benefit ratio of both options given the realities of limited resources and the relatively small number of victims who will be affected by GPS monitoring implementation. A clear cost differential will not be clear without an RFP process that identifies a vendor as well as outlines the other program costs in the implementation model.

Our review focused on monitoring to contain risk and reduce repeat offenses by Individuals charged with or convicted of crimes involving domestic violence, sexual abuse and stalking. In addition, we reviewed the alert capacity of active GPS systems. Because GPS is relatively new, there are only a small number of studies providing evidence on its effectiveness. However, much of the research and/or program evaluation is outdated because of the emergence of new technologies. Although outdated, many of the observations remain relevant. There are several resources that we used to assist us in this study which either had recent data or that included older technology, but had other relevant system observations. Those are listed in the bibliography in the appendix section for those who would like to study further.

In addition to an overview of a wide range of reports, we paid particular attention to several works:

1. *Speakers Task Force on Domestic Violence, 2012, Report & Legislative Recommendations*. This study tracked a pilot project implemented in one urban and one rural area to determine the effectiveness of GPS monitoring of domestic violence defendant who violated bail or PFA conditions. It followed best practice standards and resulted in a report with findings and recommendations. The report included the recommendation that the Connecticut Legislature should, "Identify a funding source for the continuation of this pilot so that the safety measures, accountability and case management services provided by this program can continue. The pilot showed that the program is effective." The more detailed report, "Alert Notification/GPS Pilot Program Updated Report" by the study group provided information on success factors, limitations and unintended consequences. (CT Judicial Branch, 2011)
2. Summaries of Interviews with National Experts and Practitioners on Use of GPS done by the Muskie School of Public Service in 2009.
3. *A Quantitative and Qualitative Assessment of Electronic Monitoring* (Bales, 2010). This study of Florida individuals on GPS monitoring provides an in depth evaluation of the effectiveness of that program. The evaluation however was not specific to domestic violence, sexual assault and/or stalking.

Common Program Outcomes

The Task Force observed, based on a review of the reports and conversations with program managers who implemented successful GPS monitoring programs, that there was an overall positive impact on victim safety and offender/defendant accountability. The recent studies are consistent with their support for global positioning monitoring as effective in reducing recidivism and supporting victim safety. For a significant number of participants, GPS monitoring positively shaped defendant behavior to be more in compliance with conditions of release. The Bales report noted:

The quantitative analysis demonstrates that electronic monitoring reduces offenders' risk of failure by 31 percent. All categories of offenders, regardless of offense type, experienced fewer supervision violations as a result of electronic monitoring; however, the effect was reduced for violent offenders. Offenders of all age groups and those on different forms of community supervision benefited from electronic monitoring. (Bales, 2010)

The Connecticut study concluded, "[t]he Alert Notification/GPS program is a promising practice that enhanced the overall court, law enforcement, and community response to high-risk family violence cases." (Connecticut Judicial Branch, 2011) (See Appendix E and F)

States Attorneys in Connecticut and Florida observed that information received regarding a defendant's compliance assisted with the case process and disposition. Compliance information from GPS records provided evidence, particularly in patterns of stalking or repeated violations of protection orders. Prior to having this evidence, accusations that an defendant had violated the conditions of release by stalking or contacting victims were often "he-said-she-said" situations that frustrated victims, law enforcement and prosecution as they did not lead to successful prosecutions. Having tangible information on the location of an defendant provided evidence for or against a violation. In the case that a victim was mistaken, it also provided exculpatory evidence for the defendant.

A review of the studies also highlighted the fact that the organization and integration of the different service systems, required by this program, greatly increased effective, inter-system collaboration and cooperation, and in doing so made offender/defendant management more effective. When GPS was utilized with a high-risk response team approach, significant victim safety improvement resulted. (Rosenfeld, 2012) This increased collaboration enhanced the timely law enforcement and judicial response to any violations of court-ordered conditions, enforcing the accountability and impacting offender/defendant behavior.

Lastly, it was critical for Victim Service organizations to be involved in assisting with appropriate safety planning, particularly when there was a possibility of an alert for the victim that the offender/defendant was coming nearby. This allows the victim to move into a pre-arranged safety plan action.

Critical Success Factors

In addition to some common outcomes, there were program elements commonly identified as critical success factors:

1. GPS monitoring program should be victim-centered and have victim safety as its core goal.
2. GPS monitoring is not appropriate for all cases. High-risk defendants who are not currently deemed appropriate for bail should not be considered as candidates for GPS monitoring. Most domestic violence homicides occur when the victim is leaving the relationship and “[t]his process often coincides with a criminal justice intervention; therefore pretrial containment of high risk offenders is a vital part of victim safety.”² In addition, low risk individuals are not appropriate as there may be negative effects for over scrutiny of low risk individual.
3. Risk assessment strategies are required to identify appropriate candidates.
4. Best practice for GPS indicates that it is used most effectively as part of an enhanced, coordinated community response (discussed further in section III B) and not in isolation.³
5. In Connecticut, constant GPS monitoring, with a rapid response from law enforcement and from the judiciary as well as on-going oversight by the participants by Judicial Branch-CSSD-Family Services were critical to the success. As the Connecticut Task Force Report notes: “One of the most significant aspects was that violations/non-compliance were immediately addressed by local law enforcement and the Court.” Having evidence to hold the offender of accountability for his/her actions created better compliance; when people know they will be caught they behave better. In addition, this evidence allowed the often escalating risk of lethality or of re-offense to be interrupted by law enforcement or judicial action earlier on in the process. Law enforcement noted they were more likely to pursue the investigation of a case where it was likely they could bring

² The Jeanne Geiger Crisis Center, www.jeannegeigercrisiscenter.org

³ Dianne L. Rosenfeld, *The High Risk Team Model and GPS Offender Monitoring: Stopping DV in Its Tracks*, 17 Domestic Violence Report, 33 (Feb/Mar 2012).

good evidence forward, prosecutors were more likely to prosecute and judges were more likely to see the defendants in their courtrooms.

6. Ongoing pretrial monitoring was a necessary part of the program.
7. Successful programs are those with clear policies, protocols and implementation practices.
8. Cost effective programs require the capacity to maintain and monitor a contract with a single vendor that has clear expectations, roles and responsibilities and a centralized monitoring center. (Bales, 2010)

Unintended consequences:

Programs also included some common unintended consequences such as:

1. A small number of victims were willing to wear a device that would allow for mobile alerts. This decreased the safety parameters as alerts were only possible within preconfigured zones that were known to the monitored individual and usually limited to work and home. First impressions were that the “alert” component would be the primary safety factor, but that was not necessarily the case given the limitations on the reality of the alert capacity and response times. In fact, concerns were raised that this ran the risk of providing a false sense of safety to victims.
2. Technology problems presented complications in real time monitoring. False alarms were present in both rural and urban settings. In rural areas there were occasions of lost signals that were treated as violations and taxed local resources. (Bales, 2010) In urban areas, high buildings could create “ghost” images and confuse the signals exact locations. A side problem with the false alarms was that the first assumption in some settings was not that there was an emergency, but that there was a false alarm; delaying the response to the point that the neither the alert to the victim nor the law enforcement response were effective. Management strategies for both of these situations improved over the course of the pilot projects in Connecticut. (CT Judicial Branch, 2011) However, this also decreased the effectiveness of the “alert” option throughout the pilots.
3. Law enforcement had a learning curve managing responses to alerts including the need to adopt protocols for mobile alert situations, manage false alarms, determine whether there was intent on the monitored individual’s part to violate zones (particularly the rarer mobile zones) and provide the rapid response in potentially emergent situations. These problems decreased with familiarity with the technology and protocols. (CT Judicial Branch, 2011)

4. In addition to the cost of the monitoring itself, there are additional costs for program management and response that need to be considered in the fiscal planning. The Connecticut Judiciary noted that they were not able to complete other performance benchmarks in the first year of the project due to demands on employees from the pilot project. (Note: in Connecticut the program was managed within the Judicial Branch –this could not occur in Maine. However, whatever organization(s) were in control would face the same issues). Because the Judiciary was convinced of the benefits of the program, it returned to the Connecticut legislature in 2012 for additional funds to cover the real costs of the program, which was granted.
5. The Legislative intent for people to pay to cover their own costs did not happen in several settings to the extent expected. For example, in Connecticut less than 1% of fees were paid by the defendant, the rest were picked up by federal grant funds. In a poor state with limited financial resources such as Maine, this is an important factor to take into account in sound fiscal planning for pilot projects.
6. ~~Compliance~~ Data regarding compliance with conditions became more important than initially realized in improving victim safety.

SUMMARY OF RECOMMENDATIONS:

1. The Task Force recommends GPS monitoring as a best practice intervention in the management of a subgroup of defendants charged with crimes involving domestic violence, sexual assault and stalking. These recommendations address only the application to crimes involving domestic violence and stalking. People referred for monitoring should be individuals who meet the criteria for bail or post conviction conditional release from a county jail or state institution and should take place in situations where location data is a critical safety issue. GPS monitoring is not appropriate to monitor civil matters.
2. We recommend that a monitoring program be victim-centered with the primary goal of improved victim safety while respecting the rights of defendants and/or incarcerated candidates for conditional release.
3. We recommend that GPS monitoring be ordered by the judiciary when it is found to be helpful as a component of pretrial bail and post conviction conditions of release.
4. We recommend that Sheriffs be guided by a comprehensive risk assessment and case analysis in their decisions concerning the use of GPS monitoring prior to releasing an inmate under 30-A §1659-A.

5. It is recommended that GPS monitoring be tested in pilot project(s) that address crimes involving domestic violence and stalking and that include the best practice components, incorporate the critical success factors named in this report, test the functionality of the technology, and consider the best use of resources and/or organizational structures particular to Maine.

C. Additional Technologies Examined

Victims may choose to consider technology to enhance their personal safety. New mobile phone applications are available and are being promoted as personal safety enhancing applications. Application users can identify a list of numbers, usually including 911, that will receive a range of possible notification options when the cell device is triggered by the victim in an emergency. The notification capacities vary from application to application and may include texts, cell calls, emails and/or live video feed. The applications include a GPS location, usually along with a pre-programmed message. These applications can be downloaded for free or for a small fee for iPhone and/or Android, and a variety of other cell phone platforms depending on the application. These applications may provide a victim a way to call for help quickly in the event of an emergency and may provide important information for law enforcement responders.

"Apps Against Abuse" was a national challenge from Vice President Biden's office in 2011 to identify technological responses to improve safety in dating, domestic and sexual violence situations by allowing the victim to use these pre-programmed alert connections. (<http://appsagainstabuse.challenge.gov/>). The following two applications were chosen as winners in this national competition and are recommended for use by that office.

- <http://www.onwatchoncampus.com/> "Personal safety on line application for college students." "On Watch is an iPhone application that lets you transmit critical information by phone, email, text, and social media to your support network. You can check in with friends, call 911 or campus police with two touches of a button, set countdown timers that send messages and GPS information automatically if events or activities don't go according to plan, and connect to sexual assault, dating violence and domestic abuse hotlines."
- www.circleof6app.com "An App that Prevents Violence Before it Happens" "This iPhone app makes it quick and easy to reach your circle of supporters and let them know where you are and what you need. It takes two touches to get help. The app uses phone, text, email and/or facebook to contact your circle (including 911 if programmed that way)*, uses GPS to locate you when needed, connects to reputable domestic

violence organizations, and asks contacts to take a pledge on Facebook to stop violence before it happens."

* Maine 9-1-1 call centers currently do not have technology to receive texts or e-mail.

III. THE PILOT PROJECT

Reducing domestic violence requires a coordinated community response and technology, including GPS monitoring and automated victim notification, can significantly enhance this response. However, incorporating these technologies into the criminal justice system will require experimentation with the products and systems available. The cost and effectiveness of these technologies cannot be completely known until they are tested in different areas of the state.

To more fully explore the capabilities and the cost of GPS monitoring, the task force recommends the formation of two pilot projects. These projects will facilitate GPS monitoring as part of a coordinated community response, experiment with best practices, and compile data so that a cost/benefit analysis can be made. Once the pilot sites have used the technology and fully analyzed the data, a more informed recommendation can be made on whether this technology should be implemented statewide.

There was consensus among the Task Force members that Pilot Projects in two locations in Maine; one rural and one urban was the best way to test the efficacy of electronic monitoring. Although electronic monitoring has been used around Maine sporadically, pilot projects would represent the first statewide coordinated effort to examine the impact of electronic monitoring on victim safety and offender accountability. The Task Force identified several issues that needed to be addressed before Pilot Projects could be implemented. The location of the Pilot Projects requires certain preexisting entities including High Risk Response Teams and existing pretrial services for the day to day oversight of the offender while on electronic monitoring. The Task Force concluded that unless a county has either private pretrial services such as Maine Pretrial Services or Volunteers of America or a Sheriff's Office willing to monitor the defendant while on electronic monitoring, that county is not likely a candidate for an electronic monitoring Pilot Project. Other considerations included funding for the Pilot Projects; the use of active or passive GPS systems; and outcome measures for the Pilot Projects. Although the Task Force members agreed that there would not be an immediate need for legislative modifications to the Maine Bail code to impose electronic monitoring as a condition of pre-conviction bail, there remained the outstanding issue of who would monitor the offender while using the device.

It is recommended that one pilot project form in an urban location and one form in a rural location. Because real and technological challenges, such as satellite reception, resources, culture, and geography vary between the urban and rural areas of Maine, creating two pilot sites will allow each site to develop practices and strategies according to the specific needs and resources of the particular area.

There are three components (broken into the following sections) for success with the pilot projects: A) Implementing the recommended technologies, B) Creating an enhanced coordinated community response and C) Having system-wide oversight of the projects.

A. Implementing the Technology:

Pretrial separation from a defendant can often be the most dangerous time for a victim of domestic violence. Enhanced supervision through GPS monitoring of defendants pretrial will be one of the most vital components of each pilot project. Currently, every county in the State, except for Piscataquis and Hancock County, has some kind of pretrial supervision. Some counties elect to contract the work through non-profit agencies, such as Maine Pretrial Services or Volunteers of America, while other counties hire their own pretrial supervisors. Domestic violence defendants are routinely released from custody, placed on pretrial contracts and monitored by these agencies. The task force recommends that a pretrial supervision agency, either a county or non-profit, be responsible for monitoring with GPS technology defendants who are eligible for bail with GPS technology.⁴

It is further recommended that prior to a defendant's release, pretrial supervisors conduct a comprehensive screening to determine eligibility for GPS monitoring. This screening should take into consideration the factors listed in Title 15 M.R.S. § 1026 (4), the results of a validated risk assessment tool, and the number of GPS devices available to the pilot project.

Once a defendant is placed on GPS monitoring, if a violation is detected, the pretrial organization would coordinate with local law enforcement, the District Attorney's office, and the Court, so that appropriate action is taken. Coordinating a response will of course look different depending on the type of GPS system being used. If a passive system is used, the pretrial agency would learn of a violation after the fact and notify local law enforcement. If an active GPS system is used violations would be known instantaneously and law enforcement would respond immediately. However, even when using an active GPS system, an immediate response by law enforcement may not provide complete safety to a victim. Law enforcement response time is a significant concern in rural areas due to the large geographic areas officers patrol.

In addition to the daily monitoring of defendants, the pretrial agencies would also compile data as part of the pilot project. It will be essential for these agencies to keep track of

⁴ Because the DOC is legislatively mandated to provide custody, rehabilitation and supervision of person convicted of a crime, it does not have the authority to monitor offenders pretrial. 34-A M.R.S. § 1201.

how effective the devices are, how well law enforcement and pretrial collaborate when violations are detected, the prevalence of false alarms, victims willingness to be part of an active system, and the cost of both passive and active GPS systems on the criminal justice system as a whole.

If a defendant has been convicted and is placed on probation, the Task Force recommends that DOC monitor eligible offenders with GPS technology. It is recommended that DOC also consider a validated risk assessment, known risk factors, and the availability of GPS units when determining which offenders are monitored with GPS. When using an active system, it is local law enforcement officers, not probation officers who receive notification of a violation from the GPS provider's central monitoring center and respond to the call. The monitoring center can also provide law enforcement with updated information, such as the direction the offender may be traveling.

The follow up from probation officers would occur during their normal working hours. Because probation officers would not be emergency responders, they would not have to be on call twenty four hours a day. Thus adding GPS monitoring to the equation will not unduly burden probation officers and would not require costly overtime expenses.

If a passive system is used, the probation officer would download the information to learn of past violations. Once notified of a violation, the probation officer could then take action, including arresting the offender. Like the active system, using a passive GPS system would not unduly burden probation officers. A passive system would simply give probation officers more information about what their probationers are doing and whether or not they are complying with their conditions. Whether a passive or active system is used, it is anticipated that monitored individuals will be deterred from violating their bail or probation conditions and if they do violate, the criminal justice system will hold them more accountable.

Estimated Cost Analysis

The following is based upon an estimated cost analysis for a pilot project to be conducted at the Kennebec County Sheriff's Office, Corrections Division for one calendar year. The data to develop this analysis was derived from the year 2012 total committals to the Correctional Facility for domestic violence or related crimes, daily statewide average pretrial contracts, and GPS equipment cost from Tarheel Monitoring, LLC.

	Number of Units	Cost	Daily Use	Total
Participants	203	\$5.75/unit	92 day avg.	\$107,387
Stalker Unit/Victim Protection	35	\$5.75/unit	92 day avg.	\$ 18,515

1 Full Time Case Mngr. (Wages and Benefits)				\$ 60,000
Evaluation				\$ 22,309
				\$208,211

Policy Response to Domestic Violence in a Digital World:

Policy responses can be powerful tools in keeping victims safe and in holding abusers accountable for their actions. While we would suggest that all domestic violence model policy, such as those found in law enforcement and other criminal/civil legal institutions, include attention to technology as intersects with domestic violence, we will focus on the workplace in this report.

Workplaces can provide a powerful policy response to domestic violence and abuse. Domestic violence does not exist occur in isolation. It often overlaps with work settings for both victims and perpetrators, which creates both safety and liability concerns for the employment setting. Employers are an important part of the coordinated community response to domestic violence, providing both support and accountabilities to their employees. Developing workplace policies that address the management of domestic violence and that enhance a safe, respectful workplace culture is recognized as national best practice. On April 18, 2012, President Obama signed a memorandum that instructed all federal agencies to develop policies to address domestic violence in the federal workplace and to provide assistance to employees affected by domestic violence. The State of Maine, under executive orders of former Governor Baldacci and current Governor LePage, has implemented workplace policies throughout our state agencies that create a response to victims affected by domestic violence, sexual assault and stalking, as well as a response to abusers where the abuse involves the employment nexus.

Technology is routinely misused to intimidate, harass, or stalk victims of intimate violence and abuse in our culture. Workplaces exist in that digital world. Employees who are victims of abuse may be harassed at work via an array of digital media, such as email, phone, fax, as well as be stalked by computer and/or cell phone applications during their work hours. In addition, some employees, while at work, misuse work resources such as work cell phones, email, computers to stalk, harass and/or intimidate intimate partners. Workplace domestic violence policies should be updated to include the awareness of technology as it relates to domestic violence and specific responses to technology misuse that address both the safety for victims, as well as the accountability of a abuser whose abusive behaviors are within the work nexus.

Recommendation:

We recommend that all workplaces develop a workplace domestic violence policy and corresponding standard operating procedures to support this policy that includes a response to technology misuse as it affects domestic abuse. This policy should address overall workplace safety, create a response to victims and a response to hold abusers accountable when their actions impact the nexus of employment. (note: Maine specific model policy is available through the Maine Department of Labor and from the Maine Coalition to End Domestic Violence).

B. Enhanced Coordinated Community Response

The Task Force concluded that unless a county has either private pretrial services such as Maine Pretrial Services or Volunteers of America or a Sheriff's Office willing to monitor the defendant while on electronic monitoring, that county is not likely a candidate for an electronic monitoring Pilot Project.

Collaboration between multiple agencies is needed to identify and monitor high risk individuals, provide comprehensive victim services, and hold them accountable. The best way to organize this collaboration is through the formation of a High Risk Response Team. High Risk Response Teams are "perhaps the most promising development in the prevention of domestic violence homicides" and are becoming more prevalent across the country.⁵ High Risk Response Teams provide "systematic responses to monitor offenders and enhance safety for victims."⁶ These teams are comprised of professionals representing victim advocacy centers, pretrial supervision organizations, law enforcement agencies, District Attorney's offices, probation, and batterers' intervention programs. Teams meet regularly to discuss high risk cases, create individualized safety plans, and discuss offender accountability. Goals for every High Risk Response Team includes "the early identification of high risk offenders through risk assessment, case-specific, multi-disciplinary response to high risk cases, and coordinated and ongoing monitoring and containment of offenders."⁷

Members of High Risk Response Teams work collaboratively and share information, which often requires obtaining the necessary releases of confidentiality. Ideally, team members create and sign a formal agreement that articulates protocols and procedures. This agreement should include member responsibilities, procedures on how to identify high risk cases, guidelines on how often the team will meet, and guidelines on how to track cases and compile data.

⁵ Dianne L. Rosenfeld, *The High Risk Team Model and GPS Offender Monitoring: Stopping DV in Its Tracks*, 17 Domestic Violence Report, 33 (Feb/Mar 2012).

⁶ *Promising Practices to Address Domestic Violence, Everyone Has a Role*, Report to the Massachusetts Governor's Council to Address Sexual and Domestic Violence, 6 (March 2009).

⁷ The Jeanne Geiger Crisis Center, www.jeannegeigercrisiscenter.org.

The following is a list of best practices for High Risk Response Teams from the Jeanne Geiger Crisis Center in Massachusetts:⁸

Jeanne Geiger Crisis Center High Risk Response Teams Standards of Excellence

- **All team members have received training in risk assessment**
- **All team members are aware of their roles, responsibilities and confidentiality restrictions**
- **The team leader is a skilled facilitator/leader of the team and encourages communication and accountability among team members**
- **The team has regularly scheduled meetings**
- **The team has an agreed upon protocol for urgent cases that arise between meetings**
- **All team members have the information they need to accomplish its goal of offender containment and victim safety**
- **The team issues an annual report to the community and its stakeholders on any issues distinctive to its community the impact of the work of the team and documents emerging best practices**

⁸ The Jeanne Geiger Crisis Center in Massachusetts developed the High Risk Response Team model. This model has been replicated many times across over the country. The center has provided High Risk Response Team training to over 3,000 communities. www.jeannegeigercrisiscenter.org.

To achieve an enhanced community response it is recommended that a High Risk Response Team be an integral part of each pilot project and that each team follow the “Standards of Excellence” developed by the Jeanne Geiger Crisis Center. Forming a High Risk Response Team should not require additional funding or personnel, except in Piscataquis and Hancock counties, because the agencies needed to establish teams already exist. In fact some communities have already started the processes of forming a High Risk Response Team. By communicating regularly, these teams will better coordinate law enforcement response to high risk cases, utilize new technologies, such as automated victim notification, and ultimately provide enhanced safety for victims.

C. Oversight and Cost

It will be important for both pilot projects to be overseen by one agency. This central agency will ensure integrity and consistency with operations and data collection, contract with vendors who provide GPS technology and/or an automated victim notification system, and apply for future grants to help fund the pilot projects. The Task Force recommends that this agency be the Board of Corrections. Oversight of the pilot projects fits within the Board’s purpose and falls within its statutory authority and responsibility under Title 34-A M.R.S. §1803.

Summarily, 34-A M.R.S. §1803 allows the BOC:

- To enter into contracts on behalf of and with the consent of appropriate parties for goods and services when such contracts will:
 1. Lower the cost of providing correctional services;
 2. Improve delivery of correctional services
 3. Otherwise help to achieve the goals of the Board
- Adopt standards for consistent system wide pretrial, revocation and reentry practices;
- Identify opportunities for and approve cost-savings agreements and efficiencies, including, but not limited to purchasing or contract agreements, shared staff and staff training, transportation and technology initiatives;
- Administer the County Jail Prisoner Support and Community Corrections Fund established in section 1806; and
- Receive and review recommendations submitted by the commissioner, counties, corrections working group or other interested parties concerning development of downsizing plans and reinvestment strategies, uniform practices for pretrial, inmate classification, revocation and reentry services and other recommendations with respect to the delivery of state and county corrections services.

It is recommended that the Board oversee not only the two pilot project sites but also possibly a statewide pretrial program for persons charged with domestic violence. Having a state agency already involved with the projects will ensure an efficient statewide implementation of these technologies if the pilot projects proved successful.

Nearly every county in the State of Maine already has the infrastructure needed for the pilot projects in place. However, maintaining the two pilot projects will require funding. It will require purchasing the GPS monitoring technology and the automated victim notification system, potentially hiring a full time pretrial supervisor, training individuals on risk assessment, and possibly upgrading data collection technology. We recommend that a subsequent task force coordinate with the Board of Corrections to more fully explore the costs of the recommended technologies and designate the two pilot project locations.

SUMMARY OF RECOMMENDATIONS:

1. GPS Monitoring and automated victim notification are tested in two pilot projects, one in an urban area and one in a rural area of Maine.
2. The pilot projects test the functionality of the technology, implement best practices and explore the best resources and/or organizational structures particular to Maine.
3. Pretrial supervision of defendants ordered to comply with GPS monitoring be the responsibility of a pretrial agency and that supervision, post conviction fall with DOC.
4. Law enforcement be involved in program design and have full access to the GPS data.
5. Each pilot project form a High Risk Response Team that complies with the Jeanne Geiger Center's "Standard of Excellence."
6. Both pilot projects include a method to collect data and complete program evaluations in order to determine the success of the program and inform any state-wide roll out.

IV. OTHER CONSIDERATIONS

The role of the Maine Criminal Justice Academy

According to Academy Director John Rogers, the Academy staff is working on the curriculum for the risk assessment training that will be provided to police officers as part of their mandatory training in 2014. Once a draft is complete it will be provided to Justice Planning and Management Associates (JPMA) who provide the on-line training to the majority of the police departments in the State of Maine. JPMA will then produce the on-line training and submit it to the Academy for approval, which is scheduled to occur in 2013. This training will be one of the mandatory topics for 2014, and need to be completed on-line by January 1, 2015. Departments may elect to provide this training to their officers in late 2013, which can be accomplished by requesting the approval of the Academy to substitute another mandatory training for this in 2014.

Currently officers are completing a risk assessment form on the defendant at the time of booking with very little training on how to gather and document the information that will aid in assessing a defendant's potential for re-offending. As noted this training will not occur until sometime in 2013, at the earliest, which leaves many officers still untrained on the proper methods for completing the risk assessment forms.

The Academy is also responsible for writing model policies for all of the mandatory policies that are required of departments. The revised Domestic Violence (DV) policy, which is one of the mandatory policies, was written earlier this year and was voted on and accepted by the Maine Chiefs of Police Board of Directors at their meeting on November 10, 2012. Departments were advised to begin training their officers on the revised policy which has an effective date of January 1, 2013. While the DV policy addresses the standard operating procedures for officers dealing with a domestic violence situation, only a brief section of the policy educates officers on the risk assessment form.

V. EVALUATION/OUTCOME MEASURES

- It is recommended that a consultant be hired to provide an independent evaluation during the pilot project who would serve as a project evaluator examining client-level data, risk assessment, and High Risk Response Teams. The consultant will cover three specific areas of the pilot project to ensure that impact and outcomes are evaluated, future program sustainability, and data collection.
- The research and evaluation plan will be designed to measure program's objectives by completing a comprehensive examination using both qualitative and quantitative measures. The evaluation will measure the effectiveness of the utilization of electronic monitoring technology for domestic violence offenders and victims in both rural and urban areas in the State of Maine. It will also review the compliance of evidence based

risk assessments, the best practice and effectiveness of the High Risk Response Teams. The progress will undergo a stringent performance assessment incorporating performance measures as well as a participation study involving a random research design.

- ~~Muskie Institute and Hornby & Zeller, a private software firm, were recommended as potential firms appropriate for this task.~~

VI. CONCLUSION AND NEXT STEPS

- It is recommended that either a new Task Force or Committee under the direction of the Department of ~~Public Safety~~ Corrections be formed to take these recommendations forward in overseeing the pilot projects as well as moving it forward into a state-wide program.
- It is also recommended that representatives from the following areas be included in that future Task Force/Committee so that what was learned in putting this report together is not lost.
 1. Department of Corrections
 2. Attorney General's Office
 3. District Attorney's Office
 4. ~~County~~ Maine Sheriff's Association
 5. Maine Coalition to End Domestic Violence
 6. Judicial Branch (advisory role)
 7. Maine Coalition Against Sexual Assault
 8. Additional subject matter experts should be considered as the task force is formed, either as members or in an advisory capacity.

The task force or other appropriate body is charged with continuing this work by:

1. Identifying the members and work group structure best suited to this next phase of the work, but including at minimum, representatives from the groups included in the existing task force.
2. Developing clearer cost/benefit analysis of GPS monitoring, including assessing the relative merits of active and passive options and their cost factors
3. Creating an RFP related to those findings for two pilot projects conforming to the pilot project requirements in this report.
4. Obtaining project funding via grants and/or state funding options
5. Identify any appropriate changes in Statute to be able to implement a Pilot Program

Appendix A

Existing State Statutes regarding Domestic Violence violations

**Title 37-B: DEFENSE, VETERANS AND EMERGENCY
MANAGEMENT HEADING: PL 1997, C. 455, §9 (RPR)
Chapter 5: MAINE CODE OF MILITARY JUSTICE**

§459. Assault

1. Prohibition; assault. Any person subject to this Code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault.

[2001, c. 662, §59 (NEW) .]

2. Prohibition; aggravated assault. Any person subject to this Code is guilty of aggravated assault if that person:

A. Commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or [2001, c. 662, §59 (NEW).]

B. Commits an assault and intentionally inflicts grievous bodily harm with or without a weapon. [2001, c. 662, §59 (NEW).]

[2001, c. 662, §59 (NEW) .]

3. Punishment. Any person found guilty of assault or aggravated assault must be punished as a court-martial may direct.

[2001, c. 662, §59 (NEW) .]

SECTION HISTORY

2001, c. 662, §59 (NEW) .

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**Title 30-A: MUNICIPALITIES AND COUNTIES HEADING:
PL 1987, C. 737, PT. A, §2 (NEW)
Part 1: COUNTIES HEADING: PL 1987, C. 737, PT. A, §2 (NEW)
Chapter 13: COUNTY JAILS AND JAILERS HEADING: PL 1987,
C. 737, PT. A, §2 (NEW)
Subchapter 4: MISCELLANEOUS PROVISIONS HEADING: PL
1987, C. 737, PT. A, §2 (NEW)**

§1659-A. Community confinement monitoring program

The sheriff of each county shall establish a program to permit certain inmates to serve a portion of their sentence of imprisonment in community confinement monitored by the county or a contract agency or another county or its contract agency. The county may contract only with a community confinement monitoring agency approved by the State Board of Corrections. [2009, c. 391, §6 (NEW).]

1. Petition. A sheriff, upon written request from an inmate eligible for participation in a community confinement monitoring program and recommended by the jail administrator, may assign the inmate to participate in a community confinement monitoring program. At the time of granting this privilege, the sheriff shall determine whether the inmate is responsible for the cost of participating in the program based on the inmate's ability to pay.

[2009, c. 391, §6 (NEW) .]

2. Eligibility. Inmates are eligible to participate in a community confinement monitoring program if:

A. The inmate's residence is located within the State and in a location that does not in any way restrict the adequate monitoring of the inmate; [2009, c. 391, §6 (NEW).]

B. The inmate has been sentenced to the county jail; [2009, c. 391, §6 (NEW).]

C. The inmate is not serving a sentence for a sex offense or a sexually violent offense as defined under Title 34-A, section 11203; [2009, c. 391, §6 (NEW).]

D. The inmate has a verified security classification level of "medium" or "minimum" and scores "moderate" or "less" on a validated risk assessment tool as defined by the State Board of Corrections; [2009, c. 391, §6 (NEW).]

E. The inmate serves a minimum of 1/3 of the term of imprisonment, or, in the case of a split sentence, a minimum of 1/3 of the unsuspended portion, prior to participating in a community confinement monitoring program. In calculating the amount of time served, good time or deductions earned under Title 17-A, section 1253 and time reductions earned for charitable or public works projects under section 1606 must be counted; and [2009, c. 391, §6 (NEW).]

F. The inmate agrees to abide by the conditions of release pursuant to this section and any additional conditions imposed by the sheriff or jail administrator. [2009, c. 391, §6 (NEW).]

[2009, c. 391, §6 (NEW) .]

3. Participation requirements. The following requirements of this subsection apply to inmates participating in a community confinement monitoring program.

A. Each inmate assigned to community confinement pursuant to this section shall participate in a structured program of work, education or treatment. Participation in a community confinement monitoring program may not be solely for the purpose of living at home. [2009, c. 391, §6 (NEW).]

B. At a minimum, the inmate shall report in person at least once per week to a community confinement monitor, even if being electronically monitored. [2009, c. 391, §6 (NEW).]

C. The jail administrator, or a designee, shall restrict in advance any travel or movement limiting the inmate's travel to specific times and places directly related to approved employment, formal education, job search, public service work, treatment or other specific purposes. [2009, c. 391, §6 (NEW).]

D. The inmate shall agree to searches of the inmate's person, residence, electronic monitoring equipment, vehicle, papers and effects and any property under the inmate's control, without a warrant and without probable cause, for items prohibited by law or by condition of participation in the program or otherwise subject to seizure or inspection upon the request of the jail administrator, a community confinement monitor or any law enforcement officer without prior notice. The sheriff or jail administrator may prohibit the inmate from residing with anyone who does not consent to a search or inspection of the residence to the extent necessary to search or inspect the inmate's person, residence, electronic equipment, papers and effects. [2009, c. 391, §6 (NEW).]

E. The inmate may not use alcohol or illegal drugs or other illegal substances and may not abuse alcohol or abuse any other legal substance. [2009, c. 391, §6 (NEW).]

F. The inmate shall submit to urinalysis, breath testing or other chemical tests without probable cause at the request of the jail administrator or a community confinement monitor. [2009, c. 391, §6 (NEW).]

G. If stopped or arrested by a law enforcement officer, the inmate shall notify that officer of the inmate's participation in a community confinement monitoring program. Within one hour of having been stopped or arrested, the inmate shall notify the jail administrator or a community confinement monitor. [2009, c. 391, §6 (NEW).]

H. The inmate may not violate state or federal criminal law or any conditions of the inmate's release. [2009, c. 391, §6 (NEW).]

I. As a condition of participation of an inmate in a community confinement monitoring program, the sheriff may, based upon an inmate's ability to pay, require the inmate to pay a fee including an electronic monitoring fee, if applicable, a substance testing fee, if applicable, or both. The fee charged may include the costs associated with a community confinement program for people who do not have the financial resources to pay the fees. [2009, c. 391, §6 (NEW).]

J. The inmate shall sign a statement verifying that the inmate understands and agrees to all of the conditions of release and participation in a community confinement monitoring program. [2009, c. 391, §6 (NEW).]
[2009, c. 391, §6 (NEW) .]

4. Termination of the privilege. The sheriff, jail administrator or a community confinement monitor may terminate an inmate's participation in a community confinement monitoring program at any time and return the inmate to the custody of the county jail for any violation of the conditions of the inmate's release or upon the loss of an appropriate residence on the part of the inmate.

[2009, c. 391, §6 (NEW) .]

5. Crimes. The following penalties apply to violations of this section.

A. An inmate is guilty of the crime of violating a condition of release from the community confinement monitoring program if the inmate intentionally or knowingly violates a condition of release. Violation of this paragraph is a Class D crime. [2011, c. 464, §28 (RPR).]

B. An inmate is guilty of the crime of escape from the community confinement program as provided pursuant to Title 17-A, section 755, subsection 1-E. [2011, c. 464, §28 (RPR).]

[2011, c. 464, §28 (RPR) .]

6. Minimum standards supervision of inmates in the community confinement monitoring program. The State Board of Corrections shall establish minimum policy standards for the monitoring of inmates in the community confinement monitoring program.

[2009, c. 391, §6 (NEW) .]

7. Program funding. Funds collected pursuant to this section must be forwarded to an account designated by the State Board of Corrections for the purpose of supporting pretrial, diversion or reentry activities. Community confinement monitoring program funds must be accounted for by the county through the normal budget process.

[2009, c. 391, §6 (NEW) .]

8. Terminally ill or incapacitated inmate. The sheriff may grant the privilege of participation in a community confinement monitoring program to an inmate who does not meet the requirements of subsection 2, paragraphs C and E if the jail's treating physician has determined that the inmate has a terminal or severely incapacitating medical condition and that care outside the jail is medically appropriate. Except as set out in this subsection, the inmate shall live in a hospital or other appropriate care facility, such as a nursing facility, residential care facility or facility that is a licensed hospice program pursuant to Title 22, section 8622 approved by the sheriff. As approved by the sheriff, the inmate may receive hospice services from an entity licensed pursuant to Title 22, chapter 1681, subchapter 1 or other care services and, subject to approval by the sheriff, may live at home while receiving these services. The sheriff may exempt an inmate participating in community confinement monitoring pursuant to this subsection from any requirements under subsection 3 that the sheriff determines to be inapplicable. The inmate shall provide any information pertaining to the inmate's medical condition or care that is requested by the sheriff at any time while the inmate is in the community confinement monitoring program. If the sheriff determines that the inmate has failed to fully comply with a request, or if at any time the jail's treating physician determines that the inmate does not have a terminal or severely incapacitating medical condition or that care outside the jail is not medically appropriate, the sheriff shall terminate the inmate's participation in the community confinement monitoring program. Except as set out in this subsection, all other provisions of this section apply to community confinement monitoring pursuant to this subsection.

[2009, c. 391, §6 (NEW) .]

9. Effective date. This section is effective January 1, 2010.

[2009, c. 391, §6 (NEW) .]

SECTION HISTORY

2009, c. 391, §6 (NEW). 2011, c. 464, §28 (AMD).

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Title 17-A: MAINE CRIMINAL CODE
Part 2: SUBSTANTIVE OFFENSES
Chapter 9: OFFENSES AGAINST THE PERSON

§210-C. Domestic violence stalking

1. A person is guilty of domestic violence stalking if:

A. The person violates section 210-A and the victim is a family or household member as defined in Title 19-A, section 4002, subsection 4. Violation of this paragraph is a Class D crime; or [2007, c. 436, §4 (NEW); 2007, c. 436, §7 (AFF).]

B. The person violates paragraph A and at the time of the offense:

(1) Has one or more prior convictions for violating paragraph A or for violating section 207-A, 209-A, 210-B or 211-A or one or more prior convictions for engaging in conduct substantially similar to that contained in paragraph A or in section 207-A, 209-A, 210-B or 211-A in another jurisdiction;

(2) Has one or more prior convictions for violating Title 19-A, section 4011, subsection 1 or one or more prior convictions for engaging in conduct substantially similar to that contained in Title 19-A, section 4011, subsection 1 in another jurisdiction; or

(3) Has one or more prior convictions for violating Title 15, section 1092, subsection 1, paragraph B when the condition of release violated is specified in Title 15, section 1026, subsection 3, paragraph A, subparagraph (5) or (8) when the alleged victim in the case for which the defendant was on bail was a family or household member as defined in Title 19-A, section 4002, subsection 4.

Violation of this paragraph is a Class C crime. [2011, c. 640, Pt. B, §5 (AMD).]

[2011, c. 640, Pt. B, §5 (AMD) .]

2. Section 9-A governs the use of prior convictions when determining a sentence.

[2007, c. 436, §4 (NEW); 2007, c. 436, §7 (AFF) .]

SECTION HISTORY

2007, c. 436, §4 (NEW). 2007, c. 436, §7 (AFF). 2011, c. 640, Pt. B, §5 (AMD).

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Appendix B

Recent Statute changes regarding Domestic Violence

Risk Assessment

Maine lacked a statewide, consistent method of evaluating risk within domestic violence criminal cases. Validated, evidence-based risk assessment tools are useful to help predict the risk of lethality or re-offense, as well as to focus the use of resources. 15 M.R.S. §1023(C)(5) was enacted to require bail commissioners to consider the results of 'validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in Title 5, section 12004-I, subsection 74-C, and approved by the Department of Public Safety' when setting pre-conviction bail for cases involving charges of domestic violence. In addition to providing better information about risk for immediate decision making, effective risk assessment now also sets the stage for community responses such as review by high risk response teams and increased monitoring by law enforcement and/or pre-trial programs, including GPS monitoring.

Victim Notification

17-A M.R.S. §1175-A was enacted to clarify that notification to a victim when an offender is released on bail is mandatory. Formerly, Maine required law enforcement agencies to adopt notification policies, but actual notification practices were not uniform throughout the state. This law also extends the notification requirement from cases involving domestic violence to include cases of sexual assault and stalking. The law requires that efforts be made to notify the victim by telephone as soon as possible but no later than one hour after an offender is released on bail, with follow up protocols if that time frame is not achieved.

Bail Conditions and Decision Making

15 M.R.S. §1097(2-A) was enacted to address disposition after revocation of pre-conviction bail involving crimes of domestic violence. This new law makes a number of changes intended to increase safety, primarily focusing on management of bail for a subset of serious crimes against a family or household member (as defined in statute). The law requires that offenders charged with these named offenses will have pre-conviction bail set by a judge or justice, rather than by a bail commissioner, based on the belief that a judicial review will be better informed. This statute does not deny a defendant the option of bail, but changes the locus of decision making from a bail commissioner to a judge. Among other changes, the law requires that, in the context of a revocation of pre-conviction bail proceeding, if an underlying crime or new alleged criminal conduct is one of the serious offenses specified, a judge must order that a defendant be committed without bail pending a bail revocation hearing, unless the judge makes written findings to the extent specified. In that context also, if the underlying crime is an offense specified and the new conduct found by the court involves new allegations of domestic violence or contact with a victim or witness in the underlying case, the judge or justice shall issue an order denying bail, unless the findings are made on the record as required. The judge or justice shall issue an order denying bail if there has been a previous revocation of pre-conviction bail pursuant to Maine statute.

Strangulation

Previously, Maine law did not provide a definition of strangulation within the criminal code and assumed that strangulation could be effectively prosecuted under the general assault statutes. 17-A M.R.S. §208(1)(C) was enacted to include strangulation as an act that constitutes extreme indifference to the value of human life within the crime of Aggravated Assault. Strangulation as defined in §208(1)(C) is: “the intentional impeding of the breathing or circulation of the blood of another person by applying pressure on the person's throat or neck.”

Appendix C

Monitoring Equipment examined

MONITORING EQUIPMENT

Ankle Monitoring Devices - are mounted tracking units that rely on radio frequency (RF) and/or global positioning system (GPS) data to accurately track a participant's movement within local communities.

Industry Examples:

BLUtag - one-piece GPS monitoring device that receives one GPS location point per minute (an industry standard). Only device that is capable of detecting and reporting GPS jamming and shielding violations. (*Satellite Tracking of People, LLC, Tarheel monitoring, LLC., Reliant Management Group*)

OM210 - one piece bracelet GPS monitoring device that tracks participants indoors and out and maintains proprietary signal encryption to ward off hackers. (*OmniLink*)

Exacutrack - one piece ankle mounted tracking unit that transmits location data as frequently as once every 15 seconds. (*BI a GEO Group Company*)

Home Based Monitoring Units – Monitors the participants while located at their residence. The receiver reports the participant's presence or absence to the monitoring computer utilizing land-line or cellular communication, which determines whether the participant is adhering to (or in violation of) his or her authorized schedule.

Industry Examples:

BLUhome – Installed into the participant's home offering standard and customized radio signal ranges. The device transmits data using cell phone service or the participant's landline service. (*Satellite Tracking of People LLC and Tarheel Monitoring, LLC*)

Bi HomeGuard – Radio frequency system that continuously verifies the presence or absence of a client at a specific location. Easy to use, web-based application that gives agency staff the ability to access and manage information for all enrolled participants, including violation and equipment status information. (*BI a GEO Group Company*)

Victim Notification Device

Stalker Alert – Is a small light weight device carried by a victim that uses GPS technology, mobile proximity zones, and nationwide cellular telephone networks to help provide advance warning to victims about the presence of their abuser. The device has immediate notification for multi-stage mobile exclusion zone violations with the capabilities of the notifications being sent to multiple recipients. (*Satellite Tracking of People LLC, Tarheel Monitoring, LLC*)

Appendix D

Companies whose equipment was researched

AGENCY INFORMATION

Appriss - VINE System (Victim notification)
10401 Linn Station Road
Louisville, KY 40223-3842

Electronic Monitoring

TM Tarheel Monitoring, LLC
244 Princess Street
Wilmington, NC 28401

Sentinel Offender Services
201 Technology Drive
Irvine, CA 92618

OminLink
5900 Windward Parkway, Suite 200
Alpharetta, GA 30005

ISecureTrac Systems
5078 S. 111th Street
Omaha, NE 68137

Reliant Monitoring Services
116 New Edition Court
Cary, NC 27511

BI Incorporated
6400 Lookout Road
Boulder, CO 80301

Appendix E
(CT Alert Notification GPS - policy)

Appendix F

CT VNP – Victim Participation Handout



Department of Public Safety

COUNCIL ON DOMESTIC VIOLENCE &
SEXUAL ASSAULT
Executive Director, Lauree Morton

450 Whittier Street
PO Box 111200
Juneau, Alaska 99811-1200
Main: 907.465.4356
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The Honorable Wes Keller, Judiciary Chair
Members of the House Judiciary Committee
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

March 22, 2013

Dear Representative Keller:

I appreciated the opportunity to testify on HB 73 with regard to sex offender recidivism back in February and for the work the committee is putting in on this bill. I apologize for not being available for the hearing yesterday, particularly as I understand concern was expressed over amending 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. When the Senate version of the bill was heard in that body's Judiciary committee I testified and cited the Ethics Standards to which Probation/Parole officers are expected to comply as one reason for supporting the broad application of this penalty currently in HB73/SB22. 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. I highlighted the section of the Alaska code of ethics which 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. It is incumbent on them to act in a manner that upholds these standards. 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. It is not to criminalize the casual sexual behavior I heard mentioned in the recorded hearing from yesterday. It is not to criminalize behavior between persons who were married prior to one of them being placed on probation or parole.

Unfortunately, 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.

Several years ago the legislature amended sexual assault in the third degree to prohibit a correctional officer from engaging in sexual penetration with a person who was incarcerated. Amending the statute now to prohibit probation and parole officers from engaging in sexual penetration with someone on probation or parole is in line with that public policy decision.

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 majority of people who choose to dedicate their lives to assisting people who have been incarcerated or convicted of criminal activity to successfully reintegrate into our communities and make better choices for their lives, believe in and hold true to their ethical standards. Those who choose not to do so should know there are serious consequences to that abuse of power.

Again, thank you to committee members for your work to provide the best protections for victims of sexual violence, trafficking, domestic violence and stalking. Please consider leaving this important statutory change in HB73.

Sincerely,

Lauree Morton

Lauree Morton
Executive Director

Dear Representative Wes Keller,

February 22, 2013

The Fairbanks Sexual Assault Response Team Task Force respectfully submits this letter of support for HB 73/SB22. The Fairbanks SART Task Force is a group of Fairbanks professionals including law enforcement, medical providers, prosecution, social services, and victim advocates. We meet quarterly to improve the system response to reports of sexual assault.

Many sections of HB73/SB 22 are consistent with the goals of the Fairbanks SART Task Force and we support the bill in its entirety. We specifically and strongly support section 27 (of CSSB 22) which provides the same confidentiality for victim advocates who come from our military installations as the victim advocates from the private sector. The military advocates are well trained and are a valuable and important resource to sexual assault victims.

We also support section 15 (of CSSB 22) which extends the protections of the rape shield statute to behaviors which occur after the sexual assault. Finally we support the several sections of the bills which clarify the legislature's intent regarding sentencing sex offenders.

While this letter does not address all sections of the bill, please understand this is not because we oppose or don't support those sections but because they are somewhat outside our specific 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

Angie Ellis
Fairbanks Sexual Assault Response Team Task Force



Alaska Children's
Justice Act Task Force

March 22, 2013

Richard Bloomquist,
Coordinator

Jan Rutherford, Chair
Marsha Tandeske, Co-Chair
Lt. Craig Allen
Shannon Baergen
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Gayle Garrigues
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Judge Charles Huguelet
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Visit our website at:
<http://hes.state.ak.us/ocs/ChildrensJustice/>

Contact us at:
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The Honorable Wes Keller, Chair
House Judiciary Committee
Alaska State House
Via email: Rep.Wes.Keller@akleg.gov

Re: CSHB 73 (JUD) (Work Draft 28-GH1587\U)

Dear Representative Keller and members of the House Judiciary Committee,

The Alaska Children's Justice Act Task Force respectfully submits this letter of support for the passage of HB 73, 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 HB 73 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 statues and Evidence Rule 404. Attached to this letter is an outline of the specific sections of CSHB 73 (JUD) (Work Draft 28-GH1587\U) 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.



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.