

SB

22

<TARGET><BILL>SB 22</BILL><SUBJECT>SB
22</SUBJECT><COMM>SFIN28</COMM></TARGET>

SENATE FINANCE COMMITTEE REPORT

DATE: 3/15/13

FURTHER: Rules
 DATE TURNED IN TO OFFICE: 3/28/13

Finance Committee considered SENATE BILL NO. 22

SB 22-CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

"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 at 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."

and recommends:

- be replaced with CS SB 22 (FIN) [] Same Title New Title
- [] adopt previous CS _____ (_____) [] Same Title [] New Title
- [] attached amendment(s)
- [] adopt _____ Letter of Intent SCS/CS- Forthcoming
- [] further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
ADM		X		8
LAW			X	9
COR		X		10
DPS			X	11
CRT		X		12

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DHS			X	7
ADM		X		5
DPS			X	2

[] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Clid Bishop</i>	Bishop	<input checked="" type="checkbox"/>			
<i>Michael Hoffman</i>	Hoffman	<input checked="" type="checkbox"/>			
<i>Michael Olson</i>	Olson			<input checked="" type="checkbox"/>	
vice chair: <i>L. Fairclough</i>	FAIRCLOUGH	<input checked="" type="checkbox"/>			
CHAIR:					
CHAIR:					

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

Bill Version CSSB022(JUD)
 Fiscal Note Number _____
 () Publish Date _____

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

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES								
Personal Services	***	***	***	***	***	***	***	***
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	***	***	***	***	***	***	***	***

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

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES								

Estimated SUPPLEMENTAL (FY13) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

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

ASSOCIATED REGULATIONS

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

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

Senate Judiciary Committee substitute

Prepared by Nancy Meade, General Counsel Phone 907-463-4736
 Division Alaska Court System Date/Time 3/12/13 1:00 PM
 Approved by Nancy Meade for Christine Johnson, Administrative Director Date 3/12/2013
Alaska Court System

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB022(JUD)

Analysis

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

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

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

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

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

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

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

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

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB022(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 SB 22 do not impact the court's day-to-day operations, and therefore have no fiscal impact on the court system. They clarify definitions (sec. 27-), allow the Violent Crimes Compensation Board to compensate victims of human and sex trafficking and exploitation of minors (sec. 28), make certain prisoners ineligible for "good time" deductions (sec. 30), alter certain procedures concerning administrative subpoenas from the attorney general (sec. 31-34), and make certain persons mandatory reporters of suspected harm to a child (sec. 36-38).

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: SB 22
Fiscal Note Number: _____
() Publish Date: _____

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

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

Expenditures/Revenues

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

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

Fund Source (Operating Only)

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

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

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

Why this fiscal note differs from previous version:

Not applicable, initial version.

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

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB22(JUD)

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.

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: SB 22
Fiscal Note Number: _____
() Publish Date: _____

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

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

Expenditures/Revenues

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

	FY2014	Included in	Out-Year Cost Estimates				
	Appropriation	Governor's					
	Requested	FY2014					
	FY 2014	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22

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: SB 22
Fiscal Note Number: _____
() Publish Date: _____

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

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

Expenditures/Revenues

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

	FY2014	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	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Personal Services	***	***	***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	***	***	***	***	***	***

Fund Source (Operating Only)

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

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

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

Why this fiscal note differs from previous version:

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

Prepared By: Kevin Worley, Director	Phone: (907)465-4641
Division: Department of Corrections - Administrative Services	Date: 03/04/2013 08:00 AM
Approved By: Leslie Houston, Deputy Commissioner	Date: 03/04/13
Department of Corrections	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22(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. CSSB 22(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: SB 22
Fiscal Note Number: _____
() Publish Date: _____

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

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

Expenditures/Revenues

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

(Thousands of Dollars)

	FY2014	Included in	Out-Year Cost Estimates					
	Appropriation Requested	Governor's FY2014 Request	FY 2014	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	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

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

Why this fiscal note differs from previous version:

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

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

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB022

Analysis

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

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

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			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. SB 22

Analysis

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

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES								
Personal Services	***	***	***	***	***	***	***	***
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	***	***	***	***	***	***	***	***

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

POSITIONS								
Full-time								
Part-time								
Temporary								

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY13) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

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

ASSOCIATED REGULATIONS

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

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

Not applicable, initial version.

Prepared by Richard Allen, Director Phone 907-269-3504
Division Office of Public Advocacy Date/Time 1/10/13 3:10 PM
Approved by Curtis Thayer, Deputy Commissioner Date 1/14/2013
Department of Administration

FISCAL NOTE ANALYSIS #5 ****CORRECTED****

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 22

Analysis

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

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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

Estimated SUPPLEMENTAL (FY13) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

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

ASSOCIATED REGULATIONS

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

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

Not applicable, initial version.

Prepared by Kelly Howell, Special Assistant to the Commissioner Phone (907) 269-5591
 Division Office of the Commissioner Date/Time 1/11/13 3:30 PM
 Approved by Joseph A. Masters, Commissioner Date 1/11/2013
Department of Public Safety

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 22

Analysis

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

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

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

1 child pornography or indecent materials to minors; relating to the referral of sexual
2 felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing
3 and probation for conviction of certain crimes; relating to the definition of 'sex offense'
4 regarding sex offender registration; relating to the definition of 'victim counseling
5 centers' for disclosure of certain communications concerning sexual assault or domestic
6 violence; relating to violent crimes compensation; relating to certain information in
7 retention election of judges concerning sentencing of persons convicted of felonies;
8 relating to 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 to
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(l); 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 appointed
4 duties, have reasonable cause to suspect that a child has suffered harm as a result of
5 child abuse or neglect shall immediately report the harm to the nearest office of the
6 department:

7 (1) practitioners of the healing arts;

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

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

11 (4) administrative officers of institutions;

12 (5) child care providers;

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

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

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

20 **(9) athletic coaches.**

21 * **Sec. 37.** AS 47.17.290 is amended by adding a new paragraph to read:

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

26 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

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

30 (9) Restriction on Availability of Certain Material. Notwithstanding
31 (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy,

1 photograph, duplicate, or otherwise reproduce any material prohibited under
 2 AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the
 3 prosecuting attorney makes the material reasonably available for inspection by the
 4 defendant and defense counsel. The material shall be considered to be made
 5 reasonably available to the defendant or defense counsel if the prosecuting attorney
 6 provides, at a law enforcement or prosecution facility, ample opportunity for
 7 inspection, viewing, and examination of the material by the defendant, the defendant's
 8 attorney, and any individual the defendant may seek to qualify to furnish expert
 9 testimony at trial. If the defendant is not represented by counsel and demonstrates a
 10 need to view the material, the court shall make arrangements for the defendant to be
 11 supervised while viewing the material. If the defendant or the defendant's attorney
 12 identifies an expert outside the state who must view the material, the court shall make
 13 arrangements for the court or the law enforcement agency that possesses it to send the
 14 material directly to the expert.

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

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

19 (1) Contents and Filing. If the court directs the Department of
 20 Corrections to prepare a presentence report, the report shall be filed with the court and
 21 served on counsel at least 30 days before the sentencing hearing, or 30 days before the
 22 presentencing hearing, if one is scheduled. The report shall contain all of the
 23 defendant's prior criminal convictions and findings of delinquency and any other
 24 information about the defendant's characteristics, financial condition, and the
 25 circumstances affecting the defendant's behavior that may be helpful in fashioning the
 26 defendant's sentence, a victim impact statement, and any other information required by
 27 the judge. **If the crime involved a victim, the court may not accept a report that**
 28 **does not include a victim's impact statement, unless the report explains the**
 29 **reason why the victim or the victim's representative could not be interviewed.**
 30 The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 -
 31 12.61.150 and AS 12.55.022.

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

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

5 (a) **Consideration of Victim's Statement.** If a victim as defined in
6 AS 12.55.185 prepares and submits a written statement, gives sworn testimony or
7 makes an unsworn oral presentation under AS 12.55.023, the court shall take the
8 content of the statement, testimony, or presentation into consideration when preparing
9 those elements of the sentencing report required by AS 12.55.025 that relate to the
10 effect of the offense on the victim, and when considering the need for restitution under
11 AS 12.55.045. The court shall also take the content of the victim's impact
12 statement in the presentence report into consideration in preparing the
13 sentencing report required under AS 12.55.025. The court also may take the content
14 of the statement, testimony, victim's impact statement, or presentation into
15 consideration for any other appropriate purpose.

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

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

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

24 (i) [OCCURRED WITHIN THE 10 YEARS
25 PRECEDING THE DATE OF THE OFFENSE CHARGED;

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

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

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

31 INDIRECT COURT RULE AMENDMENT. AS 12.45.045(a), as amended by sec. 16

1 of this Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by providing,
2 with some exceptions, that a defendant must request admission of certain evidence about the
3 complaining witness five days before trial and by applying the rule to the conduct of the
4 complaining witness after the alleged offense.

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

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

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

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

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

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

17 CONDITIONAL EFFECT. Section 16 of this Act, amending AS 12.45.045(a), takes
18 effect only if sec. 42 of this Act receives the two-thirds majority vote of each house required
19 by art. IV, sec. 15, Constitution of the State of Alaska.

20 * **Sec. 45.** This Act takes effect July 1, 2013.

Adopted 3/28/13 9:05

28-GS1587P
Strasbaugh
3/25/13

CS FOR SENATE BILL NO. 22()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

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

A BILL

FOR AN ACT ENTITLED

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

1 **child pornography or indecent materials to minors; relating to the referral of sexual**
2 **felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing**
3 **and probation for conviction of certain crimes; relating to the definition of 'sex offense'**
4 **regarding sex offender registration; relating to the definition of 'victim counseling**
5 **centers' for disclosure of certain communications concerning sexual assault or domestic**
6 **violence; relating to violent crimes compensation; relating to certain information in**
7 **retention election of judges concerning sentencing of persons convicted of felonies;**
8 **relating to 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:

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

- (1) murder in the first or second degree under AS 11.41.100 - 11.41.110;
- (2) kidnapping under AS 11.41.300; [OR]
- (3) a class A or unclassified felony drug offense under AS 11.71;
- (4) sex trafficking in the first or second degree under AS 11.66.110 and 11.66.120; or**
- (5) human trafficking in the first degree under AS 11.41.360.**

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

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

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

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

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

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

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

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

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

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

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

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

- (A) murder in any degree;
- (B) manslaughter;
- (C) criminally negligent homicide;
- (D) assault in any degree;
- (E) kidnapping;
- (F) sexual assault in any degree;

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- (G) sexual abuse of a minor;
- (H) robbery in any degree;
- (I) threats to do bodily harm;
- (J) driving while under the influence of an alcoholic beverage, inhalant, or controlled substance or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is under the influence of an alcoholic beverage, inhalant, or controlled substance; [OR]
- (K) arson in the first degree;
- (L) sex trafficking in violation of AS 11.66.110 or 11.66.130(a)(2);
- (M) human trafficking in any degree; or
- (N) unlawful exploitation of a minor.

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

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

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

(a) Notwithstanding AS 12.55.125(f)(3) and 12.55.125(g)(3), a prisoner convicted of an offense against the state or a political subdivision of the state and 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(l); 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 appointed
4 duties, have reasonable cause to suspect that a child has suffered harm as a result of
5 child abuse or neglect shall immediately report the harm to the nearest office of the
6 department:

7 (1) practitioners of the healing arts;

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

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

11 (4) administrative officers of institutions;

12 (5) child care providers;

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

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

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

20 **(9) athletic coaches.**

21 * **Sec. 37.** AS 47.17.290 is amended by adding a new paragraph to read:

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

26 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

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

30 (9) Restriction on Availability of Certain Material. Notwithstanding
31 (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy,

1 photograph, duplicate, or otherwise reproduce any material prohibited under
 2 AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the
 3 prosecuting attorney makes the material reasonably available for inspection by the
 4 defendant and defense counsel. The material shall be considered to be made
 5 reasonably available to the defendant or defense counsel if the prosecuting attorney
 6 provides, at a law enforcement or prosecution facility, ample opportunity for
 7 inspection, viewing, and examination of the material by the defendant, the defendant's
 8 attorney, and any individual the defendant may seek to qualify to furnish expert
 9 testimony at trial. If the defendant is not represented by counsel and demonstrates a
 10 need to view the material, the court shall make arrangements for the defendant to be
 11 supervised while viewing the material. If the defendant or the defendant's attorney
 12 identifies an expert outside the state who must view the material, the court shall make
 13 arrangements for the court or the law enforcement agency that possesses it to send the
 14 material directly to the expert.

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

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

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

30 The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 -
 31 12.61.150 and AS 12.55.022.

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

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

5 (a) **Consideration of Victim's Statement.** If a victim as defined in
6 AS 12.55.185 prepares and submits a written statement, gives sworn testimony or
7 makes an unsworn oral presentation under AS 12.55.023, the court shall take the
8 content of the statement, testimony, or presentation into consideration when preparing
9 those elements of the sentencing report required by AS 12.55.025 that relate to the
10 effect of the offense on the victim, and when considering the need for restitution under
11 AS 12.55.045. The court shall also take the content of the victim's impact
12 statement in the presentence report into consideration in preparing the
13 sentencing report required under AS 12.55.025. The court also may take the content
14 of the statement, testimony, victim's impact statement, or presentation into
15 consideration for any other appropriate purpose.

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

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

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

24 (i) [OCCURRED WITHIN THE 10 YEARS
25 PRECEDING THE DATE OF THE OFFENSE CHARGED;

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

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

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

31 INDIRECT COURT RULE AMENDMENT. AS 12.45.045(a), as amended by sec. 16

1 of this Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by providing,
2 with some exceptions, that a defendant must request admission of certain evidence about the
3 complaining witness five days before trial and by applying the rule to the conduct of the
4 complaining witness after the alleged offense.

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

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

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

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

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

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

17 CONDITIONAL EFFECT. Section 16 of this Act, amending AS 12.45.045(a), takes
18 effect only if sec. 42 of this Act receives the two-thirds majority vote of each house required
19 by art. IV, sec. 15, Constitution of the State of Alaska.

20 * **Sec. 45.** This Act takes effect July 1, 2013.

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
			FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES	FY14	FY14	FY15	FY16	FY17	FY18	FY19
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							
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Estimated SUPPLEMENTAL (FY13) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

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

ASSOCIATED REGULATIONS

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

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

Not applicable, initial version.

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

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

FISCAL NOTE ANALYSIS #7

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 22

Analysis

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

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			FY14	FY15	FY16	FY17	FY18	FY19
OPERATING EXPENDITURES								
Personal Services	***	***	***	***	***	***	***	***
Travel								
Services								
Commodities								
Capital Outlay								
Grants, Benefits								
Miscellaneous								
TOTAL OPERATING	***	***	***	***	***	***	***	***

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

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							

Estimated SUPPLEMENTAL (FY13) operating costs 0.0 (separate supplemental appropriation required)
(discuss reasons and fund source(s) in analysis section)

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

ASSOCIATED REGULATIONS

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

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

Not applicable, initial version.

Prepared by Richard Allen, Director Phone 907-269-3504
Division Office of Public Advocacy Date/Time 1/10/13 3:10 PM
Approved by Curtis Thayer, Deputy Commissioner Date 1/14/2013
Department of Administration

FISCAL NOTE ANALYSIS #5 **CORRECTED**

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 22

Analysis

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

FISCAL NOTE

STATE OF ALASKA
2013 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates					
			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 _____ (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 Phone (907) 269-5591
Division Office of the Commissioner Date/Time 1/11/13 3:30 PM
Approved by Joseph A. Masters, Commissioner Date 1/11/2013
Department of Public Safety

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 22

Analysis

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

CS FOR SENATE BILL NO. 22(JUD)

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION**

BY THE SENATE JUDICIARY COMMITTEE

**Offered: 3/15/13
Referred: Finance**

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

A BILL

FOR AN ACT ENTITLED

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

1 child pornography or indecent materials to minors; relating to the referral of sexual
 2 felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing
 3 and probation for conviction of certain crimes; relating to the definition of 'sex offense'
 4 regarding sex offender registration; relating to the definition of 'victim counseling
 5 centers' for disclosure of certain communications concerning sexual assault or domestic
 6 violence; relating to violent crimes compensation; relating to certain information in
 7 retention election of judges concerning sentencing of persons convicted of felonies;
 8 relating to 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 to
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(l); 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.



March 15, 2013

The Honorable Pete Kelly, Co-Chair
The Honorable Kevin Meyer, Co-Chair
The Honorable Anna Fairclough, Vice-Chair
Senate Finance Committee
Alaska State Senate
State Capitol, Room 532
Juneau, AK 99801

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EMMA HILL, Anchorage
STUDENT ADVISOR

via email: Sen.Pete.Kelly@akleg.gov
Sen.Kevin.Meyer@akleg.gov
Sen.Anna.Fairclough@akleg.gov

**Re: CS Senate Bill 22 (JUD) – Omnibus Crime Bill
Constitutional Concerns**

Co-Chair Kelly, Co-Chair Meyer, Vice-Chair Fairclough:

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 review revisions to the Bill. The opinions rendered here refer to the committee substitute for SB 22 reflecting the changes from the Senate Judiciary Committee.

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 SB 22. Fiscal notes prepared by many affected state agencies list the costs as "undetermined," because no one knows exactly how much each provision of the law will cost.

However, reasonable educated guesses could be made regarding the costs. For instance, would eliminate the grant of good time to prisoners convicted of a class A or unclassified sex offense. Individuals convicted of an unclassified sex offense must be sentenced to at least 20 years, but may be sentenced to as many as 99 years. AS 12.55.125(i)(1). Individuals convicted of a Class A sex offense must be sentenced to at least 15 years, but may be sentenced to as many as 99 years. AS 12.55.125(i)(2). In 1999, 15 people were sentenced for an unclassified sex offense.¹ Due to the interim changes in the law, all of them would have been sentenced to serve at least 20 years, if sentenced today. If SB 22 passes, none of them would be eligible for mandatory parole on the basis of good time.

Assuming – and this is likely an underestimation – that about 15 people are convicted of unclassified sex offenses every year, and assuming – and this is also likely an underestimation – that they are all sentenced to the mandatory minimum sentence, that means that at least 300 person-years of incarceration are handed down each year for unclassified sex offenses. If unclassified sex offenders become ineligible for mandatory parole, they will likely serve 100 person-years more in custody, because the "good time" deduction is usually about one-third of the sentence. Each person-year of incarceration costs the state about \$48,000. So, just excluding "good time" credit for unclassified sex offenders could cost the state about \$5 million dollars in correctional costs for fifteen people. And each year, more offenders will be incarcerated for longer; by 2025, this bill have imposed on the state at least \$53 million in incarceration costs to manage 165 people.

The same thing will be true of Class A felony sex offenders. In 1999, 10 people were sentenced for Class A felony sex offenses.² Now, they would each be sentenced to a mandatory minimum of 15 years; roughly, 150 person-years of sentences would be passed on this category of

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

² *Id.*

prisoners each year. Eliminating good time credit will tend to impose an extra 50 person-years of incarceration for Class A sex offenses each year, or roughly \$2.5 million worth of incarceration costs for managing 10 people. These are very rough, likely very conservative estimates based on old data. But it is better to start framing the costs of our correctional policy in terms of some roughly estimated numbers rather than just declaring the costs to be "undetermined," and putting a zero down on the bottom line.

Every year, there is a new omnibus crime bill. Every year, increases in grading of offenses are proposed; more mandatory minimums are proposed; and more limitations on means to manage our prison populations are imposed. Rarely if ever do these changes to our criminal justice policies reflect any systemic consideration of how much punishment is enough. Every year, we incrementally expand the scope of the criminal laws and criminal penalties without reference to any study or determination about what is happening on the ground in Alaska. And these incremental changes impose millions and millions of dollars in future liabilities to be paid for by our children and grandchildren.

The governor's FY2004 budget for the Department of Corrections was \$178 million; this year, it is \$327 million, a growth of 83% in 10 years. But that budget line doesn't tell the full story, because the costs of many of the most expensive policies won't be fully realized for years to come. At some point, we will not be able to afford to build roads, bridges, and schools, because we will need the money to build another and another prison.

In the 21st century, the Legislature has access to the best criminal justice studies, and can look at what other states are doing to manage correctional costs in a way that defends public safety. The consensus opinion from almost any serious review of Alaska criminal justice policy indicates that more focus should be put on preventing crime, treating the causes of crime, enabling the smooth re-entry into society of those leaving prison, and preventing recidivism of those who have previously offended. The Governor's office appears to be focusing solely on a state policy that reflects misunderstanding and rejection of the basic concepts reflected in criminology studies.

More and longer incarceration doesn't solve any crime problem; overincarceration may actually pose a threat to public safety. John Dillinger was first arrested for robbing a grocery store of \$50; after spending years in the Indiana state prison system, where he learned the fine points of how to rob a bank, his prison experiences helped turn him into career criminal. Today, in California, we see a state whose policies of mass incarceration facilitated the creation of statewide prison gangs. Those prison gangs tended to become street gangs on the outside, creating a framework for organized crime throughout the state.

SB 22 also appears to ignore the basic statistics on recidivism. Sex offenses are extremely serious crimes and deserve to be met with a stern response from the state. However, sex offenders are also the *least likely*, among all offenders, to be rearrested or to commit another

offense.³ Despite this extensively documented phenomenon, this bill would continue a long-standing policy of singling out sex offenders for mandatory minimum sentences and parole exclusions far beyond what is necessary to control those who have previously committed sex offenses.

Our founding fathers experienced the harsh hand of criminal investigations and prosecutions under the hand of Great Britain. Because of their experiences, they knew that the criminal justice apparatus was the most likely way for a government to deny the people their rights and liberty. Four of the ten amendments in the Bill of Rights are aimed in large part at limiting the criminal justice system. We should not casually ignore the hazards to our collective liberty in an ever-snowballing criminal justice system.

Sectional Analysis

Section 1, 21, 22: Three-Judge Sentencing Panels in Certain Sex Offense Cases

As discussed above, the apparent conclusion in 2006 that “sex offenders usually have committed multiple sex offenses by the time they are caught, that they often do not respond to rehabilitative treatment, and that they therefore cannot be safely released into society” should be seriously questioned in light of Judicial Council’s recidivism study, showing that sex offenders were the least likely to be rearrested or to reoffend. *Collins v. State*, 287 P.3d 791, 796 (Alaska App. 2012). Certainly, *some* sex offenders may be repeat offenders who are particularly dangerous; however, painting *all* sex offenders with the same broad brush will tend to mask those who are truly dangerous and unnecessarily punish those least likely to reoffend. At minimum, it makes sense to allow three-judge panels to serve as a safety valve and to consider deviations from the presumptive sentencing range where individual facts dictate. None of the legislative findings show instances where the public safety has been jeopardized by these three-judge panels. Alaska judges are fit to make these determinations.

Categorically, the research strongly supports the notion that the ordinary sex offender is less likely to reoffend than other offenders. Several Alaska-specific studies have been conducted on sex offenders. A comprehensive study of *all felons* by the Alaska Judicial Council found that sex offenders were least likely to reoffend among *all categories* of felons.⁴ Another UAA study

³ Alaska Judicial Council, Criminal Recidivism in Alaska, at 4, available at <http://www.ajc.state.ak.us/reports/1-07CriminalRecidivism.pdf>; *id.* at 8; *id.* at 12.

⁴ *Id.* at 4 (2007) (showing that 39% of sex offenders were re-arrested in the time frame of the study, compared to 67% of property offenders, 61% of driving offenders, 60% of violent offenders, and 52% of drug offenders); *id.* at 8 (finding that sex offenders were the least likely among all felons studied to be re-arrested for the same type of crime as their original conviction).

found that several categories of Alaskan sex offenders were less likely to reoffend than a control group of non-sex offenders.⁵ “The myth of the incorrigible sex offender, all but guaranteed to reoffend, has been largely refuted. A study by the Alaska Justice Statistical Analysis Center of sex offenders released from Alaska corrections facilities in 2001 found that non-sex offenders were more likely to be rearrested than sex offenders.”⁶

Nationwide, studies bear out the notion that sex offenders as a whole are those least likely to reoffend. A 2003 U.S. Department of Justice survey of 9600 sex offenders released in 1994 found that the overall re-arrest rate for sex offenders was 43%, while the overall re-arrest rate for non-sex offenders was 68%.⁷ That study also found that sex offenders were less likely to be re-arrested for a felony than non-sex offenders.⁸

A 2012 U.S. Department of Justice study recently found that the creation of the New Jersey sex offender registry had absolutely no effect on the likelihood that sex offenders would reoffend.⁹

Sex offenders, the seemingly worst of the worst among criminal offenders today, are commonly, *albeit incorrectly*, assumed to be highly recidivistic, as well as specialists, engaged in sex offending only. Despite the fact that our legal responses to sex offenders, primarily sex offender registration and notification (SORN), are based on assumptions that those who commit sex crimes have no control over their sexual impulses and will repeat their crimes again, relatively little research has found support for such beliefs.¹⁰

⁵ Anthony M. Mander *et al.*, *Sex Offender Treatment Program: Initial Recidivism Study: Executive Summary*, Fig. 1, available at <http://justice.uaa.alaska.edu/research/1990/9419sotp/9602sotp.html> (showing treated sex offenders had the longest “survival rate” without reoffending, followed by unmotivated, untreated offenders; motivated, untreated offenders; and, last, the control group of non-sex offenders); see also Deborah Periman, *Sex Offender Registries and Notification Programs*, 4 UAA Justice Center Research Overview, at 2 (2009) (“The majority of sex offenders do not reoffend, and when they do commit another crime it is not usually a sexual offense or crime of violence.”), available at <http://justice.uaa.alaska.edu/occasionalpapers/op02.asora.pdf>.

⁶ Deborah Periman, *Revisiting Alaska's Sex Offender Registration and Public Notification Statute*, 25 UAA JUSTICE FORUM (Spring/Summer 2008), available at http://justice.uaa.alaska.edu/forum/25/1-2springsummer2008/c_asora.html.

⁷ Patrick A. Langan *et al.*, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994*, at 2 (2003), available at <http://bis.ojp.usdoj.gov/content/pub/pdf/rsorp94.pdf>.

⁸ *Id.*

⁹ Richard Tewksbury *et al.*, Bureau of Justice Statistics, *Final Report on Sex Offenders: Recidivism and Collateral Consequences*, at 10-11, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/238060.pdf>.

¹⁰ *Id.* at 1 (emphasis added).

The overall findings of the New Jersey study showed that recidivism rates were comparatively low for sex offenders as a whole.¹¹ “Research on the offending patterns of incarcerated sex offenders and probationers, however, typically finds that recidivism rates for sex offenders are relatively low and vary across different sex offender types.”¹²

Studies, both in Alaska and from national authorities, show decisively that sex offenders are among the offenders least likely to re-offend and least likely to be re-arrested. The legislature should decline, in light of the scientific evidence, to affirm statements about the likelihood of re-offense from sex offenders against the weight of the scientific consensus.

Sections 2 & 11: Expanding the List of Offenses Without a Statute of Limitations

Section 2 would remove any statute of limitation for *civil actions* arising out of a claim of felony sex trafficking or felony human trafficking. Section 11 would remove any statute of limitations for *criminal prosecutions* for certain sex trafficking offenses, human trafficking offenses, newly created sex offenses, and child pornography offenses.

Nothing about the legislative record makes clear why these offenses are singled out for special treatment. Nor is there a common thread that links them all. Many of the listed offenses do not require that the victim be underage. For instance, AS 11.66.120 makes “advertis[ing] . . . travel that includes commercial sexual conduct as enticement for the travel” a Class B felony. Under the bill, not only would it be a crime to advertise for a travel package including a visit to a legal brothel in Nevada, one could be prosecuted for this offense at any point until one dies, even if the charges are brought 50 years after an advertisement is published.

Statutes of limitations on criminal charges serve an important purpose. Such statutes recognize that witness move, grow old, forget, and die. They recognize that it grows harder and harder to mount a successful defense to criminal charges as those charges grown stale. Statutes of limitations tend to preserve the reliability of and public trust in criminal proceedings. They also encourage prosecutors to focus their efforts on the most serious crimes.

¹¹ *Id.* at 10 (“The non-sex offenders, on average, were re-arrested significantly more frequently post-release compared to the sex offenders.”); *id.* (“94.7% of the sex offenders are identified as low-risk compared to less than 75% of the non-sex offenders.”).

¹² Lisa L. Sample & Timothy Bray, *Are Sex Offenders Different? An Examination of Rearrest Patterns*, 17 CRIMINAL JUSTICE POLICY REVIEW 83, 97 (Mar. 2006), available at <http://constitutionaldefense.org/wp-content/uploads/2009/12/51-21.pdf>.

Exceptions to the statute of limitations may be appropriate in some cases. For some offenses, like murder, the crime is so serious that many people believe the danger in letting such offenses go unprosecuted is worse than the hazard posed by trial on stale evidence. For other offenses, such as sex crimes against children who may be unable to report abuse or to participate effectively in a prosecution, the statute of limitations is extended or eliminated.

However, there is enormous hazard in slowly adding every offense in the book to the list of offenses exempted from the statute of limitations, regardless of the offense's seriousness or circumstances making prompt prosecution difficult. Adding B felonies and offenses unrelated to the minority of the victim to this list of crimes exempt from statutes of limitations merely multiplies the already enormous number of opportunities for criminal prosecutions in Alaska.

Some might defend Section 11 by stating that prosecutors will use their discretion only to bring the most important cases and will not prosecute stale cases of dubious value. One might point to many recent cases, including the Ted Stevens prosecution, to question whether prosecutorial discretion and supposed lack of bias should be relied upon as a defense of our liberties. However, Section 2, which deals with *civil* statutes of limitations, raises similar concerns, unmitigated by any of the benefits that might inhere in prosecutorial discretion.

A party bringing a claim for monetary damages is by definition biased, and that party has little incentive to ignore old, stale claims. Allowing a party to bring private claims unrestricted by any statute of limitations will allow that party to wait until the most opportune time to file the complaint. A claimant could simply wait until the best witness for the defendant has died and file suit then. Since defending oneself from even frivolous litigation entails a certain amount of cost, opening the door to all manner of litigation for all of one's life exposes ordinary people to the duty to defend themselves indefinitely against all manner of tort claims. If a claimant chooses not to file a case in some reasonable interval, for reasons unrelated to minority or disability, why should the state facilitate the delay of proceedings in a way which is harmful to justice and the truth-finding purpose of the courts?

As a side note, our concerns about the endless extension of time in which to file criminal and civil complaints are particularly heightened with regard to the human trafficking laws, which we criticized as poorly drafted last year. The human trafficking law criminalizes, among other acts, "induc[ing] another person to engage in sexual conduct. . . or labor . . . by deception." AS 11.41.360(a). This open-ended statute leaves ordinary dishonesty in sexual relations subject to prosecution, like lovers who falsely state they'll be faithful to their partners or who misrepresent how many prior sexual partners they've had. It also allows felony punishment for misleading statements from an employer.

This year, the original error in the human trafficking bill is compounded by opening employers to endless litigation on labor cases and private sexual partners open to endless litigation on any matter arising from allegedly false representation to their partners. These problems serve only to make the implications of a badly written law worse.

Sections 3, 4, 5, 6, 7, and 8: Sexual Contact with Supervisees by Probation/Parole Officers

The ACLU of Alaska generally supports the aims of Sections 3, 4, 5, 6, 7, and 8 of the bill. Sexual misconduct by adult and juvenile probation and parole officers poses a serious risk to vulnerable individuals in the state's care. Probation and parole officers have great authority in determining whether a probationer or parolee is detained. Probation and parole officers should know that sexual contact with a probationer or parolee is not tolerated and subject to penalty. While most officers will fulfill their role professionally, the officer who wishes to abuse his authority should be strongly deterred from doing so.

Section 19: Removing Sex Trafficking Offenses from the List of Offenses Eligible for Suspended Imposition of Sentence

Suspended Imposition of Sentence is virtually the only statutory diversionary program for criminal charges in Alaska. While many of the offenses described in AS 11.66.110-135 are very serious, some are less so. AS 11.66.130 could be read broadly to allow prosecution of minor participants in prostitution operations, as it criminalizes "conduct that institutes, aids, or facilitates a prostitution enterprise." One could read AS 11.66.130 so broadly as to criminalize all sorts of acts by the victims of sex trafficking. If a victim of sex trafficking answers the phone at a massage parlor and puts a note in the calendar book, she has "aid[ed] or facilitate[d] prostitution" in some sense. Does that make her no longer a victim? No, but it does make her a felon under Alaska law.

The first thing most sex trafficking advocates say is to stop prosecuting the victims. As long as victims are subject to prosecution, it will be difficult for them to seek protection. Section 18, by sweeping a lot of dissimilar conduct into the same basket, would bar merciful treatment to those who were merely minor participants in the criminal operation or who were generally the victims of the operation. Section 18 should be rewritten to exclude the suspended imposition of sentence for offenses under AS 11.66.110 and 11.66.120 only.

Section 30: Expanding the List of Offenses Not Eligible for Good Time

We have already discussed this proposed expansion in our review of the general criminal justice backdrop of this bill. We incarcerate an ever expanding number of prisoners, for longer and longer times, and often less and less serious reasons. The effect on our prisons has been striking. This section would eliminate unclassified and Class A sex offenses from good time calculations. Along with the previously discussed financial problems, this section could impose some significant non-monetary problems. One reason for having "good time" rewards is to encourage good behavior from prisoners. As we are increasing the number of prisoners in custody, do we really want to house a lot of prisoners on long sentences with no incentive to behave? This proposal puts correctional officers at risk by eliminating any incentive towards good behavior. It

is bad correctional policy and bad public safety policy. The correctional officers in Alaska institutions deserve serious enactments from this body, not bills that put them in harm's way.

Section 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 Senate Finance Committee will note our concerns with the proposed language in SB 22.

While the ACLU of Alaska does not contest the State’s ability and duty to pass laws to protect public safety, as drafted, many provisions in SB 22 are poorly tailored to advancing the cause of public safety and would come at substantial fiscal and personal costs to the community as a whole.

Please feel free to contact the undersigned should you require any additional information. Again, we are happy to reply to any questions that may arise either through written or verbal testimony, or to answer informally any questions which Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: The Honorable Mike Dunleavy, Sen.Mike.Dunleavy@akleg.gov
The Honorable Click Bishop, Sen.Click.Bishop@akleg.gov
The Honorable Donald Olson, Sen.Donald.Olson@akleg.gov
The Honorable Lyman Hoffman, Sen.Lyman.Hoffman@akleg.gov



Alaska Children's
Justice Act Task Force

March 22, 2013

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The Honorable Pete Kelly, Co-Chair
The Honorable Kevin Meyer, Co-Chair
Senate Finance Committee, Alaska State Finance
Alaska State Senate

Via email: Senator.Pete.Kelly@akleg.gov
Senator.Kevin.Meyer@akleg.gov

Re: CSSB 22 (JUD)

Dear Senators Kelly and Meyer and members of the Senate Finance Committee,

The Alaska Children's Justice Act Task Force respectfully submits this letter of support for the passage of CSSB 22 (JUD), the current version of the Governor's Crime Bill.

The genesis of the Alaska Children's Justice Act Task Force (CJA) is the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101) and the Victims of Crime Act (42 U.S.C. 10601). The CJA was founded in 2002 and is federally mandated and funded. The 20 members of the task force are from across the State of Alaska and include representatives from the fields of medicine, law, child protection, juvenile justice, tribes, and education. Our mission is to: *Identify areas where improvement is needed in the statewide response to child maltreatment, particularly child sexual abuse, make recommendations, and take actions to improve the system.*

Many of the sections contained within CSSB 22 (JUD) are consistent with the mission of CJA, that is, they will improve the system response to child maltreatment and protect Alaska's children. We particularly support the sections regarding sentencing, unlawful contact between perpetrators and victims, and changes to the mandatory reporter statutes and Evidence Rule 404. Attached to this letter is an outline of the specific sections of CSSB 22 (JUD) the CJA supports, with an explanation of why the CJA believes the section will protect children. While we do not address all sections of the governor's bill, please understand this is not because we oppose or don't support those sections but because they are outside our charge.

Thank-you very much for your consideration. If we can be of assistance or a resource for you please feel free to contact us.

Sincerely,

Alaska Children's Justice Act Task Force


Jan Rutherfordale, 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.

INTRODUCTION BY COMMISSIONER MASTERS
SENATE FINANCE COMMITTEE
CS FOR SENATE BILL 22

The Department of Public Safety is steadfast in its commitment to the Governor's goal of ending the epidemic of domestic violence, sexual assault, and sexual abuse in Alaska and I am honored to sit here with the Attorney General in introducing the CS for Senate Bill 22.

This legislation builds on this commitment by strengthening the investigative tools available to the Alaska State Troopers and other law enforcement agencies to apprehend the perpetrators of these and other related crimes.

Parts of the bill are highly useful to law enforcement as it:

- Provides law enforcement with additional investigative tools by broadening the authority investigators have to intercept communications in sex trafficking cases.

These crimes commonly require cooperation and communication among perpetrators, and if we have enough evidence to justify a wiretap, this bill would allow us to request judicial authorization to do so.

- It protects young people who are victims of sex trafficking or otherwise involved in prostitution, and strengthens the penalties on the demand side of sex trafficking, by requiring persons who prey on these victims to register as sex offenders.

- It provides additional protections for victims and survivors of domestic violence, sexual assault, and stalking.
- It allows victims of human trafficking, sex trafficking, and unlawful exploitation of a minor to apply for violent crimes compensation.
- Finally, this bill helps in the investigation of child pornography crimes, online enticement of a minor and unlawful exploitation of a minor by allowing the Attorney General (AG) to designate another attorney in his office to evaluate applications for an administrative subpoena to obtain business records from an Internet Service Provider.

The investigation of these crimes often requires quick action by law enforcement. Under current law, only the AG himself can approve them.

Thank you for the opportunity to introduce the CS for SB 22 to the Senate Finance Committee, and we urge your support of this important legislation.

ALASKA STATE LEGISLATURE

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AGENDA

Wednesday, March 20, 2013

Senate Finance Room 532 - 9:00 AM

SB 22-Crimes; Victims; Child Abuse and Neglect

Bills Previously Heard/Scheduled

Matthew Gruening

From: Christine Marasigan
Sent: Thursday, March 28, 2013 11:25 AM
To: Matthew Gruening
Subject: explanation

Explanation of Changes on SB 22 Crimes; Victims; Child Abuse and Neglect for Thursday, March 28, 2013
by Christine Marasigan staff to Senator Kevin Meyer and the Senate Finance Committee

Version 28-GS1587\O reflects the following changes:

DELETE Page 19, Lines 4-5 beginning with "or," and ending in "duties,"

DELETE on page 19 lines 22-31 all of Sec. 37

DELETE on Page 20, line 2 "or volunteer"

This was done in consultation with the Dept. of Law

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