SB

22

<TARGET><BILL>SB 22</BILL><SUBJECT>SB
22</SUBJECT><COMM>SJUD28</COMM></TARGET>

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/16/13

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 3/14/13

Judiciary 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** SB22 (JUD) *[ ] Same Title [✓] New Title*

[ ] adopt **previous CS** _____ (_____) *[ ] Same Title [ ] New Title*

[ ] attached amendment(s)

[ ] adopt _____ Letter of Intent

[ ] further referral to _____ Committee

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

Previous **FISCAL NOTE(S)**

Dept.	Fiscal	Indet.	Zero	FN #
DPS			✓	1
DPS			✓	2
COR		✓		3
LAW			✓	4
ADM		✓		5

PREVIOUS FISCAL NOTE(S)-cont

Dept.	Fiscal	Indet.	Zero	FN #
ADM		✓		6
DHS			✓	7

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
Lesil McGuire	McGuire	✓			
Fred Dyson	Dyson	✓			
CHAIR: John Coghill	Coghill	✓			

28-GS1587\U
Strasbaugh
2/14/13

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:
Referred:

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

A BILL

FOR AN ACT ENTITLED

"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 in a prosecution for stalking or a crime involving domestic violence or 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 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 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."

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

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

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 22 AND 23 OF THIS ACT. (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

(b) The legislature finds that

(1) in 2006, the legislature did not intend, by enacting ch. 14, SLA 2006, and the legislature does not now intend to create new or additional means for a defendant

convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel;

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

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

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

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

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor;

(4) felony sex trafficking; or

(5) felony human trafficking.

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

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

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

(A) mentally incapable;

(B) incapacitated; or

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

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

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and

Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; [OR]

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

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

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

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

(b) In this section,

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

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

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

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

(5) "probation officer" includes a

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

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

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

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

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

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

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

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

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

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

(b) In this section,

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

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

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

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

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

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

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

(1) mentally incapable; or

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

*** Sec. 8.** AS 11.56.750(a) is amended to read:

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

(1) has been ordered

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

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

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

(iii) **while under official detention; or**

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

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

*** Sec. 9.** AS 11.66.145 is amended to read:

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

*** Sec. 10.** AS 12.10.010 is amended to read:

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

(1) murder;

(2) attempt, solicitation, or conspiracy to commit murder or hindering

the prosecution of murder;

(3) felony sexual abuse of a minor;

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

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

(6) kidnapping**;**

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

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

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

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

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

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

*** Sec. 11.** AS 12.30.016(e) is amended to read:

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

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

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

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

(4) participate in a monitoring program with a global positioning

device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety.

*** Sec. 12.** AS 12.30.027(a) is amended to read:

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

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

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

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

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

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

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

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

*** Sec. 14.** AS 12.37.010 is amended to read:

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. 15.** 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 PRELIMINARY HEARING]. **The defendant may apply for an order during trial if the request is based on information learned after the deadline or during the trial.** 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 an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

*** Sec. 16.** AS 12.50.101(g) is amended to read:

(g) At the hearing under (f) of this section, the attorney for the witness, in the

form of a proffer, shall describe the testimony or other information that the witness claims is privileged. The proffer must include a description of how the testimony or other information could connect the witness with a crime. **The court shall conduct a personal inquiry under oath of the witness concerning the facts giving rise to the claim or claims of privilege in the proffer.** The proffer **and the testimony of the witness are** [IS] privileged and inadmissible for any other purpose. If the proffer **and the testimony establish** [ESTABLISHES] a factual basis that there is a real or substantial danger that the testimony or other information to be compelled would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime, the court may find that the witness has a valid claim of privilege.

*** Sec. 17.** AS 12.50.101 is amended by adding a new subsection to read:

(j) If the court finds, after a hearing under (f) of this section and the personal inquiry under (g) of this section, that the witness has a valid claim of privilege, the court shall enter its findings of fact and conclusions of law in a sealed, written order that explains the real or substantial danger that the proffer or testimony would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime. The attorney general may bring an immediate, interlocutory appeal of the court's decision to the court of appeals. The court issuing the order appealed under this section shall stay its proceeding while the appeal is pending.

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

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

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

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

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

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

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

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

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

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

section or under the equivalent provision of the laws of another jurisdiction.

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

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

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

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

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

(2) does not have a history of unprosecuted, undocumented, or undetected sexual offenses.

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

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

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

(2) does not have a history of unprosecuted, undocumented, or undetected sexual offenses.

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

(16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, **sex trafficking in the first degree,** sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography,

online enticement of a minor, and felony attempt, conspiracy, or solicitation to commit those crimes;

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

(6) "sex offense" means

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

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

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

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

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

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

(i) AS 11.41.410 - 11.41.438;

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

(iii) AS 11.41.450 - 11.41.458;

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

(v) AS 11.61.125 - 11.61.128;

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

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

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

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

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

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

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

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

* **Sec. 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;

(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 compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses.** 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 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the parent or guardian has

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

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

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

(D) committed the conduct described in (A) - (C) of this

paragraph that violated a law or ordinance of another jurisdiction having elements similar to an offense described in (A) - (C) of this paragraph;

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

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

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

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

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

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

(9) the child has been removed from the child's home on at least two previous occasions, family support services were offered or provided to the parent or guardian at those times, and the parent or guardian has demonstrated an inability to

protect the child from substantial harm or the risk of substantial harm; [OR]

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

(11) the parent or guardian

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

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

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

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

(1) practitioners of the healing arts;

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

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

(4) administrative officers of institutions;

(5) child care providers;

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

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

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

(9) athletic coaches.

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

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

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

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

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

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

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

(1) Contents and Filing. If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the

presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. **The court may not accept a report that does not include a victim's impact statement, unless the report explains the reason why the victim or the victim's representative could not be interviewed.** The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

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

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

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

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

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

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

rule of evidence and if the prior offenses

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

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

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

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

DIRECT COURT RULE AMENDMENT. Rule 216(a), Alaska Rules of Appellate Procedure, is amended to read:

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

(1) Extradition appeals;

(2) Peremptory challenge appeals**;**

(3) Claim of privilege appeal under AS 12.50.101(g).

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

DIRECT COURT RULE AMENDMENT. Rule 216(b), Alaska Rules of Appellate Procedure, is amended by adding a new paragraph to read:

(3) A "claim of privilege appeal" is an appeal by the State of Alaska from a finding after a hearing under AS 12.50.101(g) that a witness has a valid claim of privilege.

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

APPLICABILITY. (a) Sections 2 - 14, 20, 21, 25, 26, and 30 - 35 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 15 - 17, 22 - 24, 27, and 28 of this Act apply to offenses committed before, on, or after the effective date of this Act.

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

(d) Section 19 of this Act applies to disposition hearings occurring in proceedings on

petitions to revoke probation filed on or after the effective date of this Act.

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

- Requirements
- New ~~and~~ mandates + Penalty
- victims protections

Department of Law

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CS FOR SENATE BILL 22 (FIN)

Sectional Analysis

get short outline for floor.

PS 1/12

Sections 1, 21 and 22 are intended to overturn the majority decision in *Collins v. State*, 287 P. 3d 791 (Alaska App. 2012). *Collins* used a mistaken interpretation of legislative intent regarding standards for referring sex offenders to a three-judge sentencing panel. In 2006 the legislature adopted increased penalties for persons convicted of sex felonies. The legislature adopted specific findings, among others, that sex felons are difficult to treat, are much more likely than other felons to reoffend, that many sex offenders begin victimizing others when the offender is relatively young (between 12 and 16 years of age), and that these crimes cause serious harm to victims, particularly to young girls. When the legislature raised the sentencing ranges for sex felonies, it did not intend that different standards be applied to referral of a case involving a sex felony to a three-judge panel than for other felony offenses. **Section 1** adopts legislative findings and intent to address the *Collins* decision. **Sections 21 and 22** adopt new provisions to address the transfer of a case from the sentencing judge to a three-judge panel in a case involving a sex felony. These three sections overturn the majority decision and endorse the dissent in *Collins*.

New civil action

Removes Statute of Limitations

Section 2 allows a person to bring a civil action at any time against a perpetrator for damages based on injuries resulting from the crimes of felony sex trafficking and felony human trafficking.

5-8 dealing w/ PSOs

Sections 3 and 4 amend the crime of sexual assault in the third degree to prohibit a probation or parole officer from engaging in sexual penetration with a person on probation or parole. This is similar to the law prohibiting a police officer or a correctional officer from this conduct with a person in the officer's custody. The terms probation officer and parole officer are defined. The definition of probation officer includes a person who supervises therapeutic court participants.

These sections also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual penetration with an 18 or 19 year old on juvenile probation or in a juvenile facility. This conduct is a class C felony.

Sections 5 and 6 amend the crime of sexual assault in the fourth degree to prohibit a probation or parole officer from engaging in sexual contact with a person on probation or parole. They also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual contact with an 18 or 19 year old on probation/or in a juvenile facility. This conduct is a class A misdemeanor.

Section 7 adds a defense to the prohibition of a probation or parole officer from engaging in sexual contact with a probationer or parolee that the offender and the person were married. This applies to the crime of sexual assault in the fourth degree.

Section 8 adopts an affirmative defense to the prohibition of a parole or probation officer from engaging in sexual penetration or sexual contact with a parolee or probationer. The affirmative defense is that the officer and the person on probation or parole had a preexisting dating or sexual relationship before the alleged offense that continued until the alleged offense.

Section 9 fills a gap in the law that prohibits a person ordered by a court not to contact a victim or witness as part of a sentence or a condition of release. It prohibits a defendant who has been ordered by the court not to contact a victim or witness, but who has not been released from jail, to refrain from contacting the victim or witness. This conduct is a class A misdemeanor.

Victim Protection

New Requirement

Section 10 allows the state to request forfeiture of property of a patron of a prostitute or the prostitute if the property was used to institute, aid, or facilitate prostitution, or was received or derived from prostitution. It makes the forfeiture discretionary with the court and requires the defendant to be convicted before the property may be forfeited.

Section 11 allows the state to prosecute a person for distribution of child pornography, felony sex trafficking, and human trafficking at any time without regard to the time elapsed from the commission of the crime.

No limitation

Sections 12 and 13 allow the court the discretion, in releasing on bail a person in connection with a crime involving domestic violence or stalking, to require the defendant to participate in electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Corrections in consultation with the Department of Public Safety.

DV

GPS

Section 14 requires that a person arrested for a violation of a condition of release in connection with a domestic violence crime appear before a judge in person or by telephone before release from custody.

DV

New mandate

Section 15 authorizes the attorney general to make a written application to a court for an order allowing interception of the private communications of a person that may provide evidence that the person is committing or planning to commit sex trafficking in the first or second degree, or human trafficking in the first degree. Sex trafficking and human trafficking are crimes that would require cooperation among perpetrators. Interception of the communications of a person under these circumstances would facilitate the investigation of these crimes.

Section 16 expands the protection of a victim of sexual assault, sexual abuse of a minor, and unlawful exploitation of minor by excluding evidence of the victim's sexual conduct both before and after the person was victimized. Current law provides this protection for evidence of sexual conduct before the offense charged. This rule is commonly referred to as the rape shield law, and the purpose is to exclude evidence of the victim's private sexual conduct unless the proponent has a valid evidentiary reason for its admission. **Section 16** also requires the defendant to make the request to admit this evidence at least five days before trial, unless the request is based on information learned after the deadline or otherwise for good cause.

Section 17 requires a defendant claiming credit for time spent in a treatment program as a condition of bail release to file written notice 10 days before the sentencing hearing on that offense. The notice must include the number of days the person is claiming. A court may not consider a request for credit made more than 90 days after the deadline except for good cause. **Section 17** also requires a person to make a request for credit for time spent in a treatment program pending appeal within 90 days after the case is returned to the trial court following appeal. A court may not consider a request for credit after the deadline except for good cause.

Credit for treatment

Section 18 requires a defendant claiming credit for time spent in a treatment program as a condition of probation or a condition of bail release in connection with a petition to revoke probation to file notice of the request 10 days before the disposition hearing on the petition. The notice must include the number of requested days of credit. A court may not consider a request for credit made more than 90 days after the deadline except for good cause.

No SIS

Section 19 makes a person convicted of sex trafficking ineligible for a suspended imposition of sentence.

New mandate

New mandate

Sections 20 requires the court in sentencing a person convicted of two or more crimes of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors to give some consecutive time for each crime or attempted or solicited crime for which the defendant is being sentenced.

Mandatory Sentencing
Manifest injustice - 3 Judge panel
1- from good to extraordinary
2. No previous

Sections 21 and 22 – please refer to discussion at **Section 1.**

Section 23 corrects an error in the definition of sexual felony by including the crimes of sex trafficking in the first degree and online enticement of a minor in the definition. The term is used in AS 12.55.125(i), which adopts higher sentencing ranges for most sex felonies, including sex trafficking in the first degree and online enticement of a minor.

New mandate

Section 24 adds the felony of being a patron of a prostitute who is under 18 years of age in violation of AS 11.66.100 to those crimes that require registration as a sex offender, if the patron is 18 years or older and at least three years older than the prostitute. It also corrects a reference to the crime of sex trafficking in the first degree and the third degree in the sex offender law.

Sections 25 and **26** make conforming amendments to the warning on sexual assault, stalking, and domestic violence protective orders. Certain violations of these protective orders are a class A misdemeanor under AS 11.56.740. The maximum fine for a class A misdemeanor has been raised to $10,000 under AS 12.55.035. **Sections 25** and **26** update the warning to describe the maximum fine under current law.

Section 27 adds to the definition of victim counseling centers to include victim counseling centers operated by or contracted by a branch of the armed forces of the United States. The effect of this change is to extend the privilege for confidential communications between a victim of sexual assault or domestic violence and their counselors to counseling organizations that provide services to victims connected with the military.

Victims Protection →

Section 28 amends the law addressing persons who are eligible for violent crimes compensation to include victims of sex trafficking, human trafficking, and unlawful exploitation of a minor.

Victim Protection

Sections 29, 39, and 40 strengthen and make more explicit statutes and court rules that require a court to consider the impact of the crime on the victim. **Section 39** requires the presentence report to include a victim impact statement or an explanation of why the victim or victim's representative could not be interviewed. **Section 40** requires the court to take the victim's impact statement into account when preparing the sentencing report and for other purposes. **Section 29** requires the Alaska Judicial Council to include information about a judge's consideration of victims when imposing sentence in a felony case with other information about the judge in connection with a retention election.

New mandate

Section 30 provides that a person convicted of an unclassified or class A sexual felony is not eligible for mandatory parole (also called good time).

Sections 31 -- 34 address the procedure for a law enforcement officer to obtain an administrative subpoena for the business records of an Internet service provider. These subpoenas may be issued in the investigation of the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, and distribution of indecent material to a minor. The amendments allow the attorney general to designate the deputy attorney general for the civil division or the criminal division to evaluate applications for the subpoena, in addition to the attorney general. The investigation of these cases often requires a prompt response to a request for a subpoena, and having two attorneys who may approve them will assist law enforcement in their investigations.

Section 35 adds to the circumstances that allow a court to decide that reasonable efforts by the Office of Children's Services to reunite a child who is in an out-of-home placement with the child's family are not required. It provides that the court may make this determination if it finds by clear and convincing evidence that the parent or guardian has committed sexual abuse against the child or another child of the parent or guardian, or that the parent or guardian is registered or required to register as a sex offender or child kidnapper.

Sections 36 and **37** add athletic coaches to the persons who are required to report to authorities if the person has reasonable cause to believe that a child has suffered harm from child abuse or neglect. Athletic coach is defined in **Section 37** to include paid leaders of a sports team and their assistants.

Section 38 adopts a court rule that limits the publication of child pornography that occurs during the discovery process in a prosecution for unlawful exploitation of a minor. Because every viewing of child pornography is an additional harm to the victim, this section requires the defendant and the defendant's attorney to view the material where it is stored. If a defendant is not represented, it requires the court to arrange for the defendant to be supervised while viewing the material. If the defendant requests that an expert witness out of state view the material, it requires the court to arrange to send the material directly to the expert.

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

Section 41 amends Rule 404(b)(2)(i), Alaska Rules of Evidence. Under Rule 404, evidence of the defendant's prior bad acts is generally not admissible. There are several exceptions to this rule. Evidence in the prosecution of a physical or sexual assault or abuse of a minor that describes other similar acts by the defendant toward the same victim or other similar victims may be admissible. Current law, however, limits the admissible evidence to acts committed within 10 years preceding the date of the currently charged crime. **Section 41** removes this time limitation. Other exceptions to the general rule, for example, sexual assault and domestic violence prosecutions, do not limit the use of prior acts to those committed within 10 years of the current offense. Further, the 10

year limit is problematic because a person convicted of a crime against a child may have been incarcerated for a significant period for the previous offense. The question of whether the prior act occurred too far in the past is then left to the judge to determine under the circumstances of the case.

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

Section 43 adopts applicability provisions.

Section 44 notes that the changes in the rape shield protection in **Section 16** of the bill requires two-thirds majority vote in each house because it is an indirect court rule change.

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

Substantive changes to Senate Bill 22

Page 6, Sec. 8 (AS 11.41.432)
Added an affirmative defense so a probation or parole officer had a defense if they had a dating or sexual relationship with a person on probation or parole and the relationship continued until the date of the alleged offense.

Page 6, Sec. 9(B) (AS 33.16.150)
Added that it is a crime of unlawful contact if a person as a condition of parole is not to contact a victim or witness of the offense.

Page 6, Sec. 10 (AS 11.66.145)
Added that forfeiture could be applied to the prostitute. And changed "shall" to "may" be forfeited. Added "at sentencing".

Page 7, AS 12.30.016(e)
Deleted. Requiring a person to participate in a monitoring program, when it was a civil case, with no conviction, and does not involve domestic violence.

Page 9, Sec. 16 (AS 12.45.045(a)
Added "for good cause" in order to give the court leeway to decide if information should be allowed even though the time limit was not met regarding evidence about the complaining witness, or for information learned during trial.

Page 10, Sec. 17 (AS 12.55.025)
Added "good cause" in order to give the court the discretion to accept a request for credit after the 90 days of the sentencing hearing.

Page 11, Sec. 21 (AS 12.55.165)
Changed the criteria for a case being referred to a three-judge panel if the defendant is being sentenced for a sexual felony and the referral is based ADDED: "solely" on; DELETED: "youthful offender."

Pages 11-12. Sec. 22 (AS 12.55.175)
Changed criteria for the three judge panel to find that manifest injustice would result with the presumptive range based ADDED: "solely" on; DELETED: "youthful offender".

Page 17, Sec 34 (AS 44.23.080)
ADDED: New definition of "attorney general's designee" to be deputy attorney general for the divisions that have responsibility over civil or criminal cases within the Department of Law.

Page 19, Sec 37 (AS 47.17.020)
ADDED: what defines when a "volunteer coach" is required to be a mandatory reporter for child abuse or neglect.

Sections relating to 5th amendment defense and the right of the court to interview a witness personally, rather than through their proffer; and the right of the prosecution to appeal the court's decision were removed from the bill.

THE STATE
of ALASKA
GOVERNOR SEAN PARNELL

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CS FOR SENATE BILL 22 (JUD)

Sectional Analysis

Sections 1, 21 and 22 are intended to overturn the majority decision in *Collins v. State,* 287 P. 3d 791 (Alaska App. 2012). *Collins* used a mistaken interpretation of legislative intent regarding standards for referring sex offenders to a three-judge sentencing panel. In 2006 the legislature adopted increased penalties for persons convicted of sex felonies. The legislature adopted specific findings, among others, that sex felons are difficult to treat, are much more likely than other felons to reoffend, that many sex offenders begin victimizing others when the offender is relatively young (between 12 and 16 years of age), and that these crimes cause serious harm to victims, particularly to young girls. When the legislature raised the sentencing ranges for sex felonies, it did not intend that different standards be applied to referral of a case involving a sex felony to a three-judge panel than for other felony offenses. **Section 1** adopts legislative findings and intent to address the *Collins* decision. **Sections 21 and 22** adopt new provisions to address the transfer of a case from the sentencing judge to a three-judge panel in a case involving a sex felony. These three sections overturn the majority decision and endorse the dissent in *Collins.*

Section 2 allows a person to bring a civil action at any time against a perpetrator for damages based on injuries resulting from the crimes of felony sex trafficking and felony human trafficking.

Sections 3 and 4 amend the crime of sexual assault in the third degree to prohibit a probation or parole officer from engaging in sexual penetration with a person on probation or parole. This is similar to the law prohibiting a police officer or a correctional officer from this conduct with a person in the officer's custody. The terms probation officer and parole officer are defined. The definition of probation officer includes a person who supervises therapeutic court participants.

These sections also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual penetration with an 18 or 19 year old on juvenile probation or in a juvenile facility. This conduct is a class C felony.

Sections 5 and 6 amend the crime of sexual assault in the fourth degree to prohibit a probation or parole officer from engaging in sexual contact with a person on probation or parole. They also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual contact with an 18 or 19 year old on probation/or in a juvenile facility. This conduct is a class A misdemeanor.

Section 7 adds a defense to the prohibition of a probation or parole officer from engaging in sexual contact with a probationer or parolee that the offender and the person were married. This applies to the crime of sexual assault in the fourth degree. It also adds the defense that the offender was mentally incapable to the crime of sexual assault in the fourth degree.

Section 8 adopts an affirmative defense to the prohibition of a parole or probation officer from engaging in sexual penetration or sexual contact with a parolee or probationer. The affirmative defense is that the officer and the person on probation or parole had a preexisting dating or sexual relationship before the alleged offense that continued until the alleged offense.

Section 9 fills a gap in the law that prohibits a person ordered by a court not to contact a victim or witness as part of a sentence or a condition of release. It prohibits a defendant who has been ordered by the court not to contact a victim or witness, but who has not been released from jail, to refrain from contacting the victim or witness. This conduct is a class A misdemeanor.

Section 10 allows the state to request forfeiture of property of a patron of a prostitute or the prostitute if the property was used to institute, aid, or facilitate prostitution, or was received or derived from prostitution. It makes the forfeiture discretionary with the court and requires the defendant to be convicted before the property may be forfeited.

Section 11 allows the state to prosecute a person for distribution of child pornography, felony sex trafficking, and human trafficking at any time without regard to the time elapsed from the commission of the crime.

Sections 12 and 13 allow the court the discretion, in releasing on bail a person in connection with a crime involving domestic violence or stalking, to require the defendant to participate in electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Corrections in consultation with the Department of Public Safety.

Section 14 requires that a person arrested for a violation of a condition of release in connection with a domestic violence crime appear before a judge in person or by telephone before release from custody.

Section 15 authorizes the attorney general to make a written application to a court for an order allowing interception of the private communications of a person that may provide evidence that the person is committing or planning to commit sex trafficking in the first or second degree, or human trafficking in the first degree. Sex trafficking and human trafficking are crimes that would require cooperation among perpetrators. Interception of the communications of a person under these circumstances would facilitate the investigation of these crimes.

Section 16 expands the protection of a victim of sexual assault, sexual abuse of a minor, and unlawful exploitation of minor by excluding evidence of the victim's sexual conduct both before and after the person was victimized. Current law provides this protection for evidence of sexual conduct before the offense charged. This rule is commonly referred to as the rape shield law, and the purpose is to exclude evidence of the victim's private sexual conduct unless the proponent has a valid evidentiary reason for its admission. **Section 16** also requires the defendant to make the request to admit this evidence at least five days before trial, unless the request is based on information learned after the deadline or otherwise for good cause.

Section 17 requires a defendant claiming credit for time spent in a treatment program as a condition of bail release to file written notice 10 days before the sentencing hearing on that offense. The notice must include the number of days the person is claiming. A court may not consider a request for credit made more than 90 days after the deadline except for good cause. **Section 17** also requires a person to make a request for credit for time spent in a treatment program pending appeal within 90 days after the case is returned to the trial court following appeal. A court may not consider a request for credit after the deadline except for good cause.

Section 18 requires a defendant claiming credit for time spent in a treatment program as a condition of probation or a condition of bail release in connection with a petition to revoke probation to file notice of the request 10 days before the disposition hearing on the petition. The notice must include the number of requested days of credit. A court may not consider a request for credit made more than 90 days after the deadline except for good cause.

Section 19 makes a person convicted of sex trafficking ineligible for a suspended imposition of sentence.

Sections 20 requires the court in sentencing a person convicted of two or more crimes of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors to give some consecutive time for each crime or attempted or solicited crime for which the defendant is being sentenced.

Sections 21 and 22 – please refer to discussion at **Section 1.**

Section 23 corrects an error in the definition of sexual felony by including the crimes of sex trafficking in the first degree and online enticement of a minor in the definition. The term is used in AS 12.55.125(i), which adopts higher sentencing ranges for most sex felonies, including sex trafficking in the first degree and online enticement of a minor.

Section 24 adds the felony of being a patron of a prostitute who is under 18 years of age in violation of AS 11.66.100 to those crimes that require registration as a sex offender, if the patron is 18 years or older and at least three years older than the prostitute. It also corrects a reference to the crime of sex trafficking in the first degree and the third degree in the sex offender law.

Sections 25 and **26** make conforming amendments to the warning on sexual assault, stalking, and domestic violence protective orders. Certain violations of these protective orders are a class A misdemeanor under AS 11.56.740. The maximum fine for a class A misdemeanor has been raised to $10,000 under AS 12.55.035. **Sections 25** and **26** update the warning to describe the maximum fine under current law.

Section 27 adds to the definition of victim counseling centers to include victim counseling centers operated by or contracted by a branch of the armed forces of the United States. The effect of this change is to extend the privilege for confidential communications between a victim of sexual assault or domestic violence and their counselors to counseling organizations that provide services to victims connected with the military.

Section 28 amends the law addressing persons who are eligible for violent crimes compensation to include victims of sex trafficking, human trafficking, and unlawful exploitation of a minor.

Sections 29, 40, and 41 strengthen and make more explicit statutes and court rules that require a court to consider the impact of the crime on the victim. **Section 40** requires the presentence report to include a victim impact statement or an explanation of why the victim or victim's representative could not be interviewed. **Section 41** requires the court to take the victim's impact statement into account when preparing the sentencing report and for other purposes. **Section 29** requires the Alaska Judicial Council to include information about a judge's consideration of victims when imposing sentence in a felony case with other information about the judge in connection with a retention election.

Section 30 provides that a person convicted of an unclassified or class A sexual felony is not eligible for mandatory parole (also called good time).

Sections 31 -- 34 address the procedure for a law enforcement officer to obtain an administrative subpoena for the business records of an Internet service provider. These subpoenas may be issued in the investigation of the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, and distribution of indecent material to a minor. The amendments allow the attorney general to designate the deputy attorney general for the civil division or the criminal division to evaluate applications for the subpoena, in addition to the attorney general. The investigation of these cases often requires a prompt response to a request for a subpoena, and having two attorneys who may approve them will assist law enforcement in their investigations.

Section 35 adds to the circumstances that allow a court to decide that reasonable efforts by the Office of Children's Services to reunite a child who is in an out-of-home placement with the child's family are not required. It provides that the court may make this determination if it finds by clear and convincing evidence that the parent or guardian has committed sexual abuse against the child or another child of the parent or guardian, or that the parent or guardian is registered or required to register as a sex offender or child kidnapper.

Sections 36, 37, and 38 add athletic coaches to the persons who are required to report to authorities if the person has reasonable cause to believe that a child has suffered harm from child abuse or neglect. Athletic coach is defined to include paid leaders and their assistants and volunteer leaders of sports teams.

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

Section 39 adopts a court rule that limits the publication of child pornography that occurs during the discovery process in a prosecution for unlawful exploitation of a minor. Because every viewing of child pornography is an additional harm to the victim, this section requires the defendant and the defendant's attorney to view the material where it is stored. If a defendant is not represented, it requires the court to arrange for the defendant to be supervised while viewing the material. If the defendant requests that an expert witness out of state view the material, it requires the court to arrange to send the material directly to the expert.

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

Section 42 amends Rule 404(b)(2)(i), Alaska Rules of Evidence. Under Rule 404, evidence of the defendant's prior bad acts is generally not admissible. There are several exceptions to this rule. Evidence in the prosecution of a physical or sexual assault or abuse of a minor that describes other similar acts by the defendant toward the same victim or other similar victims may be admissible. Current law, however, limits the admissible evidence to acts committed within 10 years preceding the date of the currently charged crime. **Section 42** removes this time limitation. Other exceptions to the general rule, for example, sexual assault and domestic violence prosecutions, do not limit the use of prior acts to those committed within 10 years of the current offense. Further, the 10 year limit is problematic because a person convicted of a crime against a child may have been incarcerated for a significant period for the previous offense. The question of whether the prior act occurred too far in the past is then left to the judge to determine under the circumstances of the case.

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

Section 44 adopts applicability provisions.

Section 45 notes that the changes in the rape shield protection in **Section 16** of the bill requires two-thirds majority vote in each house because it is an indirect court rule change.

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

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:
Referred:

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

A BILL

FOR AN ACT ENTITLED

"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 in a prosecution for stalking or a crime involving domestic violence or 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 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 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

New Text Underlined *[DELETED TEXT BRACKETED]*

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 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 forms for sexual assault, stalking, and domestic violence protective orders; 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, and Rules 404(a) and (b), Alaska Rules of Evidence; and providing for an effective date."

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

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

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 21 AND 22 OF THIS ACT. (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

(b) The legislature finds that

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

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

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

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

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

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor**;**

(4) felony sex trafficking; or

(5) felony human trafficking.

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

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

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

(A) mentally incapable;

(B) incapacitated; or

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

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

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

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

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

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

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

(b) In this section,

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

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

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

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

(5) "probation officer" includes a

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

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

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

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

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

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

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

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

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

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

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

(b) In this section,

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

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

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

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

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

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

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

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

(1) mentally incapable; or

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

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

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

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

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

(1) has been ordered

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

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

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

(iii) **while under official detention; or**

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

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

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

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

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

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

offenses may be commenced at any time:

(1) murder;

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

(3) felony sexual abuse of a minor;

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

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

(6) kidnapping**;**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "sex offense" means

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

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

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

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

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

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

(i) AS 11.41.410 - 11.41.438;

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

(iii) AS 11.41.450 - 11.41.458;

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

(v) AS 11.61.125 - 11.61.128;

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

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

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

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

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

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

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

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

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

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

*** Sec. 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;

(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

subpoena.

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

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

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

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

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

(2) the parent or guardian has

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) the parent or guardian

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

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

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

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

(1) practitioners of the healing arts;

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

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

(4) administrative officers of institutions;

(5) child care providers;

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

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

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

(9) athletic coaches.

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

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

(1) volunteers for more than

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

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

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

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

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

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

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

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

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

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

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

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

served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. **If the crime involved a victim, the court may not accept a report that does not include a victim's impact statement, unless the report explains the reason why the victim or the victim's representative could not be interviewed.** The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28-GS1587\U.13
Strasbaugh
2/28/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 19, following line 30:

Insert a new bill section to read:

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

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

(1) volunteers for more than

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

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

(2) has received the training required under AS 47.17.022; and

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

Renumber the following bill sections accordingly.

Karen Lidster

From: Chuck Kopp
Sent: Tuesday, March 05, 2013 3:49 PM
To: Karen Lidster
Subject: FW: SB 22 - Amendment - 28-GS1587\U.13
Attachments: U.13.pdf

From: LAA Legal
Sent: Monday, March 04, 2013 12:49 PM
To: Chuck Kopp
Subject: SB 22 - Amendment - 28-GS1587\U.13

To the Office of Senator Dyson:

The amendment you requested is attached.

Division of Legal and Research Services
Alaska Legislative Affairs Agency
(907) 465-2450

Warning: This message and any attachments to it are confidential. If you have received this message in error, please notify the sender by electronic mail and delete the message. If you are not the intended recipient of this message, you are hereby notified that disclosing, disseminating, or copying this message or any attachments to it is prohibited. Thank you.

Karen Lidster

From: Nancy Meade <NMeade@courts.state.ak.us>
Sent: Monday, March 04, 2013 11:11 AM
To: Karen Lidster
Cc: anne.carpeneti@alaska.gov; Larry Cohn (lcohn@ajc.state.ak.us)
Subject: SB 22 amendment to section

Hi Karen –

The Court System, the Judicial Council, and the Department of Law discussed the amendment that the Court and Council would like to propose in SB 22. We now agree that the following change to the new CS (version N) would be satisfactory to us all:

Page 15, lines 22-23:

Delete "**The information shall include the judge's compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses.**"

Insert "**The information shall include the judge's consideration of victims when imposing sentence on persons convicted of felony offenses where the offenses involved victims.**"

I also noticed that section 42 of the bill ought to be deleted – it was related to former sections 16 and 17, which the committee vote to delete on Friday.

Please let me know if I should do anything further to have this presented to the committee at this afternoon's meeting. Thank you for all your help!

Nancy Meade

General Counsel

Alaska Court System

28-GS1587\N.1
Strasbaugh
3/4/13

A M E N D M E N T

Incorrectly drafted

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "N"

Page 15, line 23, following "**offenses**":

Insert "**, if the offenses involved victims**"

Karen Lidster

From: Karen Lidster
Sent: Monday, March 04, 2013 11:30 AM
To: LAA Legal
Subject: Blank Amendment for CS SB22\N

Could you please expedite a blank amendment to CS SB22\N for Senator Coghill as follows:

Page 15, line 22
DELETE: "AS 12.55.025(a)(5)
Page 15, line 23
ADD: **"where the offenses involved victims."** after offenses.

Judiciary meets at 1:30 this afternoon. Thank you for your work on this.
k

Karen

Karen Lidster, Staff
Senator John Coghill
(907) 465-5834 Session

This electronic message transmission contains information belonging to Senator John Coghill that is solely for the recipient named above and which may be confidential or privileged. SENATOR JOHN COGHILL EXPRESSLY PRESERVES AND ASSERTS ALL PRIVILEGES AND IMMUNITIES APPLICABLE TO THIS TRANSMISSION. If you are not the intented recipient, be aware that any disclosure, copying, distribution, or use of the contents of this communication is STRICTLY PROHIBITED. If you have received this electronic transmission in error, please notify us by telephone (907-465-6858) or by electronic mail (chad.hutchison@akleg.gov).

28-GS1587\N.1
Strasbaugh
3/4/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "N"

Page 15, line 23, following "**offenses**":

Insert "**, if the offenses involved victims**"

Karen Lidster

Amendments 1-3

From: Karen Lidster
Sent: Friday, March 01, 2013 8:11 PM
To: LAA Legal
Cc: MaryEllen Duffy
Subject: Two additional amendments for CS to CSSB22(JUD)

Please include the following 2 amendments to the new draft CS to CSSB22(JUD).
Amendment #2 – 28-GS1587\U.2 – Passed
Amendment #3 – 28-GS1587\U.3 – Passed

The amendment 28-GS1587\U1 was withdrawn.

I apologize for missing these on the first email, these two amendments passed on 2/25.

Thanks

Karen

Karen Lidster, Staff
Senator John Coghill
(907) 465-5834 Session

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Karen Lidster

amendments 4-14

To: LAA Legal
Cc: MaryEllen Duffy
Subject: CS for CSSB22(JUD)
Attachments: Carpeneti AM.1.pdf; Carpeneti AM.2.pdf

Please draft a new CS for CS Senate Bill 22 (JUD) reflecting the following amendments that were voted on and passed in committee.
Our next meeting is Monday at 1:30 p.m. and your earliest turn-around would be so greatly appreciated.
Thank you.
K

Version: CS SB22(JUD) 28-GS1587\U
Amendment #4 – 28-GS1587\U.4 – Withdrawn left on table from 3/25. Withdrawn 3/1.
Amendment #5 – 28-GS1587\U.16 - Passed
Amendment #6 – 28-GS1587\U.6 - Withdrawn
Amendment #7 – 28-GS1587\U.7 - Passed
Amendment #8 – 28-GS1587\U.8 – Passed
Amendment #9 – 28-GS1587\AM-1 – Passed (Attached)
Amendment #10 – 28-GS1587\U.9 – Passed w/amendments as follows: Page 12, line 12 **ADD** **solely** after "referral is based"; and Page 12, line 21 **ADD** **based solely on the claim that** after "presumptive range" and **DELETE** **if** before "the defendant".
Amendment #11 – 28-GS1587\U.11 – Passed
Amendment #12 – 28-GS1587\U.12 – Passed
Amendment #13 – 28-GS1587\U.15 – Withdrawn
Amendment #14 – 28-GS1587\AM-2 Passed (Attached)

And for your information the amendments that you did and numbered \U.10 ✓ was combined with \U.14 ✓ and were never re-submitted to the committee for action. I hope this helps you in drafting the CS, by clearing up any questions on what happened to some of the amendments you drafted.

Thank you for your work on this. I hope it is clear what changes need to be made in the new CS. If you have questions, I will be in the office most of the weekend, but please call my cell at 388-8340. I will keep this paperwork with me in order to help facilitate a quick turn-around on this request.

You have my sincere thanks.

k

Karen

Karen Lidster, Staff
Senator John Coghill
(907) 465-5834 Session

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Karen Lidster

From: Karen Lidster
Sent: Friday, March 01, 2013 9:29 AM
To: LAA Legal
Subject: Amendment for CSSB 22(JUD)

Importance: High

Could you please provide Senator Coghill with an amendment for as follows:

Page 15, line 29 – 30
DELETE: The information shall include the judge's compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses.
ADD: **The information may include responses received concerning the judge's consideration of victims when imposing sentence on persons convicted of a felony offense, if applicable.**

Thank you for expediting this request in order that we are able to have it for our 1:30 p.m. meeting.

k
Karen

Karen Lidster, Staff
Senator John Coghill
(907) 465-5834 Session

This electronic message transmission contains information belonging to Senator John Coghill that is solely for the recipient named above and which may be confidential or privileged. SENATOR JOHN COGHILL EXPRESSLY PRESERVES AND ASSERTS ALL PRIVILEGES AND IMMUNITIES APPLICABLE TO THIS TRANSMISSION. If you are not the intented recipient, be aware that any disclosure, copying, distribution, or use of the contents of this communication is STRICTLY PROHIBITED. If you have received this electronic transmission in error, please notify us by telephone (907-465-6858) or by electronic mail (chad.hutchison@akleg.gov).

28-GS1587\U.6
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 7, line 31:

Delete "**with a**"

Insert "**with an active**"

Page 8, line 16:

Delete "**a**"

Insert "**an active**"

28-GS1587\U.7
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 9, line 19, following "trial":

Insert "**, or at a later time as the court may, for good cause, permit**"

Page 9, line 20, following "**may**":

Insert "**, for good cause shown,**"

Page 11, line 7:

Delete "The"

Insert "Except for good cause, the"

#2

28-GS1587\N.14
Strasbaugh
2/28/13

conceptual

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "N"

Page 19, following line ~~30~~ 22:

Insert a new bill section to read:

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

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

(1) volunteers for more than

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

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

(2) has received the training required under AS 47.17.022; and

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

Renumber the following bill sections accordingly.

#3

28-GS1587\N.3
Strasbaugh
3/4/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "N"

Page 15, line 22:

Delete "**compliance with AS 12.55.025(a)(5)**"

Insert "**consideration of victims**"

Page 15, line 23, following "**offenses**":

Insert "**where the offenses involve victims**"

Amendment N. 3

New language regarding information on judge's compliance when a sentence involves a victim.

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				
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							

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: 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 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
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	**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							

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 initally 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 **BILL NO.** CSSB022
2013 LEGISLATIVE SESSION

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:
() Publish Date:

Identifier: SB022CS(JUD)-LAW-CRIM-03-04-13
Title: CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT
Sponsor: RLS BY REQUEST OF THE GOVERNOR
Requester: Senate Judiciary

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

Expenditures/Revenues

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

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
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	**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							

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:

Analysis discusses changes in the Senate Judiciary committee substitute.

Prepared By: Loretta Withington, Division Operations Manager — Phone: (907)465-5427
Division: Administrative Services — Date: 03/04/2013 08:00 AM
Approved By: Michael C. Geraghty, Attorney General — Date: 03/04/13
Department of Law

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. CSSB 22 (JUD)

Analysis

The bill, while in part addressing sex trafficking and human trafficking specifically, also strengthens the law in several other areas including protection for victims of sexual assault and domestic violence. It also makes changes in the law of criminal procedure. The bill would adopt criminal penalties for probation and parole officers who engage in sexual penetration or sexual contact with persons on probation or parole. It makes changes in the statute of limitations for sex trafficking and human trafficking. It improves the procedure for determining whether a witness has a valid claim of privilege not to incriminate him or herself in a particular prosecution; and adopts a time limit within which to bring a claim of credit for time served against a sentence.

It requires athletic coaches to report to authorities if the coach has reasonable cause to suspect that a child has been abused or neglected. It allows the court to decide that the Office of Children's Services need not make reasonable efforts to reunite a child with the child's family if the parent or guardian has committed sexual abuse against the child or another child of the parent or guardian, or if the parent or guardian is registered or required to register as a sex offender.

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

The bill would allow a person to bring a civil action at any time that is based on conduct by a defendant that is felony sex trafficking or felony human trafficking 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 (file name): SB22-AJC-2-6-13
Title: An Act relating to sex trafficking and DVSA crimes
Sponsor: Rules by Request of the Governor
Requester: Governor

Dept. Affected: Alaska Court System
Appropriation: Judicial Council
Allocation: Judicial Council
OMB Component Number: 771

Expenditures/Revenues (Thousands of Dollars)

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

	FY14 Appropriation Requested	Included in Governor's FY14 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY14**	**FY14**	**FY15**	**FY16**	**FY17**	**FY18**	**FY19**
Personal Services	65.4		65.4	65.4	65.4	65.4	65.4
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	**65.4**	**0.0**	**65.4**	**65.4**	**65.4**	**65.4**	**65.4**

FUND SOURCE		(Thousands of Dollars)						
1002	Federal Receipts							
1003	GF Match							
1004	GF	65.4		65.4	65.4	65.4	65.4	65.4
1005	GF/Prgm (DGF)							
1037	GF/MH (UGF)							
1178	temp code (UGF)							
TOTAL		**65.4**	**0.0**	**65.4**	**65.4**	**65.4**	**65.4**	**65.4**

POSITIONS							
Full-time	1		1	1	1	1	1
Part-time							
Temporary							

CHANGE IN REVENUES							

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

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

ASSOCIATED REGULATIONS

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

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

Initial version.

Prepared by: E. J. Pavsek, Fiscal Officer — Phone 279-2526 Ext. 5
Division: Alaska Judicial Council — Date/Time 2/6/13 2:30 PM
Approved by: Larry Cohn, Executive Director — Date 2/6/2013
Alaska Judicial Council

(Revised 1/15/2013 OMB)

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. SB 22

Analysis

Section 30 of SB 22 requires the Alaska Judicial Council to provide information to the public before a judge's retention election about the judge's compliance with requirements to consider particular victim information when sentencing the defendant. In FY 12, there were 4,832 felony sentencings statewide. The number of felony sentencings increases every year. If the legislature intends for the Judicial Council to independently monitor judges' compliance (as opposed to relying on court system data), the Council will need to obtain audio recordings of all felony sentencings; listen to the recordings; assess judges' compliance; and enter and analyze data for each judge. The Council would need to hire one full-time employee to accomplish this work. This fiscal note estimates the cost of a full-time Range 11 employee.

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: 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 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates				
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							

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 deveopment 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.

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.

28-GS1587\N.2
Strasbaugh
3/4/13

#1

AMENDMENT

OFFERED IN THE SENATE BY SENATOR COGHILL

TO: CSSB 22(JUD), Draft Version "N"

Page 2, line 14, following "**Procedure,**":

Insert "**and**"

Page 2, line 15:

Delete "**, and Rule 216, Alaska Rules of Appellate Procedure**"

Page 21, line 31, through page 22, line 15:

Delete all material.

Renumber the following bill sections accordingly.

Page 23, line 5:

Delete "sec. 44"

Insert "sec. 42"

no objection

28-GS1587\N.1~~4~~
Strasbaugh
2/28/13

conceptual #2

AMENDMENT

OFFERED IN THE SENATE BY SENATOR ~~DYSON~~ McGuire

TO: CSSB 22(JUD), Draft Version "~~N~~"

Page 19, following line ~~30~~: 22

Insert a new bill section to read:

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

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

(1) volunteers for more than

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

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

(2) has received the training required under AS 47.17.022; and

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

Renumber the following bill sections accordingly.

no prosecution
no lawsuits
ever on side of kids
the earlier you can report - the
better the chance of the child.
only w/ athletic people.
w/out reporter

Dept of Law - supports -

28-GS1587\N.14
Strasbaugh
2/28/13

conceptual

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "N"

Page 19, following line ~~30~~ 22:

Insert a new bill section to read:

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

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

(1) volunteers for more than

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

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

(2) has received the training required under AS 47.17.022; and

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

Renumber the following bill sections accordingly.

28-GS1587\N.14
Strasbaugh
2/28/13

conceptual

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "N"

Page 19, following line ~~30~~ 22:

Insert a new bill section to read:

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

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

(1) volunteers for more than

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

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

(2) has received the training required under AS 47.17.022; and

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

Renumber the following bill sections accordingly.

28-GS1587\N.3
Strasbaugh
3/4/13

AMENDMENT #3

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "N"

Page 15, line 22:

Delete "**compliance with AS 12.55.025(a)(5)**"

Insert "**consideration of victims**"

Page 15, line 23, following "**offenses**":

Insert "**where the offenses involve victims**"

28-GS1587\U.8
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 9 - 10:

Delete "**relating to procedures for granting immunity to a witness in a criminal proceeding;**"

Page 2, line 20:

Delete "SECS. 22 AND 23"

Insert "SECS. 20 AND 21"

Page 9, line 30, through page 10, line 20:

Delete all material.

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "Sections 2 - 14, 20, 21, 25, 26, and 30 - 35"

Insert "Sections 2 - 14, 18, 19, 23, 24, and 28 - 33"

Page 22, line 27:

Delete "Sections 15 - 17, 22 - 24, 27, and 28"

Insert "Sections 15, 20 - 22, 25, and 26"

Page 22, line 29:

Delete "Section 18"

Insert "Section 16"

Page 22, line 31:

Delete "Section 19"

Insert "Section 17"

28-GS1587\U.9
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 12, line 13, following "combination,":

Insert "has"

Page 12, line 14:

Delete "has"

Page 12, line 15:

Delete "does not have a history"

Insert "a history free"

Page 12, line 21:

Delete "of law by a showing that"

Insert "if"

Page 12, line 22, following "combination,":

Insert "has"

Page 12, line 23:

Delete "has"

Page 12, line 24:

Delete "does not have a history"

Insert "a history free"

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

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

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

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

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

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

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

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

28-GS1587\U.10
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 15, line 19, following "**11.66.130(a)(2);**":

Insert "**or**"

Page 15, lines 20 - 21:

Delete "**human trafficking in any degree; or**

(N)"

28-GS1587\U.11
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 21, line 6:

Delete "**The**""

Insert "**If the crime involved a victim, the**"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 25, 2013

SUBJECT: Clean-up amendment for SB 22
(Work Order No. 28-GS1587\U.12)

TO: Senator John Coghill
Attn: Karen Lidster

FROM: Kathleen Strasbaugh
Legislative Counsel

In addition to the amendments you requested, please find enclosed an amendment that updates AS 18.65.865(b) in the same manner that section 26 of the "U" version of the bill amends AS 18.66.130(d), by correcting the maximum penalty for the class A misdemeanor offense referred to in these sections.

KJS:lnd
13-109.lnd

Enclosure

28-GS1587\U.12
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 14, following line 4:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "26, and 30 - 35"

Insert "27, and 31 - 36"

Page 22, line 27:

Delete "27, and 28"

Insert "28, and 29"

Amendments to CS SB22

1. Dyson – Amendment 1 - "remove human trafficking" from the entirety of the bill. WITHDRAWN ✓
2. Dyson – Amendment 2 – "prostitutes and patrons may equally have their assets seized" ACCEPTED
3. Dyson – Amendment 3 – "proffer – testimony not to be used for any other purpose." ACCEPTED
4. Dyson – Amendment 4 – " remove 'volunteer' athletic coaches." YOU ARE HERE. ✓

Amendments to CS SB22

1. Dyson – Amendment 1 - "remove human trafficking" from the entirety of the bill. WITHDRAWN
2. Dyson – Amendment 2 – "prostitutes and patrons may equally have their assets seized" ACCEPTED
3. Dyson – Amendment 3 – "proffer – testimony not to be used for any other purpose." ACCEPTED
4. Dyson – Amendment 4 – " remove 'volunteer' athletic coaches." YOU ARE HERE.

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 12, line 13, following "combination,":

Insert "has"

Page 12, line 14:

Delete "has"

Page 12, line 15:

Delete "does not have a history"

Insert "a history free"

Page 12, line 21:

Delete "of law by a showing that"

Insert "if"

Page 12, line 22, following "combination,":

Insert "has"

Page 12, line 23:

Delete "has"

Page 12, line 24:

Delete "does not have a history"

Insert "a history free"

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

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

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

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

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

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

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

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

28-GS1587\U.1
Strasbaugh
2/22/13

By amendment

AMENDMENT #1

withdrawn 2/25

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 1 - 2:

Delete "**and felony human trafficking**"

Page 1, line 7:

Delete "**or human trafficking**"

Page 3, line 15, following "minor**;**":

Insert "**or**"

Page 3, lines 16 - 17:

Delete "**; or**

(5) felony human trafficking"

Page 7, lines 12 - 13:

Delete "**;**

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

Page 7, line 18:

Delete "**AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370]"

Insert "AS 11.41.120 - 11.41.370"

Page 9, line 7, following "AS 11.71**;**":

Insert "**or**"

rewritten as u. 14 not resubmitted on 3/1/2013

added in Cogbill u. 10

Page 9, lines 9 - 10:

Delete "**; or**

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

added in. pg 15, line 21 (M)

28-GS1587\U.10
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 15, line 19, following "**11.66.130(a)(2);**":

Insert "**or**"

Page 15, lines 20 - 21:

Delete "**human trafficking in any degree; or**

(N)"

28-GS1587\U.2
Strasbaugh
2/22/13

AMENDMENT #2 passed 2/25

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 6, line 25:

Delete "**AS 11.66.100(a)(2), 11.66.100(c),** [AS 11.66.100(c)] or 11.66.110 - 11.66.135"

Insert "**AS 11.66.100 - 11.66.135** [AS 11.66.100(c) OR 11.66.110 - 11.66.135]"

Coverse by U.2
Amend #2 & Dyson

28-GS1587\U.5
Strasbaugh
2/25/13

Coghill

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 6, lines 25 - 26:

Delete "**AS 11.66.100(a)(2), 11.66.100(c),** [AS 11.66.100(c)] or 11.66.110 - 11.66.135 **may** [SHALL]"

Insert "**AS 11.66.100 - 11.66.135 may** [AS 11.66.100(c) OR 11.66.110 - 11.66.135 SHALL]"

28-GS1587\U.3
Strasbaugh
2/22/13

AMENDMENT #3 passed 2/25

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 10, line 6, following "privileged":

Delete "and inadmissible"

Insert "; [AND] inadmissible**, and may not be used**"

28-GS1587\U.4
Strasbaugh
2/22/13

AMENDMENT #4

left on the table 2/25

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Then withdrawn 3/1/2013

Page 19, line 14:

Delete "**or volunteer**"

Page 20, line 1:

Delete "or volunteer"

and replaced w/ H.16 #5 amend and it passes.

Passed 2 yeas / 1 nay

28-GS1587\U.16
Strasbaugh
3/1/13

AMENDMENT #5

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 19, line 12:

Delete "[OR]"

Insert "or"

Page 19, lines 13 - 14:

Delete "**or, with respect to (a) of this subsection, in performance of their occupational or volunteer duties**"

Page 20, line 1:

Delete "or volunteer"

28-GS1587\U.16
Strasbaugh
3/1/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 19, line 12:

Delete "[OR]"

Insert "or"

Page 19, lines 13 - 14:

Delete "**or, with respect to (a) of this subsection, in performance of their occupational or volunteer duties**"

Page 20, line 1:

Delete "or volunteer"

28-GS1587\U.4
Strasbaugh
2/22/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 19, line 14:

Delete "**or volunteer**"

Page 20, line 1:

Delete "or volunteer"

Withdrawn
Replaced with U.16

Amendment 4.4

SENATOR FRED DYSON

To: Senator Coghill, Judiciary Committee Chair
From: Senator Dyson
cc: Judiciary Committee Members
Date: 2/27/2013
Re: Legislative History Regarding Mandatory Reporting Requirements for School Professionals and Child Care Workers.

Our research into the legislative history of the mandatory reporting statute, AS 47.17.020, yielded that it was amended in 1985 as part of Governor Sheffield's legislative initiative to address child welfare issues.

HB 88 and companion SB 243 sought, among many other proposals, to broaden the mandatory reporter categories related to school professionals child care providers.

School Professionals. The governor's bills sought to broaden this category from teachers and administrators to "employees and volunteers of private and public schools."

As the bills were considered, the legislature struck the concept of "employees and volunteers". The requirement that was eventually enacted into law is the version that exists today: "school teachers and school administrative staff members of public and private schools."

Child Care Providers. The governor sought to broaden this category from "licensed" day care providers to "child care providers." The bills also proposed a new definition for "child care providers."

This change succeeded and was enacted into law and that version exists today. The definition of "child care provider" clarifies that the term means "an adult, or employee of an organization, who provides care and supervision to a child for compensation.

Other States. Our research into other states' requirements yielded three states that specifically require coach or organized activity volunteers to report (Louisiana, Virginia, and Washington). This research is from the report "Mandatory Reporters of Child Abuse and Neglect" by the Child Welfare Information Gateway. The report can be found at:
https://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf

During Session (January - April): Alaska State Capitol, Room #121 • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-3818 FAX
During Interim (May - December): 12641 Old Glenn Highway, Suite 201 • Eagle River, Alaska 99577 • (907) 694-6683 • (907) 694-1015 FAX
Senator_Fred_Dyson@Legis.state.ak.us • www.akrepublicans.org

28-GS1587\U.6
Strasbaugh
2/25/13

#6

AMENDMENT

withdrawn

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 7, line 31:

Delete "**with a**"

Insert "**with an active**"

Page 8, line 16:

Delete "**a**"

Insert "**an active**"

28-GS1587\U.7
Strasbaugh
2/25/13

AMENDMENT #7

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

tape sheet passed

Page 9, line 19, following "trial":

Insert "**, or at a later time as the court may, for good cause, permit**"

Page 9, line 20, following "**may**":

Insert "**, for good cause shown,**"

Page 11, line 7:

Delete "The"

Insert "Except for good cause, the"

28-GS1587\U.8
Strasbaugh
2/25/13

AMENDMENT

H 8
passed

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 9 - 10:

Delete "**relating to procedures for granting immunity to a witness in a criminal proceeding;**"

Page 2, line 20:

Delete "SECS. 22 AND 23"

Insert "SECS. 20 AND 21"

Page 9, line 30, through page 10, line 20:

Delete all material.

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "Sections 2 - 14, 20, 21, 25, 26, and 30 - 35"

Insert "Sections 2 - 14, 18, 19, 23, 24, and 28 - 33"

Page 22, line 27:

Delete "Sections 15 - 17, 22 - 24, 27, and 28"

Insert "Sections 15, 20 - 22, 25, and 26"

Page 22, line 29:

Delete "Section 18"

Insert "Section 16"

Page 22, line 31:

Delete "Section 19"

Insert "Section 17"

AM-1
2/19/2013
10:32 am
Carpeneti

AMENDMENT #9

OFFERED IN SENATE JUDICIARY COMMITTEE

BY _____

TO: CSSB 22(JUD)/28-GS1587\U

Page 2, line 20:

Delete "SECS. 22 AND 23"

Insert "SECS. 23 AND 24"

Page 3, line 6:

Delete "sec. 22"

Insert "sec. 23"

Page 3, line 7:

Delete "sec. 23"

Insert "sec. 24"

Page 6, following line 6:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "Sections 2 - 14, 20, 21, 25, 26, and 30 - 35"

Insert "Sections 2 - 15, 21, 22, 26, 27, and 31 - 36"

Page 22, line 27:

Delete "Sections 15 - 17, 22 - 24, 27, and 28"

Insert "Sections 16 - 18, 23 - 25, 28, and 29"

Page 22, line 29:

Delete "Section 18"

Insert "Section 19"

Page 22, line 31:

Delete "Section 19"

Insert "Section 20"

AM-2
2/25/2013
10:44 am
Carpeneti

AMENDMENT

OFFERED IN SENATE JUDICIARY COMMITTEE BY _____

TO: CSSB 22(JUD) / 28-GS1587\U

Page 2, line 14:

Delete "**Rule**"

Insert "**Rules 404(a) and**"

Page 22, following line 22:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 23, following line 1:

Insert a new bill section to read:

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

CONDITIONAL EFFECT. AS 12.45.045(a), enacted by sec. 15 of this Act, takes effect

only if sec. 44 of this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

Renumber the following bill section accordingly.

28-GS1587\U.9
Strasbaugh
2/25/13

AMENDMENT #10 passed w/ changes see back side

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 12, line 13, following "combination,":

Insert "has"

Page 12, line 14:

Delete "has"

Page 12, line 15:

Delete "does not have a history"

Insert "a history free"

Page 12, line 21:

Delete "of law by a showing that"

Insert "if"

Page 12, line 22, following "combination,":

Insert "has"

Page 12, line 23:

Delete "has"

Page 12, line 24:

Delete "does not have a history"

Insert "a history free"

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

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

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

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

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

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

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

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

28-GS1587\U.11
Strasbaugh
2/25/13

11

AMENDMENT

11
passed

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 21, line 6:

Delete "**The**""

Insert "**If the crime involved a victim, the**"

#12

28-GS1587\U.12
Strasbaugh
2/25/13

#12

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

striking + renumber accordingly passed

Page 14, following line 4:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "26, and 30 - 35"

Insert "27, and 31 - 36"

Page 22, line 27:

Delete "27, and 28"

Insert "28, and 29"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 25, 2013

SUBJECT: Clean-up amendment for SB 22
(Work Order No. 28-GS1587\U.12)

TO: Senator John Coghill
Attn: Karen Lidster

FROM: Kathleen Strasbaugh
Legislative Counsel

In addition to the amendments you requested, please find enclosed an amendment that updates AS 18.65.865(b) in the same manner that section 26 of the "U" version of the bill amends AS 18.66.130(d), by correcting the maximum penalty for the class A misdemeanor offense referred to in these sections.

KJS:lnd
13-109.lnd

Enclosure

#13 withdrawn

28-GS1587\U.15
Strasbaugh
3/1/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR COGHILL

TO: CSSB 22(JUD), Draft Version "U"

Page 15, lines 29 - 30:

Delete "**The information shall include the judge's compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses.**"

Insert "**The information may include the judge's consideration of victims when imposing sentence on persons convicted of felony offenses where the offenses involved victims.**"

a.
b.
c.

Karen Lidster

From: Nancy Meade <NMeade@courts.state.ak.us>
Sent: Friday, March 01, 2013 8:27 AM
To: Karen Lidster
Subject: RE: SB 22

Thank you, Karen. The Court System would like to propose an amendment to SB 22(JUD) "work draft" as follows:

Page 15, following line 17:

Delete lines 17 through 31.

Renumber the following bill sections accordingly.

The reasons for this are what I stated previously: the proposed bill language is likely to lead to inaccurate or misleading information about a very subjective matter, which could be unfair to the judges and unhelpful to the public. A judge's consideration of victims may be thorough and proper, yet lead to victims mis-perceiving what their role and influence over a defendant's sentence is, particularly in the very common situation of plea agreements.

Please let me know if I should submit this in another format or if you would like more information. Thank you for your patience.

****

ALTERNATIVE: IF your boss is not comfortable with the Court's above proposal, I would submit the following alternative; the sentence below would make the collection and dissemination of information easier to implement and allow information to be publicized when appropriate. This amendment would be acceptable, but the Court does prefer the above amendment, deleting all of Section 29.

Page 15, line 22, following "retention or election.":

Insert "**The information may include responses received concerning the judge's consideration of victims when imposing sentence on persons convicted of a felony offense, if applicable.**"

appropriate

Page 15, lines 23 through 25:

Delete "**It shall include information on the judge's compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of a felony offense.**"

Nancy Meade

General Counsel

Alaska Court System

(907) 264-8264 – Anchorage

(907) 463-4736 - Juneau

From: Karen Lidster [mailto:Karen.Lidster@akleg.gov]
Sent: Thursday, February 28, 2013 6:21 PM
To: Nancy Meade
Subject: RE: SB 22

The bill you should be working off of is Work Draft CS for SB 22(JUD) 28-GSl587\U.

Have a good evening.

k

From: Nancy Meade [mailto:NMeade@courts.state.ak.us]
Sent: Thursday, February 28, 2013 5:07 PM
To: Karen Lidster
Subject: RE: SB 22

Question – the committee is still working on the original SB 22, without any committee substitute yet, right? So my amendment concerns **section 30,** even though in the working draft CS it became re-numbered as section 29. I am just making sure, because I think you referred to the section numbers in the draft CS (rather than the numbers in the original bill) earlier when we were talking.

#14

AM-2
2/25/2013
10:44 am
Carpeneti

AMENDMENT #14 passed

OFFERED IN SENATE JUDICIARY COMMITTEE BY _____

TO: CSSB 22(JUD) / 28-GS1587\U

Page 2, line 14:

Delete "**Rule**"

Insert "**Rules 404(a) and**"

Page 22, following line 22:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 23, following line 1:

Insert a new bill section to read:

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

CONDITIONAL EFFECT. AS 12.45.045(a), enacted by sec. 15 of this Act, takes effect

only if sec. 44 of this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

Renumber the following bill section accordingly.

#1 Held By/U.* and AM.1 + AM.2

28-GS1587\U.1
Strasbaugh
2/22/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

and Coghill U.10 combine to U.14 & never offered.

Page 1, lines 1 - 2:
Delete "**and felony human trafficking**"

Page 1, line 7:
Delete "**or human trafficking**"

Page 3, line 15, following "minor;":
Insert "**or**"

Page 3, lines 16 - 17:
Delete "**; or**
(5) felony human trafficking"

Page 7, lines 12 - 13:
Delete "**;**
(9) human trafficking in violation of AS 11.41.360 or 11.41.365"

Page 7, line 18: Time Limit
Delete "**AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370]"
Insert "AS 11.41.120 - 11.41.370"

Page 9, line 7, following "AS 11.71;":
Insert "**or**"

Page 9, lines 9 - 10:

Delete "**; or**

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

15 - Line 20

#2 Pass

28-GS1587\U.2
Strasbaugh
2/22/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 6, line 25:

Delete "**AS 11.66.100(a)(2), 11.66.100(c),** [AS 11.66.100(c)] or 11.66.110 - 11.66.135"

Insert "**AS 11.66.100 - 11.66.135** [AS 11.66.100(c) OR 11.66.110 - 11.66.135]"

#3 Pass

28-GS1587\U.3
Strasbaugh
2/22/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 10, line 6, following "privileged":

Delete "and inadmissible"

Insert "; [AND] inadmissible**, and may not be used**"

#4

28-GS1587\U.4
Strasbaugh
2/22/13

AMENDMENT #4

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

left on table

Page 19, line 14:

Delete "**or volunteer**"

Page 20, line 1:

Delete "or volunteer"

Covers by U.2 amendment #2 by Dyson

28-GS1587\U.5
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 6, lines 25 - 26:

Delete "**AS 11.66.100(a)(2), 11.66.100(c),** [AS 11.66.100(c)] or 11.66.110 - 11.66.135 **may** [SHALL]"

Insert "**AS 11.66.100 - 11.66.135 may** [AS 11.66.100(c) OR 11.66.110 - 11.66.135 SHALL]"

#6

28-GS1587\U.6
Strasbaugh
2/25/13

AMENDMENT #6

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 7, line 31:

Delete "**with a**"

Insert "**with an active**"

Page 8, line 16:

Delete "**a**"

Insert "**an active**"

withdrawn

#7 Pass

28-GS1587\U.7
Strasbaugh
2/25/13

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 9, line 19, following "trial":

Insert "**, or at a later time as the court may, for good cause, permit**"

Page 9, line 20, following "**may**":

Insert "**, for good cause shown,**"

Page 11, line 7:

Delete "The"

Insert "Except for good cause, the"

28-GS1587\U.8
Strasbaugh
2/25/13

AMENDMENT #8 passed

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 9 - 10:

Delete "**relating to procedures for granting immunity to a witness in a criminal proceeding;**"

Page 2, line 20:

Delete "SECS. 22 AND 23"

Insert "SECS. 20 AND 21"

Page 9, line 30, through page 10, line 20:

Delete all material.

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "Sections 2 - 14, 20, 21, 25, 26, and 30 - 35"

Insert "Sections 2 - 14, 18, 19, 23, 24, and 28 - 33"

Page 22, line 27:

Delete "Sections 15 - 17, 22 - 24, 27, and 28"

Insert "Sections 15, 20 - 22, 25, and 26"

Page 22, line 29:

Delete "Section 18"

Insert "Section 16"

Page 22, line 31:

Delete "Section 19"

Insert "Section 17"

#10

28-GS1587\U.9
Strasbaugh
2/25/13

AMENDMENT #10

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

w/ further amendments

Page 12, line 13, following "combination,":

Insert "has"

Page 12, line 14:

Delete "has"

Page 12, line 15:

Delete "does not have a history"

Insert "a history free"

Page 12, line 21:

Delete "of law by a showing that"

Insert "if"

Page 12, line 22, following "combination,":

Insert "has"

Page 12, line 23:

Delete "has"

Page 12, line 24:

Delete "does not have a history"

Insert "a history free"

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

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

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

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

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

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

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

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

28-GS1587\U.10
Strasbaugh
2/25/13

AMENDMENT

added into Dyson amendment

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 15, line 19, following "**11.66.130(a)(2);**":

Insert "**or**"

Page 15, lines 20 - 21:

Delete "**human trafficking in any degree; or**

(N)"

28-GS1587\U.1
Strasbaugh
2/22/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 1 - 2:

Delete "**and felony human trafficking**"

Page 1, line 7:

Delete "**or human trafficking**"

Page 3, line 15, following "minor;":

Insert "**or**"

Page 3, lines 16 - 17:

Delete "**; or**

(5) felony human trafficking"

Page 7, lines 12 - 13:

Delete "**;**

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

Page 7, line 18:

Delete "**AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370]"

Insert "AS 11.41.120 - 11.41.370"

Page 9, line 7, following "AS 11.71;":

Insert "**or**"

Page 9, lines 9 - 10:

Delete "**; or**

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

Page 15, line 20

Delete: (M) human trafficking in any degree; or

II 11

28-GS1587\U.11
Strasbaugh
2/25/13

AMENDMENT

passed

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 21, line 6:

Delete "**The**""

Insert "**If the crime involved a victim, the**"

#12

28-GS1587\U.12
Strasbaugh
2/25/13

passed

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 14, following line 4:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "26, and 30 - 35"

Insert "27, and 31 - 36"

Page 22, line 27:

Delete "27, and 28"

Insert "28, and 29"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 25, 2013

SUBJECT: Clean-up amendment for SB 22
(Work Order No. 28-GS1587\U.12)

TO: Senator John Coghill
Attn: Karen Lidster

FROM: Kathleen Strasbaugh
Legislative Counsel

In addition to the amendments you requested, please find enclosed an amendment that updates AS 18.65.865(b) in the same manner that section 26 of the "U" version of the bill amends AS 18.66.130(d), by correcting the maximum penalty for the class A misdemeanor offense referred to in these sections.

KJS:lnd
13-109.lnd

Enclosure

28-GS1587\U.14
Strasbaugh
2/28/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 1 - 2:

Delete "**and felony human trafficking**"

Page 1, line 7:

Delete "**or human trafficking**"

Page 3, line 15, following "minor;":

Insert "**or**"

Page 3, lines 16 - 17:

Delete "**; or**

(5) felony human trafficking"

Page 7, lines 12 - 13:

Delete "**;**

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

Page 7, line 18:

Delete "**AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370]"

Insert "AS 11.41.120 - 11.41.370"

Page 9, line 7, following "AS 11.71;":

Insert "**or**"

Page 9, lines 9 - 10:

Delete "**; or**

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

Page 15, line 19, following "**11.66.130(a)(2);**":

Insert "**or**"

Page 15, lines 20 - 21:

Delete "**human trafficking in any degree; or**

(N)"

28-GS1587\U.14
Strasbaugh
2/28/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 1 - 2:

Delete "**and felony human trafficking**"

Page 1, line 7:

Delete "**or human trafficking**"

Page 3, line 15, following "minor**;**":

Insert "**or**"

Page 3, lines 16 - 17:

Delete "**; or**

(5) felony human trafficking"

Page 7, lines 12 - 13:

Delete "**;**

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

Page 7, line 18:

Delete "**AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370]"

Insert "AS 11.41.120 - 11.41.370"

Page 9, line 7, following "AS 11.71**;**":

Insert "**or**"

Page 9, lines 9 - 10:

Delete "**; or**

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

Page 15, line 19, following "**11.66.130(a)(2);**":

Insert "**or**"

Page 15, lines 20 - 21:

Delete "**human trafficking in any degree; or**

(N)"

28-GS1587\U.14
Strasbaugh
2/28/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 1 - 2:

Delete "**and felony human trafficking**"

Page 1, line 7:

Delete "**or human trafficking**"

Page 3, line 15, following "minor;":

Insert "**or**"

Page 3, lines 16 - 17:

Delete "**; or**

(5) felony human trafficking"

Page 7, lines 12 - 13:

Delete "**;**

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

Page 7, line 18:

Delete "**AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370]"

Insert "AS 11.41.120 - 11.41.370"

Page 9, line 7, following "AS 11.71;":

Insert "**or**"

Page 9, lines 9 - 10:

Delete "**; or**

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

Page 15, line 19, following "**11.66.130(a)(2);**":

Insert "**or**"

Page 15, lines 20 - 21:

Delete "**human trafficking in any degree; or**

(N)"

28-GS1587\U.14
Strasbaugh
2/28/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 1 - 2:

Delete "**and felony human trafficking**"

Page 1, line 7:

Delete "**or human trafficking**"

Page 3, line 15, following "minor;":

Insert "**or**"

Page 3, lines 16 - 17:

Delete "**; or**

(5) felony human trafficking"

Page 7, lines 12 - 13:

Delete "**;**

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

Page 7, line 18:

Delete "**AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370]"

Insert "AS 11.41.120 - 11.41.370"

Page 9, line 7, following "AS 11.71;":

Insert "**or**"

Page 9, lines 9 - 10:

Delete "**; or**

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

Page 15, line 19, following "**11.66.130(a)(2);**":

Insert "**or**"

Page 15, lines 20 - 21:

Delete "**human trafficking in any degree; or**

(N)"

28-GS1587\U.14
Strasbaugh
2/28/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 1 - 2:

Delete "**and felony human trafficking**"

Page 1, line 7:

Delete "**or human trafficking**"

Page 3, line 15, following "minor;":

Insert "**or**"

Page 3, lines 16 - 17:

Delete "**; or**

(5) felony human trafficking"

Page 7, lines 12 - 13:

Delete "**;**

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

Page 7, line 18:

Delete "**AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370]"

Insert "AS 11.41.120 - 11.41.370"

Page 9, line 7, following "AS 11.71;":

Insert "**or**"

Page 9, lines 9 - 10:

Delete "**; or**

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

Page 15, line 19, following "**11.66.130(a)(2);**":

Insert "**or**"

Page 15, lines 20 - 21:

Delete "**human trafficking in any degree; or**

(N)"

28-GS1587\U.15
Strasbaugh
3/1/13

#13 withdrawn

AMENDMENT

OFFERED IN THE SENATE BY SENATOR COGHILL

TO: CSSB 22(JUD), Draft Version "U"

Page 15, lines 29 - 30:

Delete "**The information shall include the judge's compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses.**"

Insert "**The information may include the judge's consideration of victims when imposing sentence on persons convicted of felony offenses where the offenses involved victims.**"

#5

28-GS1587\U.16
Strasbaugh
3/1/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 19, line 12:

Delete "[OR]"

Insert "or"

Page 19, lines 13 - 14:

Delete "**or, with respect to (a) of this subsection, in performance of their occupational or volunteer duties**"

Page 20, line 1:

Delete "or volunteer"

Amendment U.4

SENATOR FRED DYSON

To: Senator Coghill, Judiciary Committee Chair
From: Senator Dyson
cc: Judiciary Committee Members
Date: 2/27/2013
Re: Legislative History Regarding Mandatory Reporting Requirements for School Professionals and Child Care Workers.

Our research into the legislative history of the mandatory reporting statute, AS 47.17.020, yielded that it was amended in 1985 as part of Governor Sheffield's legislative initiative to address child welfare issues.

HB 88 and companion SB 243 sought, among many other proposals, to broaden the mandatory reporter categories related to school professionals child care providers.

School Professionals. The governor's bills sought to broaden this category from teachers and administrators to "employees and volunteers of private and public schools."

As the bills were considered, the legislature struck the concept of "employees and volunteers". The requirement that was eventually enacted into law is the version that exists today: "school teachers and school administrative staff members of public and private schools."

Child Care Providers. The governor sought to broaden this category from "licensed" day care providers to "child care providers." The bills also proposed a new definition for "child care providers."

This change succeeded and was enacted into law and that version exists today. The definition of "child care provider" clarifies that the term means "an adult, or employee of an organization, who provides care and supervision to a child for compensation.

Other States. Our research into other states' requirements yielded three states that specifically require coach or organized activity volunteers to report (Louisiana, Virginia, and Washington). This research is from the report "Mandatory Reporters of Child Abuse and Neglect" by the Child Welfare Information Gateway. The report can be found at:
https://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.pdf

During Session (January - April): Alaska State Capitol, Room #121 • Juneau, Alaska 99801 • (800) 342-2199 • (907) 465-2199 • (907) 465-3818 FAX
During Interim (May - December): 12641 Old Glenn Highway, Suite 201 • Eagle River, Alaska 99577 • (907) 694-6683 • (907) 694-1015 FAX
Senator_Fred_Dyson@Legis.state.ak.us • www.akrepublicans.org

28-GS1587\U.4
Strasbaugh
2/22/13

AMENDMENT

OFFERED IN THE SENATE BY SENATOR DYSON

TO: CSSB 22(JUD), Draft Version "U"

Page 19, line 14:

Delete "**or volunteer**"

Page 20, line 1:

Delete "or volunteer"

AM-1

#9

AM-1
2/19/2013
10:32 am
Carpeneti

AMENDMENT #9 passed

OFFERED IN SENATE JUDICIARY COMMITTEE

BY _____

TO: CSSB 22(JUD)/28-GS1587\U

Page 2, line 20:

Delete "SECS. 22 AND 23"

Insert "SECS. 23 AND 24"

Page 3, line 6:

Delete "sec. 22"

Insert "sec. 23"

Page 3, line 7:

Delete "sec. 23"

Insert "sec. 24"

Page 6, following line 6:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "Sections 2 - 14, 20, 21, 25, 26, and 30 - 35"

Insert "Sections 2 - 15, 21, 22, 26, 27, and 31 - 36"

Page 22, line 27:

Delete "Sections 15 - 17, 22 - 24, 27, and 28"

Insert "Sections 16 - 18, 23 - 25, 28, and 29"

Page 22, line 29:

Delete "Section 18"

Insert "Section 19"

Page 22, line 31:

Delete "Section 19"

Insert "Section 20"

AM-2
2/25/2013
10:44 am
Carpeneti

#14 passed

AMENDMENT

OFFERED IN SENATE JUDICIARY COMMITTEE

BY _____

TO: CSSB 22(JUD) / 28-GS1587\U

Page 2, line 14:

Delete "**Rule**"

Insert "**Rules 404(a) and**"

Page 22, following line 22:

Insert a new bill section to read:

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

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

Renumber the following bill sections accordingly.

Page 23, following line 1:

Insert a new bill section to read:

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

CONDITIONAL EFFECT. AS 12.45.045(a), enacted by sec. 15 of this Act, takes effect

only if sec. 44 of this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

Renumber the following bill section accordingly.

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 5, 2013

SUBJECT: CSSB 22(JUD): Sex Crimes and Human Trafficking
(Work Order No. 28-GS1587\N)

TO: Senator John Coghill
Chair of the Senate Judiciary Committee
Attn: Karen Lidster

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the draft committee substitute for SB 22 that you requested. I made a few corrections that I wanted to bring to your attention.

1. **Page 2, line 8.** I added a description of sections 25 and 26 to the title.

2. **Applicability section.** Section 45(a) of the bill sets out sections of the bill that apply to offenses committed on or after the effective date of the act, this provision is designed to comply with the constitutional prohibition against ex post facto laws. The following sections do not create or amend criminal offenses so I have eliminated them from sec. 45(a):

Sections 25 and 26 (penalty notices required for protective order forms),
Sections 31 - 34 (adding "or the attorney general's designee" to AS 44.23.080),
Section 35 (child in need of aid provisions).

3. Slight wording changes have been made:

Section 44 (substituting "amending" for "changing"),
Section 45(c) (adding "occurring" after "hearings"),
Section 46 (reorganizing the first line).

Please let me know if these changes are not acceptable.

In addition, I wonder if the Department of Law intended to include secs. 21 - 23 in sec. 45(b), the provision that allows the law to be applied whether an offense was committed before, on, or after the effective date of the act. These provisions, particularly secs. 21 and 22, might arguably be considered an ex post facto increase in punishment.

KJS:ljw
13-136.ljw

Enclosure

what is unclassified felony?

For discussion draft

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

"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 in prosecution for stalking, a crime involving domestic violence, or 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 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 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."

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

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

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 22 AND 23 OF THIS ACT. (a) The legislature reaffirms the findings made by the letter of intent for ch. 14, SLA 2006, shown at 2006 Senate Journal 2207 - 2214 (February 16).

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

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

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

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

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

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor**;**

(4) felony sex trafficking; or

(5) felony human trafficking.

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

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

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

(A) mentally incapable;

(B) incapacitated; or

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

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

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

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

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

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

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

(b) In this section,

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

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

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

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

(5) "probation officer" includes a person

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

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

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

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

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners,

the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

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

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

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

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

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

(b) In this section,

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

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

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

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

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

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

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

(1) mentally incapable; or

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

* **Sec. 8.** AS 11.56.750(a) is amended to read:

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

(1) has been ordered **by the court** not to contact a victim or witness of the offense [AS]

(A) **as** part of a sentence imposed under AS 12.55.015; or

(B) **as** a condition of

(i) release under AS 12.30; **or**

(ii) probation under AS 12.55.101; or

(C) while under official detention; or

[(iii) PAROLE UNDER AS 33.16.150; AND]

(2) **has been ordered not to contact a victim or witness of the offense as a condition of parole under AS 33.16.150; and**

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

* **Sec. 9.** AS 11.66.145 is amended to read:

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

* **Sec. 10.** AS 12.10.010 is amended to read:

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

(1) murder;

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

(3) felony sexual abuse of a minor;

(4) sexual assault that is an unclassified, class A, or class B felony or a

violation of AS 11.41.425(a)(2) - (4); da 3rd

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

(6) kidnapping**;**

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

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

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

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

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

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

*** Sec. 11.** AS 12.30.016(e) is amended to read:

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

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

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

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

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

* **Sec. 12.** AS 12.30.027(a) is amended to read:

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

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

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

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

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

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

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

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

* **Sec. 14.** AS 12.37.010 is amended to read:

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 degree 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. 15.** 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**, 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 PRELIMINARY HEARING]. **The defendant may apply for an order during trial if the request is based on evidence discovered after the deadline or during the trial.** 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 an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

*** Sec. 16.** AS 12.50.101(g) is amended to read:

(g) At the hearing under (f) of this section, the attorney for the witness, in the form of a proffer, shall describe the testimony or other information that the witness claims is privileged. The proffer must include a description of how the testimony or other information could connect the witness with a crime. **The court shall conduct a**

personal inquiry under oath of the witness concerning the facts giving rise to the claim or claims of privilege in the proffer. The proffer **and the testimony of the witness are** [IS] privileged and inadmissible for any other purpose. If the proffer **and the testimony establish** [ESTABLISHES] a factual basis that there is a real or substantial danger that the testimony or other information to be compelled would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime, the court may find that the witness has a valid claim of privilege.

*** Sec. 17.** AS 12.50.101 is amended by adding a new subsection to read:

(j) If the court finds after a hearing under (f) of this section and the personal inquiry under (g) of this section, that the witness has a valid claim of privilege, the court shall enter its findings of fact and conclusions of law in a sealed, written order that explains the real or substantial danger that the proffer or testimony would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime. The attorney general may bring an immediate, interlocutory appeal of the court's decision to the court of appeals. The court issuing the order appealed under this section shall stay its proceeding while the appeal is pending.

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

(k) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail in connection with an offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecutor 30 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except as provided in (*l*) of this section, a court may not consider a request for credit made under this subsection more than 90 days after the sentencing hearing.

(*l*) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail while pending appeal, the defendant shall file notice with the court and the prosecutor not later than 90 days after return of the case to the trial court following appeal. The

notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. The court may not consider a request for credit made under this subsection after this deadline.

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

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

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

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

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

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

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

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

(e) If the defendant is being sentenced for two or more crimes of distribution of child pornography under AS 11.61.125, possession of child pornography under AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a

consecutive term of imprisonment shall be imposed for some additional term of imprisonment for each additional crime or each additional attempt or solicitation to commit the offense.

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

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

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

(2) does not have a history of unprosecuted, undocumented, or undetected sexual offenses.

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

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

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

(2) does not have a history of unprosecuted, undocumented, or undetected sexual offenses.

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

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

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

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of

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

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

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

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

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

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

(i) AS 11.41.410 - 11.41.438;

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

(iii) AS 11.41.450 - 11.41.458;

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

(v) AS 11.61.125 - 11.61.128;

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

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

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

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

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

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

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

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

* **Sec. 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 United States military,** 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;

(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(b)(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. **It shall include information on the judge's compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of a felony offense.** 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 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) For purposes of this section, the attorney general's designee may be the deputy attorney general of the civil division or the criminal division of the Department of Law.

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

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

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

(2) the parent or guardian has

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

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

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

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

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

(4) the department has conducted a reasonably diligent search over a

time period of at least three months for an unidentified or absent parent and has failed to identify and locate the parent;

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

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

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

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

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

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

(11) the parent or guardian

(A) has committed sexual abuse against the child or another

child of the parent or guardian; or

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

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

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

(1) practitioners of the healing arts;

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

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

(4) administrative officers of institutions;

(5) child care providers;

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

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

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

(9) athletic coaches.

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

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

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

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

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

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

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

(1) Contents and Filing. If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. **The court may not accept a report that does not include a victim's**

If the crime involved a victim,

impact statement, unless the report explains the reason why the victim or the victim's representative could not be interviewed. The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

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

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

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

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

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

(b) Other Crimes, Wrongs, or Acts.

(1) Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith. It is, however, admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

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

rule of evidence and if the prior offenses

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

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

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

(3) In a prosecution for a crime of sexual assault in any degree, evidence of other sexual assaults or attempted sexual assaults by the defendant against the same or another person is admissible if the defendant relies on a defense of consent. In a prosecution for a crime of attempt to commit sexual assault in any degree, evidence of other sexual assaults or attempted sexual assaults by the defendant against the same or another person is admissible.

(4) In a prosecution for a crime involving domestic violence or of interfering with a report of a crime involving domestic violence, evidence of other crimes involving domestic violence by the defendant against the same or another person or of interfering with a report of a crime involving domestic violence is admissible. In this paragraph, "domestic violence" and "crime involving domestic violence" have the meanings given in AS 18.66.990.

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

DIRECT COURT RULE AMENDMENT. Rule 216(a), Alaska Rules of Appellate Procedure, is amended to read:

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

(1) Extradition appeals;

(2) Peremptory challenge appeals**;**

(3) Claim of privilege appeal under AS 12.50.101(j).

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

DIRECT COURT RULE AMENDMENT. Rule 216(b), Alaska Rules of Appellate Procedure, is amended by adding a new paragraph to read:

(3) A "claim of privilege appeal" is an appeal by the State of Alaska from a finding after a hearing under AS 12.50.101(g) that a witness has a valid claim of privilege.

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

APPLICABILITY. (a) Sections 2 - 14, 20, 21, 25, 26, and 30 - 35 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 15 - 17, 22 - 24, 27, and 28 of this Act apply to offenses committed before, on, or after the effective date of this Act.

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

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

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

28-GS1587\A

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SENATE BILL NO. 22

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/16/13
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"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."

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

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

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 20 AND 21 OF THIS ACT. (a) The legislature reaffirms the findings made by the letter of intent for ch. 14, SLA 2006, shown at 2006 Senate Journal 2207 - 2214 (February 16).

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

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

(c) It is the intent of the legislature that AS 12.55.165, as amended by sec. 20 of this Act, and AS 12.55.175, as amended by sec. 21 of this Act, to overturn the majority decision in Collins v. State, 287 P.3d 791 (Alaska 2012), and to endorse the dissenting opinion in the same case.

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

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

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor;

(4) felony sex trafficking; or

(5) felony human trafficking.

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

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

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

(A) mentally incapable;

(B) incapacitated; or

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

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

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

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

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

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

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

(b) In this section,

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

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

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

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

(5) "probation officer" includes a person

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

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

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

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

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners,

the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

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

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

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

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

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

(b) In this section,

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

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

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

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

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

*** Sec. 7.** AS 11.56.750(a) is amended to read:

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

(1) has been ordered not to contact a victim or witness of the offense [AS]

(A) **as** part of a sentence imposed under AS 12.55.015; or

(B) **as** a condition of

(i) release under AS 12.30;

(ii) probation under AS 12.55.101; [OR]

(iii) parole under AS 33.16.150; **or**

(C) while under official detention; and

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

*** Sec. 8.** AS 11.66.145 is amended to read:

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

*** Sec. 9.** AS 12.10.010 is amended to read:

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

(1) murder;

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

(3) felony sexual abuse of a minor;

(4) sexual assault that is an unclassified, class A, or class B felony or a violation of AS 11.41.425(a)(2) - **(6)** [(4)];

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

(6) kidnapping**;**

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

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

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

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

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

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

* **Sec. 10.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the judicial officer shall consider the safety of the victim or other household member. To protect the victim, household member, other persons, and the community and to reasonably assure the person's appearance, the judicial officer shall impose conditions required under AS 12.30.011, and may impose any of the conditions authorized under AS 12.30.011, any of the provisions of AS 18.66.100(c)(1) - (7)**,** [AND] (11), **and (17),** and any other condition necessary to protect the victim, household member, other persons, and the community, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

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

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

* **Sec. 12.** AS 12.37.010 is amended to read:

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 degree 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. 13.** 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**, 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 PRELIMINARY HEARING]. **The defendant may apply for an order during trial if the request is based on evidence admitted at trial that was not available to the defendant before trial.** 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 an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

*** Sec. 14.** AS 12.50.101(g) is amended to read:

(g) At the hearing under (f) of this section, the attorney for the witness, in the form of a proffer, shall describe the testimony or other information that the witness claims is privileged. The proffer must include a description of how the testimony or other information could connect the witness with a crime. **The court shall conduct a**

personal inquiry under oath of the witness concerning the facts giving rise to the claim or claims of privilege in the proffer. The proffer **and the testimony of the witness are** [IS] privileged and inadmissible for any other purpose. If the proffer **and the testimony establish** [ESTABLISHES] a factual basis that there is a real or substantial danger that the testimony or other information to be compelled would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime, the court may find that the witness has a valid claim of privilege.

*** Sec. 15.** AS 12.50.101 is amended by adding a new subsection to read:

(j) If the court finds after a hearing under (f) of this section and the personal inquiry under (g) of this section, that the witness has a valid claim of privilege, the court shall enter its findings of fact and conclusions of law in a sealed, written order that explains the real or substantial danger that the proffer or testimony would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime. The attorney general may bring an immediate, interlocutory appeal of the court's decision to the court of appeals. The court issuing the order appealed under this section shall stay its proceeding while the appeal is pending.

*** Sec. 16.** AS 12.55.025 is amended by adding a new subsection to read:

(k) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program as a condition of bail under AS 12.55.027 in connection with the offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecuting authority 10 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before the credit may be awarded. A court may not consider a request for credit made after the sentencing hearing.

*** Sec. 17.** AS 12.55.027 is amended by adding a new subsection to read:

(e) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program either as a condition of probation or a condition of bail release after a petition to revoke probation has been filed, the defendant shall file notice with the court and the prosecuting authority 10 days before the disposition

hearing. The notice shall include the amount of time the defendant is claiming. The defendant must prove that the credit claimed meets the requirements of this section by a preponderance of evidence. A court may not consider a request for credit made after the disposition hearing.

* **Sec. 18.** AS 12.55.085(f) is amended to read:

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

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

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

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

* **Sec. 19.** AS 12.55.127 is amended by adding a new subsection to read:

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

* **Sec. 20.** AS 12.55.165 is amended by adding a new subsection to read:

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

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

(2) is a youthful offender; or

(3) does not have a history of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 21.** AS 12.55.175 is amended by adding a new subsection to read:

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

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

(2) is a youthful offender; or

(3) does not have a history of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 22.** AS 12.55.185(16) is amended to read:

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

*** Sec. 23.** AS 12.63.100(6) is amended to read:

(6) "sex offense" means

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

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

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

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

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

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

(i) AS 11.41.410 - 11.41.438;

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

(iii) AS 11.41.450 - 11.41.458;

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

(v) AS 11.61.125 - 11.61.128;

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

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

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

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

*** Sec. 24.** AS 18.65.850(c) is amended to read:

(c) A protective order issued under this section may

(1) prohibit the respondent from threatening to commit or committing stalking or sexual assault;

(2) prohibit the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner or a designated household member of the petitioner specifically named by the court;

(3) direct the respondent to stay away from the residence, school, or

place of employment of the petitioner, or any specified place frequented by the petitioner; however, the court may order the respondent to stay away from the respondent's own residence, school, or place of employment only if the respondent has been provided actual notice of the opportunity to appear and be heard on the petition;

(4) order the respondent to participate in a monitoring program with a global positioning device or similar technological means that meet the guidelines for a monitoring program adopted by the Department of Public Safety;

(5) order other relief the court determines to be necessary to protect the petitioner or the designated household member.

* **Sec. 25.** AS 18.66.100(b) is amended to read:

(b) When a petition for a protective order is filed, the court shall schedule a hearing and provide at least 10 days' notice to the respondent of the hearing and of the respondent's right to appear and be heard, either in person or by an attorney. If the court finds by a preponderance of evidence that the respondent has committed a crime involving domestic violence against the petitioner, regardless of whether the respondent appears at the hearing, the court may order any relief available under (c) of this section. The provisions of a protective order issued under

(1) (c)(1) of this section are effective until further order of the court;

(2) (c)(2) - (17) [(16)] of this section are effective for one year unless earlier dissolved by court order.

* **Sec. 26.** AS 18.66.100(c) is amended to read:

(c) A protective order under this section may

(1) prohibit the respondent from threatening to commit or committing domestic violence, stalking, or harassment;

(2) prohibit the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner;

(3) remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;

(4) direct the respondent to stay away from the residence, school, or place of employment of the petitioner or any specified place frequented by the

petitioner or any designated household member;

(5) prohibit the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner;

(6) prohibit the respondent from using or possessing a deadly weapon if the court finds the respondent was in the actual possession of or used a weapon during the commission of domestic violence;

(7) direct the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was in the actual possession of or used a firearm during the commission of the domestic violence;

(8) request a peace officer to accompany the petitioner to the petitioner's residence to ensure that the petitioner

(A) safely obtains possession of the petitioner's residence, vehicle, or personal items; and

(B) is able to safely remove a vehicle or personal items from the petitioner's residence;

(9) award temporary custody of a minor child to the petitioner and may arrange for visitation with a minor child if the safety of the child and the petitioner can be protected; if visitation is allowed, the court may order visitation under the conditions provided in AS 25.20.061;

(10) give the petitioner possession and use of a vehicle and other essential personal items, regardless of ownership of the items;

(11) prohibit the respondent from consuming controlled substances;

(12) require the respondent to pay support for the petitioner or a minor child in the care of the petitioner if there is an independent legal obligation of the respondent to support the petitioner or child;

(13) require the respondent to reimburse the petitioner or other person for expenses associated with the domestic violence, including medical expenses, counseling, shelter, and repair or replacement of damaged property;

(14) require the respondent to pay costs and fees incurred by the petitioner in bringing the action under this chapter;

(15) order the respondent, at the respondent's expense, to participate in

(A) a program for the rehabilitation of perpetrators of domestic violence that meets the standards set by, and that is approved by, the Department of Corrections under AS 44.28.020(b), or (B) treatment for the abuse of alcohol or controlled substances, or both; a protective order under this section may not require a respondent to participate in a program for the rehabilitation of perpetrators of domestic violence unless the program meets the standards set by, and that is approved by, the Department of Corrections under AS 44.28.020(b);

(16) order other relief the court determines necessary to protect the petitioner or any household member**;**

(17) order the respondent to participate in a monitoring program with a global positioning device or similar technological means that meet the guidelines for a monitoring program adopted by the Department of Public Safety.

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

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

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

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

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

(5) "victim counseling center" means a private organization**, military organization,** 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. 29.** 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;

(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(b)(2);

(M) human trafficking in any degree; or

(N) unlawful exploitation of a minor.

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

Sec. 22.10.150. Approval or rejection. Each superior court judge is subject to

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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 data on the judge's compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of a felony offense.** 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. 31.** 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 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced

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

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

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

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

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

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

(a) If there is reasonable cause to believe that an Internet service account has been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other information about the account

owner will assist in obtaining evidence that is relevant to the offense, a law enforcement officer may apply to the attorney general **or the attorney general's designee** for an administrative subpoena to obtain the business records of the Internet service provider located inside or outside of the state.

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

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

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

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

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

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

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

* **Sec. 35.** AS 44.23.080 is amended by adding a new subsection to read:

(i) For purposes of this section, the attorney general's designee must be an attorney employed by the Department of Law.

* **Sec. 36.** AS 47.10.086(c) is amended to read:

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

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

(2) the parent or guardian has

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

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

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

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

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

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

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

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

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

(8) the parental rights of the parent have been terminated with respect to another child because of child abuse or neglect, the parent has not remedied the

conditions or conduct that led to the termination of parental rights, and the parent has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm;

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

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

(11) the parent or guardian

(A) has committed sexual abuse against the child or another child of the parent or guardian; or

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

*** Sec. 37.** AS 47.17.020(a) is amended to read:

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

(1) practitioners of the healing arts;

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

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

(4) administrative officers of institutions;

(5) child care providers;

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

(7) paid employees of an organization that provides counseling or

treatment to individuals seeking to control their use of drugs or alcohol;

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

(9) athletic coaches.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Other Crimes, Wrongs, or Acts.

(1) Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith. It is, however, admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

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

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

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

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

(3) In a prosecution for a crime of sexual assault in any degree, evidence of other sexual assaults or attempted sexual assaults by the defendant against the same or another person is admissible if the defendant relies on a defense of consent. In a prosecution for a crime of attempt to commit sexual assault in any degree, evidence of other sexual assaults or attempted sexual assaults by the defendant against the same or another person is admissible.

(4) In a prosecution for a crime involving domestic violence or of interfering with a report of a crime involving domestic violence, evidence of other crimes involving domestic violence by the defendant against the same or another person or of interfering with a report of a crime involving domestic violence is admissible. In this paragraph, "domestic violence" and "crime involving domestic violence" have the meanings given in AS 18.66.990.

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

DIRECT COURT RULE AMENDMENT. Rule 216(a), Alaska Rules of Appellate Procedure, is amended to read:

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

(1) Extradition appeals;

(2) Peremptory challenge appeals**;**

(3) Claim of privilege appeal under AS 12.50.101(g).

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

DIRECT COURT RULE AMENDMENT. Rule 216(b), Alaska Rules of Appellate Procedure, is amended by adding a new paragraph to read:

(3) A "claim of privilege appeal" is an appeal by the State of Alaska from a finding after a hearing under AS 12.50.101(g) that a witness has a valid claim of privilege.

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

APPLICABILITY. (a) Sections 2 - 12, 18, 19, 23 - 27, and 31 - 36 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 13 - 15, 20 - 22, 28, and 29 of this Act apply to offenses committed before, on, or after the effective date of this Act.

(c) Section 16 of this Act applies to sentencing hearings on or after the effective date of this Act.

(d) Section 17 of this Act applies to disposition hearings occurring in proceedings on petitions to revoke probation filed on or after the effective date of this Act.

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

Court case - letter of dismissal
Case of Rollins v State.

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:
Referred:

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

A BILL

FOR AN ACT ENTITLED

"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 in a prosecution for stalking or a crime involving domestic violence or 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 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 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 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 forms for sexual assault, stalking, and domestic violence protective orders; 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, and Rules 404(a) and (b), Alaska Rules of Evidence; and providing for an effective date."

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

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

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 21 AND 22 OF THIS ACT. (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

(b) The legislature finds that

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

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

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

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

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

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor;

(4) felony sex trafficking; or

(5) felony human trafficking.

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

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

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

(A) mentally incapable;

(B) incapacitated; or

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

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

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

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

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

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

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

(b) In this section,

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

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

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

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

(5) "probation officer" includes a

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

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

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

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

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

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

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

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

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

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

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

(b) In this section,

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

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

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

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

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

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

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

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

(1) mentally incapable; or

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

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

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

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

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

(1) has been ordered

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

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

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

(iii) **while under official detention; or**

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

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

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

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

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

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

offenses may be commenced at any time:

(1) murder;

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

(3) felony sexual abuse of a minor;

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

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

(6) kidnapping;

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

(8) sex trafficking in violation of AS 11.66.110 - 11.66.130 that is an unclassified, class A, or class B felony or that is committed against a person who, at the time of the offense, was under 20 years of age;

(9) human trafficking in violation of AS 11.41.360 or 11.41.365.

(b) Except as otherwise provided by law or in (a) of this section, a person may not be prosecuted, tried, or punished for an offense unless the indictment is found or the information or complaint is instituted not later than

(1) 10 years after the commission of a felony offense in violation of **AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370], 11.41.425(a)(1), **11.41.425(a)(5), 11.41.425(a)(6),** or 11.41.450 - 11.41.458; or

(2) five years after the commission of any other offense.

*** Sec. 12.** AS 12.30.016(e) is amended to read:

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting, in any manner, including by telephone or electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial

officer shall require that counseling ordered include counseling about alternatives to aggressive behavior;

(4) participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety.

*** Sec. 13.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the judicial officer shall consider the safety of the victim or other household member. To protect the victim, household member, other persons, and the community and to reasonably **ensure** [ASSURE] the person's appearance, the judicial officer

(1) shall impose conditions required under AS 12.30.011;

(2) [, AND] may impose any of the conditions authorized under AS 12.30.011;

(3) may impose [,] any of the provisions of AS 18.66.100(c)(1) - (7) and (11);

(4) may order the person to participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety; [,] and

(5) may impose any other condition necessary to protect the victim, household member, other persons, and the community, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

*** Sec. 14.** AS 12.30.027(e) is amended to read:

(e) A person arrested for a crime involving domestic violence **or for violation of a condition of release in connection with a crime involving domestic violence** may not be released from custody until the person has appeared in person before a judicial officer or telephonically for arraignment.

*** Sec. 15.** AS 12.37.010 is amended to read:

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

an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

*** Sec. 17.** AS 12.55.025 is amended by adding new subsections to read:

(k) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail in connection with an offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecutor 10 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except as provided in (*l*) of this section, except for good cause, a court may not consider a request for credit made under this subsection more than 90 days after the sentencing hearing.

(*l*) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail while pending appeal, the defendant shall file notice with the court and the prosecutor not later than 90 days after return of the case to the trial court following appeal. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except for good cause, the court may not consider a request for credit made under this subsection after the deadline.

*** Sec. 18.** AS 12.55.027 is amended by adding a new subsection to read:

(e) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program either as a condition of probation or as a condition of bail release after a petition to revoke probation has been filed, the defendant shall file notice with the court and the prosecutor 10 days before the disposition hearing. The notice shall include the amount of time the defendant is claiming. The defendant must prove by a preponderance of the evidence that the credit claimed meets the requirements of this section. A court may not consider, except for good cause, a request for credit made under this subsection more than 90 days after the disposition hearing.

* **Sec. 19.** AS 12.55.085(f) is amended to read:

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR] AS 11.61.125 - 11.61.128**, or AS 11.66.110 - 11.66.135**;

(2) uses a firearm in the commission of the offense for which the person is convicted; or

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this section or under the equivalent provision of the laws of another jurisdiction.

* **Sec. 20.** AS 12.55.127 is amended by adding a new subsection to read:

(e) If the defendant is being sentenced for two or more crimes of distribution of child pornography under AS 11.61.125, possession of child pornography under AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a consecutive term of imprisonment shall be imposed for some additional term of imprisonment for each additional crime or each additional attempt or solicitation to commit the offense.

* **Sec. 21.** AS 12.55.165 is amended by adding a new subsection to read:

(c) A court may not refer a case to a three-judge panel under (a) of this section if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the request for the referral is based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or

(2) a history free of unprosecuted, undocumented, or undetected sexual offenses.

* **Sec. 22.** AS 12.55.175 is amended by adding a new subsection to read:

(f) A defendant being sentenced for a sexual felony under AS 12.55.125(i)

may not establish, nor may the three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposition of a sentence within the presumptive range based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or

(2) a history free of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 23.** AS 12.55.185(16) is amended to read:

(16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, **sex trafficking in the first degree,** sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, **online enticement of a minor,** and felony attempt, conspiracy, or solicitation to commit those crimes;

*** Sec. 24.** AS 12.63.100(6) is amended to read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 - 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was **under 20** [16 OR 17] years of age at the time of the offense;

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200; [OR]

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense; **or**

(ix) AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(c):

* **Sec. 25.** AS 18.65.865(b) is amended to read:

(b) The Alaska Court System shall prepare forms for petitions and protective orders and instructions for their use by a person seeking a protective order under AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. Filing fees may not be charged in any action seeking only the relief provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the following warning in boldface type: "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to **$10,000** [$5,000]."

* **Sec. 26.** AS 18.66.130(d) is amended to read:

(d) In addition to other required information contained in a protective order, the order must include in bold face type the following statements:

(1) "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and up to a **$10,000** [$5,000] fine";

(2) "If you are ordered to have no contact with the petitioner or to stay away from the petitioner's residence, vehicle, or other place designated by the court, an invitation by the petitioner to have the prohibited contact or to be present at or enter the residence, vehicle, or other place does not in any way invalidate or nullify the order."

*** Sec. 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;

(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

of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced

(1) to a mandatory 99-year term of imprisonment under AS 12.55.125(a) after June 27, 1996;

(2) to a definite term under AS 12.55.125(*l*); or

(3) for a sexual felony under AS 12.55.125(i)

(A) and has one or more prior sexual felony convictions as determined under AS 12.55.145(a)(4)**; or**

(B) that is an unclassified or a class A felony.

*** Sec. 31.** AS 44.23.080(a) is amended to read:

(a) If there is reasonable cause to believe that an Internet service account has been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other information about the account owner will assist in obtaining evidence that is relevant to the offense, a law enforcement officer may apply to the attorney general **or the attorney general's designee** for an administrative subpoena to obtain the business records of the Internet service provider located inside or outside of the state.

*** Sec. 32.** AS 44.23.080(b) is amended to read:

(b) If an application meets the requirements of (a) of this section, the attorney general **or the attorney general's designee** may issue an administrative subpoena to the Internet service provider requiring the production of the following records:

(1) the name and other identifying information of the account holder;

(2) the address and physical location associated with the account;

(3) a description of the length of service, service start date, and types of service associated with the account.

*** Sec. 33.** AS 44.23.080(e) is amended to read:

(e) If the Internet service provider refuses to obey a subpoena issued under (b) of this section, the superior court may, upon application of the attorney general **or the attorney general's designee**, issue an order requiring the Internet service provider to appear at the office of the attorney general with the information described in the

subpoena.

* **Sec. 34.** AS 44.23.080 is amended by adding a new subsection to read:

(i) For purposes of this section, the attorney general's designee may be the deputy attorney general of the division of the Department of Law that has responsibility for civil cases or the division of the Department of Law that has responsibility for criminal cases.

* **Sec. 35.** AS 47.10.086(c) is amended to read:

(c) The court may determine that reasonable efforts of the type described in (a) of this section are not required if the court has found by clear and convincing evidence that

(1) the parent or guardian has subjected the child to circumstances that pose a substantial risk to the child's health or safety; these circumstances include abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

(2) the parent or guardian has

(A) committed homicide under AS 11.41.100 - 11.41.130 of a parent of the child or of a child;

(B) aided or abetted, attempted, conspired, or solicited under AS 11.16 or AS 11.31 to commit a homicide described in (A) of this paragraph;

(C) committed an assault that is a felony under AS 11.41.200 - 11.41.220 and results in serious physical injury to a child; or

(D) committed the conduct described in (A) - (C) of this paragraph that violated a law or ordinance of another jurisdiction having elements similar to an offense described in (A) - (C) of this paragraph;

(3) the parent or guardian has, during the 12 months preceding the permanency hearing, failed to comply with a court order to participate in family support services;

(4) the department has conducted a reasonably diligent search over a time period of at least three months for an unidentified or absent parent and has failed to identify and locate the parent;

(5) the parent or guardian is the sole caregiver of the child and the

parent or guardian has a mental illness or mental deficiency of such nature and duration that, according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months;

(6) the parent or guardian has previously been convicted of a crime involving a child in this state or in another jurisdiction and, after the conviction, the child was returned to the custody of the parent or guardian and later removed because of an additional substantiated report of physical or sexual abuse by the parent or guardian;

(7) a child has suffered substantial physical harm as the result of abusive or neglectful conduct by the parent or guardian or by a person known by the parent or guardian and the parent or guardian knew or reasonably should have known that the person was abusing the child;

(8) the parental rights of the parent have been terminated with respect to another child because of child abuse or neglect, the parent has not remedied the conditions or conduct that led to the termination of parental rights, and the parent has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm;

(9) the child has been removed from the child's home on at least two previous occasions, family support services were offered or provided to the parent or guardian at those times, and the parent or guardian has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm; [OR]

(10) the parent or guardian is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and need for care by an adult; **or**

(11) the parent or guardian

(A) has sexually abused the child or another child of the parent or guardian; or

(B) is registered or required to register as a sex offender or child kidnapper under AS 12.63.

Draft

*** Sec. 38.** AS 47.17.290 is amended by adding a new paragraph to read:

(17) "athletic coach" means a leader or assistant of a sports team in a public or private school, in a public or private postsecondary institution, or sponsored by a municipality of the state or other local government organization, or of a sports team that receives public funding, who is

(A) paid; or

(B) a volunteer leader or assistant who

(i) volunteers for four hours or more a week for four consecutive weeks or for 20 hours in a one-month period;

(ii) has received the training described in AS 47.17.022 or a similar training ~~curriculum~~ provided by the coach; and

(iii) has agreed in writing that the person is required to report child abuse or neglect under this section.

other training that is similar to the training ~~described~~ required in AS 47.17.022.

* **Sec. 36.** AS 47.17.020(a) is amended to read:

(a) The following persons who, in the performance of their occupational duties, [OR] with respect to (8) of this subsection, in the performance of their appointed duties, **or, with respect to (9) of this subsection, in performance of their occupational or volunteer duties,** have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department:

(1) practitioners of the healing arts;

(2) school teachers and school administrative staff members of public and private schools;

(3) peace officers and officers of the Department of Corrections;

(4) administrative officers of institutions;

(5) child care providers;

(6) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.990;

(7) paid employees of an organization that provides counseling or treatment to individuals seeking to control their use of drugs or alcohol;

(8) members of a child fatality review team established under AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created under AS 47.14.300;

(9) athletic coaches.

* **Sec. 37.** AS 47.17.020 is amended by adding a new subsection to read:

(j) This section does not require an athletic coach who is an unpaid volunteer to report child abuse or neglect under (a)(9) of this section unless the coach

(1) volunteers for more than

(A) four hours a week for four consecutive weeks; or

(B) 20 hours in a one-month period;

(2) has received the training ~~required~~ described under AS 47.17.022; and

(3) has signed a form acknowledging that the coach is required to report child abuse or neglect under this section.

* **Sec. 38.** AS 47.17.290 is amended by adding a new paragraph to read:

(17) "athletic coach" includes a paid or volunteer leader or assistant of a sports team in a public or private school, in a public or private postsecondary institution, or sponsored by a municipality of the state or other local government organization, or of a sports team that receives public funding.

*** Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any material prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the prosecuting attorney makes the material reasonably available for inspection by the defendant and defense counsel. The material shall be considered to be made reasonably available to the defendant or defense counsel if the prosecuting attorney provides, at a law enforcement or prosecution facility, ample opportunity for inspection, viewing, and examination of the material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial. If the defendant is not represented by counsel and demonstrates a need to view the material, the court shall make arrangements for the defendant to be supervised while viewing the material. If the defendant or the defendant's attorney identifies an expert outside the state who must view the material, the court shall make arrangements for the court or the law enforcement agency that possesses it to send the material directly to the expert.

*** Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.1(b)(1), Alaska Rules of Criminal Procedure, is amended to read:

(1) Contents and Filing. If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the

presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. **If the crime involved a victim, the court may not accept a report that does not include a victim's impact statement, unless the report explains the reason why the victim or the victim's representative could not be interviewed.** The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

*** Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.2(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Consideration of Victim's Statement.** If a victim as defined in AS 12.55.185 prepares and submits a written statement, gives sworn testimony or makes an unsworn oral presentation under AS 12.55.023, the court shall take the content of the statement, testimony, or presentation into consideration when preparing those elements of the sentencing report required by AS 12.55.025 that relate to the effect of the offense on the victim, and when considering the need for restitution under AS 12.55.045. **The court shall also take the content of the victim's impact statement in the presentence report into consideration in preparing the sentencing report required under AS 12.55.025.** The court also may take the content of the statement, testimony, **victim's impact statement,** or presentation into consideration for any other appropriate purpose.

*** Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 404(b)(2), Alaska Rules of Evidence, is amended to read:

(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or

another child is admissible if admission of the evidence is not precluded by another rule of evidence and if the prior offenses

(i) [OCCURRED WITHIN THE 10 YEARS PRECEDING THE DATE OF THE OFFENSE CHARGED;

(ii)] are similar to the offense charged; and

(ii) [(iii)] were committed upon persons similar to the prosecuting witness.

*** Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 12.45.045(a), as amended by sec. 16 of this Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by providing, with some exceptions, that a defendant must request admission of certain evidence about the complaining witness five days before trial and by applying the rule to the conduct of the complaining witness after the alleged offense.

*** Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 2 - 15, 19, 20, 24, and 30 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 16, 21 - 23, 27, and 28 of this Act apply to offenses committed before, on, or after the effective date of this Act.

(c) Section 17 of this Act applies to sentencing hearings occurring on or after the effective date of this Act.

(d) Section 18 of this Act applies to disposition hearings occurring in proceedings on petitions to revoke probation filed on or after the effective date of this Act.

*** Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 16 of this Act, amending AS 12.45.045(a), takes effect only if sec. 43 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 46.** This Act takes effect July 1, 2013.

28-GS1587\N
Strasbaugh
3/4/13

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:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"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 in a prosecution for stalking or a crime involving domestic violence or 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 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 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 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 forms for sexual assault, stalking, and domestic violence protective orders; 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, Rules 404(a) and (b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 21 AND 22 OF THIS ACT. (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

(b) The legislature finds that

(1) in 2006, the legislature did not intend, by enacting ch. 14, SLA 2006, and the legislature does not now intend to create new or additional means for a defendant

convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel;

(2) the legislature did not, in 2006, intend nor does the legislature now intend for a court to create new or additional means for a defendant convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel.

(c) It is the intent of the legislature in AS 12.55.165, as amended by sec. 21 of this Act, and AS 12.55.175, as amended by sec. 22 of this Act, to overturn the majority decision in Collins v. State, 287 P.3d 791 (Alaska App. 2012), and to endorse the dissenting opinion in the same case.

*** Sec. 2.** AS 09.10.065(a) is amended to read:

(a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses:

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor**;**

(4) felony sex trafficking; or

(5) felony human trafficking.

*** Sec. 3.** AS 11.41.425(a) is amended to read:

(a) An offender commits the crime of sexual assault in the third degree if the offender

(1) engages in sexual contact with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and

Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; [OR]

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency;

(5) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual penetration with a person with reckless disregard that the person is on probation or parole; or

(6) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual penetration with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

*** Sec. 4.** AS 11.41.425(b) is repealed and reenacted to read:

(b) In this section,

(1) "juvenile facility staff" means a person employed in a juvenile detention or treatment facility;

(2) "juvenile probation officer" means a person assigned to supervise another person 18 or 19 years of age who is committed to the probationary supervision of the Department of Health and Social Services;

(3) "parole officer" has the meaning given in AS 18.65.290;

(4) "peace officer" has the meaning given in AS 01.10.060;

(5) "probation officer" includes a

(A) probation officer as defined in AS 18.65.290; or

(B) person who supervises a participant in a specialty court, including a therapeutic or wellness court addressing alcohol or drug use, a court addressing the needs of veterans, an adult or juvenile mental health court, a fetal alcohol spectrum disorder court, or a family care or preservation court.

*** Sec. 5.** AS 11.41.427(a) is amended to read:

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; [OR]

(3) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, the offender engages in sexual contact with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency**;**

(4) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual contact with a person with reckless disregard that the person is on probation or parole; or

(5) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual contact with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

*** Sec. 6.** AS 11.41.427(b) is repealed and reenacted to read:

(b) In this section,

(1) "juvenile facility staff" has the meaning given in AS 11.41.425;

(2) "juvenile probation officer" has the meaning given in AS 11.41.425;

(3) "parole officer" has the meaning given in AS 18.65.290;

(4) "peace officer" has the meaning given in AS 01.10.060;

(5) "probation officer" has the meaning given in AS 11.41.425.

*** Sec. 7.** AS 11.41.432(a) is amended to read:

(a) It is a defense to a crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), [OR] 11.41.425**, or 11.41.427** that the offender is

(1) mentally incapable; or

(2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.

*** Sec. 8.** AS 11.41.432 is amended by adding a new subsection to read:

(c) It is an affirmative defense to a crime charged under AS 11.41.425(a)(5) or 11.41.427(a)(4) that the offender and the person on probation or parole had, before the person was placed on probation or parole, a dating relationship or a sexual relationship, and the relationship continued until the date of the alleged offense.

*** Sec. 9.** AS 11.56.750(a) is amended to read:

(a) A person commits the crime of unlawful contact in the first degree if the person

(1) has been ordered

(A) by the court not to contact a victim or witness of the offense

(i) as [(A)] part of a sentence imposed under AS 12.55.015;

(ii) as [OR (B)] a condition of [(i)] release under AS 12.30 **or** [; (ii)] probation under AS 12.55.101; or

(iii) **while under official detention; or**

(B) as a condition of parole not to contact a victim or witness of the offense under AS 33.16.150 [PAROLE UNDER AS 33.16.150]; and

(2) either directly or indirectly, knowingly contacts or attempts to contact the victim or witness in violation of the order.

*** Sec. 10.** AS 11.66.145 is amended to read:

Sec. 11.66.145. Forfeiture. Property used to institute, aid, or facilitate, or received or derived from, a violation of **AS 11.66.100 - 11.66.135 may** [AS 11.66.100(c) OR 11.66.110 - 11.66.135 SHALL] be forfeited **at sentencing**.

* **Sec. 11.** AS 12.10.010 is amended to read:

Sec. 12.10.010. General time limitations. (a) Prosecution for the following offenses may be commenced at any time:

(1) murder;

(2) attempt, solicitation, or conspiracy to commit murder or hindering the prosecution of murder;

(3) felony sexual abuse of a minor;

(4) sexual assault that is an unclassified, class A, or class B felony or a violation of AS 11.41.425(a)(2) - (4);

(5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458, AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person who, at the time of the offense, was under 18 years of age;

(6) kidnapping**;**

(7) distribution of child pornography in violation of AS 11.61.125;

(8) sex trafficking in violation of AS 11.66.110 - 11.66.130 that is an unclassified, class A, or class B felony or that is committed against a person who, at the time of the offense, was under 20 years of age;

(9) human trafficking in violation of AS 11.41.360 or 11.41.365.

(b) Except as otherwise provided by law or in (a) of this section, a person may not be prosecuted, tried, or punished for an offense unless the indictment is found or the information or complaint is instituted not later than

(1) 10 years after the commission of a felony offense in violation of **AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370], 11.41.425(a)(1), **11.41.425(a)(5), 11.41.425(a)(6),** or 11.41.450 - 11.41.458; or

(2) five years after the commission of any other offense.

* **Sec. 12.** AS 12.30.016(e) is amended to read:

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting**,** in any manner, including by telephone or

electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior**;**

(4) participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety.

*** Sec. 13.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the judicial officer shall consider the safety of the victim or other household member. To protect the victim, household member, other persons, and the community and to reasonably **ensure** [ASSURE] the person's appearance, the judicial officer

(1) shall impose conditions required under AS 12.30.011**;**

(2) [, AND] may impose any of the conditions authorized under AS 12.30.011**;**

(3) may impose [,] any of the provisions of AS 18.66.100(c)(1) - (7) and (11)**;**

(4) may order the person to participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety; [,] and

(5) may impose any other condition necessary to protect the victim, household member, other persons, and the community, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

*** Sec. 14.** AS 12.30.027(e) is amended to read:

(e) A person arrested for a crime involving domestic violence **or for violation of a condition of release in connection with a crime involving domestic violence** may not be released from custody until the person has appeared in person before a

judicial officer or telephonically for arraignment.

*** Sec. 15.** AS 12.37.010 is amended to read:

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 an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

*** Sec. 17.** AS 12.55.025 is amended by adding new subsections to read:

(k) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail in connection with an offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecutor 10 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except as provided in (*l*) of this section, except for good cause, a court may not consider a request for credit made under this subsection more than 90 days after the sentencing hearing.

(*l*) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail while pending appeal, the defendant shall file notice with the court and the prosecutor not later than 90 days after return of the case to the trial court following appeal. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except for good cause, the court may not consider a request for credit made under this subsection after the deadline.

*** Sec. 18.** AS 12.55.027 is amended by adding a new subsection to read:

(e) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program either as a condition of probation or as a condition of bail release after a petition to revoke probation has been filed, the defendant shall file notice with the court and the prosecutor 10 days before the disposition hearing. The notice shall include the amount of time the defendant is claiming. The defendant must prove by a preponderance of the evidence that the credit claimed meets the requirements of this section. A court may not consider, except for

good cause, a request for credit made under this subsection more than 90 days after the disposition hearing.

*** Sec. 19.** AS 12.55.085(f) is amended to read:

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR] AS 11.61.125 - 11.61.128**, or AS 11.66.110 - 11.66.135**;

(2) uses a firearm in the commission of the offense for which the person is convicted; or

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this section or under the equivalent provision of the laws of another jurisdiction.

*** Sec. 20.** AS 12.55.127 is amended by adding a new subsection to read:

(e) If the defendant is being sentenced for two or more crimes of distribution of child pornography under AS 11.61.125, possession of child pornography under AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a consecutive term of imprisonment shall be imposed for some additional term of imprisonment for each additional crime or each additional attempt or solicitation to commit the offense.

*** Sec. 21.** AS 12.55.165 is amended by adding a new subsection to read:

(c) A court may not refer a case to a three-judge panel under (a) of this section if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the request for the referral is based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or

(2) a history free of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 22.** AS 12.55.175 is amended by adding a new subsection to read:

(f) A defendant being sentenced for a sexual felony under AS 12.55.125(i) may not establish, nor may the three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposition of a sentence within the presumptive range based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or

(2) a history free of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 23.** AS 12.55.185(16) is amended to read:

(16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, **sex trafficking in the first degree,** sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, **online enticement of a minor,** and felony attempt, conspiracy, or solicitation to commit those crimes;

*** Sec. 24.** AS 12.63.100(6) is amended to read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 - 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was **under 20** [16 OR 17] years of age at the time of the offense;

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200; [OR]

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense; **or**

(ix) AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(c);

*** Sec. 25.** AS 18.65.865(b) is amended to read:

(b) The Alaska Court System shall prepare forms for petitions and protective orders and instructions for their use by a person seeking a protective order under AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. Filing fees may not be charged in any action seeking only the relief provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the following warning in boldface type: "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to **$10,000** [$5,000]."

*** Sec. 26.** AS 18.66.130(d) is amended to read:

(d) In addition to other required information contained in a protective order, the order must include in bold face type the following statements:

(1) "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and up to a **$10,000** [$5,000] fine";

(2) "If you are ordered to have no contact with the petitioner or to stay away from the petitioner's residence, vehicle, or other place designated by the court, an invitation by the petitioner to have the prohibited contact or to be present at or enter the residence, vehicle, or other place does not in any way invalidate or nullify the order."

* **Sec. 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;

(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 compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses.** 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 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced

(1) to a mandatory 99-year term of imprisonment under AS 12.55.125(a) after June 27, 1996;

(2) to a definite term under AS 12.55.125(*l*); or

(3) for a sexual felony under AS 12.55.125(i)

(A) and has one or more prior sexual felony convictions as determined under AS 12.55.145(a)(4)**; or**

(B) that is an unclassified or a class A felony.

*** Sec. 31.** AS 44.23.080(a) is amended to read:

(a) If there is reasonable cause to believe that an Internet service account has been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other information about the account owner will assist in obtaining evidence that is relevant to the offense, a law enforcement officer may apply to the attorney general **or the attorney general's designee** for an administrative subpoena to obtain the business records of the Internet service provider located inside or outside of the state.

*** Sec. 32.** AS 44.23.080(b) is amended to read:

(b) If an application meets the requirements of (a) of this section, the attorney general **or the attorney general's designee** may issue an administrative subpoena to the Internet service provider requiring the production of the following records:

(1) the name and other identifying information of the account holder;

(2) the address and physical location associated with the account;

(3) a description of the length of service, service start date, and types of service associated with the account.

*** Sec. 33.** AS 44.23.080(e) is amended to read:

(e) If the Internet service provider refuses to obey a subpoena issued under (b) of this section, the superior court may, upon application of the attorney general **or the**

attorney general's designee, issue an order requiring the Internet service provider to appear at the office of the attorney general with the information described in the subpoena.

* **Sec. 34.** AS 44.23.080 is amended by adding a new subsection to read:

(i) For purposes of this section, the attorney general's designee may be the deputy attorney general of the division of the Department of Law that has responsibility for civil cases or the division of the Department of Law that has responsibility for criminal cases.

* **Sec. 35.** AS 47.10.086(c) is amended to read:

(c) The court may determine that reasonable efforts of the type described in (a) of this section are not required if the court has found by clear and convincing evidence that

(1) the parent or guardian has subjected the child to circumstances that pose a substantial risk to the child's health or safety; these circumstances include abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

(2) the parent or guardian has

(A) committed homicide under AS 11.41.100 - 11.41.130 of a parent of the child or of a child;

(B) aided or abetted, attempted, conspired, or solicited under AS 11.16 or AS 11.31 to commit a homicide described in (A) of this paragraph;

(C) committed an assault that is a felony under AS 11.41.200 - 11.41.220 and results in serious physical injury to a child; or

(D) committed the conduct described in (A) - (C) of this paragraph that violated a law or ordinance of another jurisdiction having elements similar to an offense described in (A) - (C) of this paragraph;

(3) the parent or guardian has, during the 12 months preceding the permanency hearing, failed to comply with a court order to participate in family support services;

(4) the department has conducted a reasonably diligent search over a time period of at least three months for an unidentified or absent parent and has failed

to identify and locate the parent;

(5) the parent or guardian is the sole caregiver of the child and the parent or guardian has a mental illness or mental deficiency of such nature and duration that, according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months;

(6) the parent or guardian has previously been convicted of a crime involving a child in this state or in another jurisdiction and, after the conviction, the child was returned to the custody of the parent or guardian and later removed because of an additional substantiated report of physical or sexual abuse by the parent or guardian;

(7) a child has suffered substantial physical harm as the result of abusive or neglectful conduct by the parent or guardian or by a person known by the parent or guardian and the parent or guardian knew or reasonably should have known that the person was abusing the child;

(8) the parental rights of the parent have been terminated with respect to another child because of child abuse or neglect, the parent has not remedied the conditions or conduct that led to the termination of parental rights, and the parent has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm;

(9) the child has been removed from the child's home on at least two previous occasions, family support services were offered or provided to the parent or guardian at those times, and the parent or guardian has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm; [OR]

(10) the parent or guardian is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and need for care by an adult**; or**

(11) the parent or guardian

(A) has sexually abused the child or another child of the parent or guardian; or

(B) is registered or required to register as a sex offender or child kidnapper under AS 12.63.

*** Sec. 36.** AS 47.17.020(a) is amended to read:

(a) The following persons who, in the performance of their occupational duties, or with respect to (8) of this subsection, in the performance of their appointed duties, have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department:

(1) practitioners of the healing arts;

(2) school teachers and school administrative staff members of public and private schools;

(3) peace officers and officers of the Department of Corrections;

(4) administrative officers of institutions;

(5) child care providers;

(6) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.990;

(7) paid employees of an organization that provides counseling or treatment to individuals seeking to control their use of drugs or alcohol;

(8) members of a child fatality review team established under AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created under AS 47.14.300**;**

(9) athletic coaches.

*** Sec. 37.** AS 47.17.290 is amended by adding a new paragraph to read:

(17) "athletic coach" includes a paid leader or assistant of a sports team in a public or private school, in a public or private postsecondary institution, or sponsored by a municipality of the state or other local government organization, or of a sports team that receives public funding.

*** Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any material prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the prosecuting attorney makes the material reasonably available for inspection by the defendant and defense counsel. The material shall be considered to be made reasonably available to the defendant or defense counsel if the prosecuting attorney provides, at a law enforcement or prosecution facility, ample opportunity for inspection, viewing, and examination of the material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial. If the defendant is not represented by counsel and demonstrates a need to view the material, the court shall make arrangements for the defendant to be supervised while viewing the material. If the defendant or the defendant's attorney identifies an expert outside the state who must view the material, the court shall make arrangements for the court or the law enforcement agency that possesses it to send the material directly to the expert.

*** Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.1(b)(1), Alaska Rules of Criminal Procedure, is amended to read:

(1) Contents and Filing. If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. **If the crime involved a victim, the court may not accept a report that does not include a victim's impact statement, unless the report explains the reason why the victim or the victim's representative could not be interviewed.**

The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

*** Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.2(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Consideration of Victim's Statement.** If a victim as defined in AS 12.55.185 prepares and submits a written statement, gives sworn testimony or makes an unsworn oral presentation under AS 12.55.023, the court shall take the content of the statement, testimony, or presentation into consideration when preparing those elements of the sentencing report required by AS 12.55.025 that relate to the effect of the offense on the victim, and when considering the need for restitution under AS 12.55.045. **The court shall also take the content of the victim's impact statement in the presentence report into consideration in preparing the sentencing report required under AS 12.55.025.** The court also may take the content of the statement, testimony, **victim's impact statement,** or presentation into consideration for any other appropriate purpose.

*** Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 404(b)(2), Alaska Rules of Evidence, is amended to read:

(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another rule of evidence and if the prior offenses

(i) [OCCURRED WITHIN THE 10 YEARS PRECEDING THE DATE OF THE OFFENSE CHARGED;

(ii)] are similar to the offense charged; and

(ii) [(iii)] were committed upon persons similar to the prosecuting witness.

*** Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to

read:

DIRECT COURT RULE AMENDMENT. Rule 216(a), Alaska Rules of Appellate Procedure, is amended to read:

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

(1) Extradition appeals;

(2) Peremptory challenge appeals**;**

(3) Claim of privilege appeal under AS 12.50.101(g).

*** Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 216(b), Alaska Rules of Appellate Procedure, is amended by adding a new paragraph to read:

(3) A "claim of privilege appeal" is an appeal by the State of Alaska from a finding after a hearing under AS 12.50.101(g) that a witness has a valid claim of privilege.

*** Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 12.45.045(a), as amended by sec. 16 of this Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by providing, with some exceptions, that a defendant must request admission of certain evidence about the complaining witness five days before trial and by applying the rule to the conduct of the complaining witness after the alleged offense.

*** Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 2 - 15, 19, 20, 24, and 30 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 16, 21 - 23, 27, and 28 of this Act apply to offenses committed before, on, or after the effective date of this Act.

(c) Section 17 of this Act applies to sentencing hearings occurring on or after the effective date of this Act.

(d) Section 18 of this Act applies to disposition hearings occurring in proceedings on

petitions to revoke probation filed on or after the effective date of this Act.

*** Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 16 of this Act, amending AS 12.45.045(a), takes effect only if sec. 44 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 47.** This Act takes effect July 1, 2013.

28-GS1587\U
Strasbaugh
2/14/13

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:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"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 in a prosecution for stalking or a crime involving domestic violence or 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 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 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."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 22 AND 23 OF THIS ACT. (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

(b) The legislature finds that

(1) in 2006, the legislature did not intend, by enacting ch. 14, SLA 2006, and the legislature does not now intend to create new or additional means for a defendant

convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel;

(2) the legislature did not, in 2006, intend nor does the legislature now intend for a court to create new or additional means for a defendant convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel.

(c) It is the intent of the legislature in AS 12.55.165, as amended by sec. 22 of this Act, and AS 12.55.175, as amended by sec. 23 of this Act, to overturn the majority decision in Collins v. State, 287 P.3d 791 (Alaska App. 2012), and to endorse the dissenting opinion in the same case.

*** Sec. 2.** AS 09.10.065(a) is amended to read:

~~(a) A person may bring an action at any time for conduct that would have, at~~ the time the conduct occurred, violated provisions of any of the following offenses:

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor;

(4) felony sex trafficking; or

(5) felony human trafficking.

*** Sec. 3.** AS 11.41.425(a) is amended to read:

(a) An offender commits the crime of sexual assault in the third degree if the offender

(1) engages in sexual contact with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and

Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; [OR]

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency;

(5) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual penetration with a person with reckless disregard that the person is on probation or parole; or

(6) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual penetration with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

*** Sec. 4.** AS 11.41.425(b) is repealed and reenacted to read:

(b) In this section,

(1) "juvenile facility staff" means a person employed in a juvenile detention or treatment facility;

(2) "juvenile probation officer" means a person assigned to supervise another person 18 or 19 years of age who is committed to the probationary supervision of the Department of Health and Social Services;

(3) "parole officer" has the meaning given in AS 18.65.290;

(4) "peace officer" has the meaning given in AS 01.10.060;

(5) "probation officer" includes a

(A) probation officer as defined in AS 18.65.290; or

(B) person who supervises a participant in a specialty court, including a therapeutic or wellness court addressing alcohol or drug use, a court addressing the needs of veterans, an adult or juvenile mental health court, a fetal alcohol spectrum disorder court, or a family care or preservation court.

*** Sec. 5.** AS 11.41.427(a) is amended to read:

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; [OR]

~~(3) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, the offender engages in sexual contact with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency;~~

(4) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual contact with a person with reckless disregard that the person is on probation or parole; or

(5) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual contact with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

*** Sec. 6.** AS 11.41.427(b) is repealed and reenacted to read:

(b) In this section,

(1) "juvenile facility staff" has the meaning given in AS 11.41.425;

(2) "juvenile probation officer" has the meaning given in AS 11.41.425;

(3) "parole officer" has the meaning given in AS 18.65.290;

(4) "peace officer" has the meaning given in AS 01.10.060;

(5) "probation officer" has the meaning given in AS 11.41.425.

* **Sec. 7.** AS 11.41.432(a) is amended to read:

(a) It is a defense to a crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), [OR] 11.41.425**, or 11.41.427** that the offender is

(1) mentally incapable; or

(2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.

* **Sec. 8.** AS 11.56.750(a) is amended to read:

(a) A person commits the crime of unlawful contact in the first degree if the person

(1) has been ordered

(A) by the court not to contact a victim or witness of the offense

(i) as [(A)] part of a sentence imposed under AS 12.55.015;

(ii) as [OR (B)] a condition of [(i)] release under AS 12.30 **or** [; (ii)] probation under AS 12.55.101; or

(iii) **while under official detention; or**

(B) as a condition of parole not to contact a victim or witness of the offense under AS 33.16.150 [PAROLE UNDER AS 33.16.150]; and

(2) either directly or indirectly, knowingly contacts or attempts to contact the victim or witness in violation of the order.

* **Sec. 9.** AS 11.66.145 is amended to read:

Sec. 11.66.145. Forfeiture. Property used to institute, aid, or facilitate, or received or derived from, a violation of **AS 11.66.100(a)(2), 11.66.100(c),** [AS 11.66.100(c)] or 11.66.110 - 11.66.135 **may** [SHALL] be forfeited **at sentencing**.

* **Sec. 10.** AS 12.10.010 is amended to read:

Sec. 12.10.010. General time limitations. (a) Prosecution for the following offenses may be commenced at any time:

(1) murder;

(2) attempt, solicitation, or conspiracy to commit murder or hindering

the prosecution of murder;

(3) felony sexual abuse of a minor;

(4) sexual assault that is an unclassified, class A, or class B felony or a violation of AS 11.41.425(a)(2) - (4);

(5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458, AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person who, at the time of the offense, was under 18 years of age;

(6) kidnapping;

(7) distribution of child pornography in violation of AS 11.61.125;

(8) sex trafficking in violation of AS 11.66.110 - 11.66.130 that is an unclassified, class A, or class B felony or that is committed against a person who, at the time of the offense, was under 20 years of age;

(9) human trafficking in violation of AS 11.41.360 or 11.41.365.

(b) Except as otherwise provided by law or in (a) of this section, a person may not be prosecuted, tried, or punished for an offense unless the indictment is found or the information or complaint is instituted not later than

(1) 10 years after the commission of a felony offense in violation of **AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370], 11.41.425(a)(1), **11.41.425(a)(5), 11.41.425(a)(6),** or 11.41.450 - 11.41.458; or

(2) five years after the commission of any other offense.

*** Sec. 11.** AS 12.30.016(e) is amended to read:

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting, in any manner, including by telephone or electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior;

(4) participate in a monitoring program with a global positioning

device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety.

*** Sec. 12.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the judicial officer shall consider the safety of the victim or other household member. To protect the victim, household member, other persons, and the community and to reasonably **ensure** [ASSURE] the person's appearance, the judicial officer

(1) shall impose conditions required under AS 12.30.011**;**

~~**(2)** [, AND] may impose any of the conditions authorized under~~ AS 12.30.011**;**

(3) may impose [,] any of the provisions of AS 18.66.100(c)(1) - (7) and (11)**;**

(4) may order the person to participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety; [,] and

(5) may impose any other condition necessary to protect the victim, household member, other persons, and the community, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

*** Sec. 13.** AS 12.30.027(e) is amended to read:

(e) A person arrested for a crime involving domestic violence **or for violation of a condition of release in connection with a crime involving domestic violence** may not be released from custody until the person has appeared in person before a judicial officer or telephonically for arraignment.

*** Sec. 14.** AS 12.37.010 is amended to read:

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. 15.** 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** * except for juve cases [AT ANY TIME] before [OR DURING THE] trial [OR PRELIMINARY HEARING]. **The defendant may apply for an order during trial if the request is based on information learned after the deadline or during the trial.** * 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 an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

*** Sec. 16.** AS 12.50.101(g) is amended to read:

(g) At the hearing under (f) of this section, the attorney for the witness, in the

form of a proffer, shall describe the testimony or other information that the witness claims is privileged. The proffer must include a description of how the testimony or other information could connect the witness with a crime. **The court shall conduct a personal inquiry under oath of the witness concerning the facts giving rise to the claim or claims of privilege in the proffer.** The proffer **and the testimony of the witness are** [IS] privileged and inadmissible for any other purpose. If the proffer **and the testimony establish** [ESTABLISHES] a factual basis that there is a real or substantial danger that the testimony or other information to be compelled would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime, the court may find that the witness has a valid claim of privilege.

* Sec. 17. AS 12.50.101 is amended by adding a new subsection to read:

(j) If the court finds, after a hearing under (f) of this section and the personal inquiry under (g) of this section, that the witness has a valid claim of privilege, the court shall enter its findings of fact and conclusions of law in a sealed, written order that explains the real or substantial danger that the proffer or testimony would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime. The attorney general may bring an immediate, interlocutory appeal of the court's decision to the court of appeals. The court issuing the order appealed under this section shall stay its proceeding while the appeal is pending.

* Sec. 18. AS 12.55.025 is amended by adding new subsections to read:

(k) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail in connection with an offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecutor 10 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except as provided in (*l*) of this section, except for good cause, a court may not consider a request for credit made under this subsection more than 90 days after the sentencing hearing.

(*l*) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail while pending appeal, the defendant shall file notice with the court and the prosecutor not later than 90 days after return of the case to the trial court following appeal. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. The court may not consider a request for credit made under this subsection after the deadline. except for good cause.

*** Sec. 19.** AS 12.55.027 is amended by adding a new subsection to read:

(e) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program either as a condition of probation or as a condition of bail release after a petition to revoke probation has been filed, the defendant shall file notice with the court and the prosecutor 10 days before the disposition hearing. The notice shall include the amount of time the defendant is claiming. The defendant must prove by a preponderance of the evidence that the credit claimed meets the requirements of this section. A court may not consider, except for good cause, a request for credit made under this subsection more than 90 days after the disposition hearing.

*** Sec. 20.** AS 12.55.085(f) is amended to read:

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR] AS 11.61.125 - 11.61.128**, or AS 11.66.110 - 11.66.135**;

(2) uses a firearm in the commission of the offense for which the person is convicted; or

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this

section or under the equivalent provision of the laws of another jurisdiction.

*** Sec. 21.** AS 12.55.127 is amended by adding a new subsection to read:

(e) If the defendant is being sentenced for two or more crimes of distribution of child pornography under AS 11.61.125, possession of child pornography under AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a consecutive term of imprisonment shall be imposed for some additional term of imprisonment for each additional crime or each additional attempt or solicitation to commit the offense.

*** Sec. 22.** AS 12.55.165 is amended by adding a new subsection to read:

(c) A court may not refer a case to a three-judge panel under (a) of this section ~~if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and~~ the request for the referral is based solely on the claim that the defendant, either singly or in combination,

(1) has prospects for rehabilitation that are less than extraordinary; or

(2) ~~does not have~~ a history of unprosecuted, undocumented, or undetected sexual offenses.

re-work wording.

*** Sec. 23.** AS 12.55.175 is amended by adding a new subsection to read:

(f) A defendant being sentenced for a sexual felony under AS 12.55.125(i) may not establish, nor may the three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposition of a sentence within the presumptive range ~~of~~ law by a showing that the defendant, either singly or in combination, based solely on the claim that

(1) has prospects for rehabilitation that are less than extraordinary; or

(2) ~~does not have~~ a history of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 24.** AS 12.55.185(16) is amended to read:

(16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, **sex trafficking in the first degree,** sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography,

online enticement of a minor. and felony attempt, conspiracy, or solicitation to commit those crimes;

*** Sec. 25.** AS 12.63.100(6) is amended to read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 - 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was **under 20** [16 OR 17] years of age at the time of the offense;

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200; [OR]

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense; **or**

(ix) AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(c);

*** Sec. 26.** AS 18.66.130(d) is amended to read:

(d) In addition to other required information contained in a protective order, the order must include in bold face type the following statements:

(1) "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and up to a **$10,000** [$5,000] fine";

(2) "If you are ordered to have no contact with the petitioner or to stay ~~away from the petitioner's residence, vehicle, or other place designated by the court,~~ an invitation by the petitioner to have the prohibited contact or to be present at or enter the residence, vehicle, or other place does not in any way invalidate or nullify the order."

*** Sec. 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;

(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 compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses.** 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 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced

(1) to a mandatory 99-year term of imprisonment under AS 12.55.125(a) after June 27, 1996;

(2) to a definite term under AS 12.55.125(*l*); or

(3) for a sexual felony under AS 12.55.125(i)

(A) and has one or more prior sexual felony convictions as determined under AS 12.55.145(a)(4)**; or**

(B) that is an unclassified or a class A felony.

*** Sec. 31.** AS 44.23.080(a) is amended to read:

(a) If there is reasonable cause to believe that an Internet service account has been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other information about the account owner will assist in obtaining evidence that is relevant to the offense, a law enforcement officer may apply to the attorney general **or the attorney general's designee** for an administrative subpoena to obtain the business records of the Internet service provider located inside or outside of the state.

*** Sec. 32.** AS 44.23.080(b) is amended to read:

(b) If an application meets the requirements of (a) of this section, the attorney general **or the attorney general's designee** may issue an administrative subpoena to the Internet service provider requiring the production of the following records:

(1) the name and other identifying information of the account holder;

(2) the address and physical location associated with the account;

(3) a description of the length of service, service start date, and types of service associated with the account.

* **Sec. 33.** AS 44.23.080(e) is amended to read:

(e) If the Internet service provider refuses to obey a subpoena issued under (b) of this section, the superior court may, upon application of the attorney general **or the attorney general's designee**, issue an order requiring the Internet service provider to appear at the office of the attorney general with the information described in the subpoena.

~~* Sec. 34. AS 44.23.080 is amended by adding a new subsection to read:~~

(i) For purposes of this section, the attorney general's designee may be the deputy attorney general of the division of the Department of Law that has responsibility for civil cases or the division of the Department of Law that has responsibility for criminal cases.

* **Sec. 35.** AS 47.10.086(c) is amended to read:

(c) The court may determine that reasonable efforts of the type described in (a) of this section are not required if the court has found by clear and convincing evidence that

(1) the parent or guardian has subjected the child to circumstances that pose a substantial risk to the child's health or safety; these circumstances include abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

(2) the parent or guardian has

(A) committed homicide under AS 11.41.100 - 11.41.130 of a parent of the child or of a child;

(B) aided or abetted, attempted, conspired, or solicited under AS 11.16 or AS 11.31 to commit a homicide described in (A) of this paragraph;

(C) committed an assault that is a felony under AS 11.41.200 - 11.41.220 and results in serious physical injury to a child; or

(D) committed the conduct described in (A) - (C) of this

paragraph that violated a law or ordinance of another jurisdiction having elements similar to an offense described in (A) - (C) of this paragraph;

(3) the parent or guardian has, during the 12 months preceding the permanency hearing, failed to comply with a court order to participate in family support services;

(4) the department has conducted a reasonably diligent search over a time period of at least three months for an unidentified or absent parent and has failed to identify and locate the parent;

(5) the parent or guardian is the sole caregiver of the child and the parent or guardian has a mental illness or mental deficiency of such nature and duration that, according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months;

(6) the parent or guardian has previously been convicted of a crime involving a child in this state or in another jurisdiction and, after the conviction, the child was returned to the custody of the parent or guardian and later removed because of an additional substantiated report of physical or sexual abuse by the parent or guardian;

(7) a child has suffered substantial physical harm as the result of abusive or neglectful conduct by the parent or guardian or by a person known by the parent or guardian and the parent or guardian knew or reasonably should have known that the person was abusing the child;

(8) the parental rights of the parent have been terminated with respect to another child because of child abuse or neglect, the parent has not remedied the conditions or conduct that led to the termination of parental rights, and the parent has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm;

(9) the child has been removed from the child's home on at least two previous occasions, family support services were offered or provided to the parent or guardian at those times, and the parent or guardian has demonstrated an inability to

protect the child from substantial harm or the risk of substantial harm; [OR]

(10) the parent or guardian is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and need for care by an adult; **or**

(11) the parent or guardian

(A) has sexually abused the child or another child of the parent or guardian; or

(B) is registered or required to register as a sex offender or child kidnapper under AS 12.63.

*** Sec. 36.** AS 47.17.020(a) is amended to read:

~~(a) The following persons who, in the performance of their occupational~~ duties, [OR] with respect to (8) of this subsection, in the performance of their appointed duties, **or, with respect to (9) of this subsection, in performance of their occupational or volunteer duties,** have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department:

(1) practitioners of the healing arts;

(2) school teachers and school administrative staff members of public and private schools;

(3) peace officers and officers of the Department of Corrections;

(4) administrative officers of institutions;

(5) child care providers;

(6) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.990;

(7) paid employees of an organization that provides counseling or treatment to individuals seeking to control their use of drugs or alcohol;

(8) members of a child fatality review team established under AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created under AS 47.14.300;

(9) athletic coaches.

*** Sec. 37.** AS 47.17.290 is amended by adding a new paragraph to read:

(17) "athletic coach" includes a paid or volunteer leader or assistant of a sports team in a public or private school, in a public or private postsecondary institution, or sponsored by a municipality of the state or other local government organization, or of a sports team that receives public funding.

* **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any material prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the prosecuting attorney makes the material reasonably available for inspection by the defendant and defense counsel. The material shall be considered to be made reasonably available to the defendant or defense counsel if the prosecuting attorney provides, at a law enforcement or prosecution facility, ample opportunity for inspection, viewing, and examination of the material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial. If the defendant is not represented by counsel and demonstrates a need to view the material, the court shall make arrangements for the defendant to be supervised while viewing the material. If the defendant or the defendant's attorney identifies an expert outside the state who must view the material, the court shall make arrangements for the court or the law enforcement agency that possesses it to send the material directly to the expert.

* **Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.1(b)(1), Alaska Rules of Criminal Procedure, is amended to read:

(1) Contents and Filing. If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the

presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. **The court may not accept a report that does not include a victim's impact statement, unless the report explains the reason why the victim or the victim's representative could not be interviewed.** The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

*** Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.2(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Consideration of Victim's Statement.** If a victim as defined in AS 12.55.185 prepares and submits a written statement, gives sworn testimony or makes an unsworn oral presentation under AS 12.55.023, the court shall take the content of the statement, testimony, or presentation into consideration when preparing those elements of the sentencing report required by AS 12.55.025 that relate to the effect of the offense on the victim, and when considering the need for restitution under AS 12.55.045. **The court shall also take the content of the victim's impact statement in the presentence report into consideration in preparing the sentencing report required under AS 12.55.025.** The court also may take the content of the statement, testimony, **victim's impact statement.** or presentation into consideration for any other appropriate purpose.

*** Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 404(b)(2), Alaska Rules of Evidence, is amended to read:

(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another

rule of evidence and if the prior offenses

(i) [OCCURRED WITHIN THE 10 YEARS PRECEDING THE DATE OF THE OFFENSE CHARGED;

(ii)] are similar to the offense charged; and

(ii) [(iii)] were committed upon persons similar to the prosecuting witness.

* **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 216(a), Alaska Rules of Appellate Procedure, is amended to read:

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

(1) Extradition appeals;

(2) Peremptory challenge appeals;

(3) Claim of privilege appeal under AS 12.50.101(g).

* **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 216(b), Alaska Rules of Appellate Procedure, is amended by adding a new paragraph to read:

(3) A "claim of privilege appeal" is an appeal by the State of Alaska from a finding after a hearing under AS 12.50.101(g) that a witness has a valid claim of privilege.

* **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 2 - 14, 20, 21, 25, 26, and 30 - 35 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 15 - 17, 22 - 24, 27, and 28 of this Act apply to offenses committed before, on, or after the effective date of this Act.

(c) Section 18 of this Act applies to sentencing hearings on or after the effective date of this Act.

(d) Section 19 of this Act applies to disposition hearings occurring in proceedings on

petitions to revoke probation filed on or after the effective date of this Act.

* Sec. 45. This Act takes effect July 1, 2013.

CS FOR SENATE BILL 22
(Work Draft)
Sectional Analysis

Sections 1, 22 and 23 are designed to overturn the majority decision in *Collins v. State,* 287 P. 3d 791 (Alaska App. 2012). *Collins* used a mistaken interpretation of legislative intent to adopt lower standards for referring sex offenders to a three-judge sentencing panel. In 2006 the legislature adopted increased penalties for persons convicted of sex felonies. The legislature adopted specific findings, among others, that sex felons are difficult to treat, are much more likely than other felons to reoffend, that many sex offenders begin victimizing others when the offender is relatively young (between 12 and 16 years of age), and that these crimes cause serious harm to victims, particularly to young girls. When the legislature raised the sentencing ranges for sex felonies, it did not intend that different standards be applied to referral of a case involving a sex felony to a three-judge panel than for other felony offenses. **Section 1** adopts legislative findings and intent to address the *Collins* decision. **Sections 22 and 23** adopt new provisions to the law addressing the transfer of a case from the sentencing judge to a three-judge panel in a case involving a sex felony. These three sections overturn the majority decision and endorse the dissent in *Collins v. State,* 287 P. 3d 791 (Alaska App. 2012).

Section 2 allows a person to bring a civil action at any time against a perpetrator for damages based on injuries resulting from the crimes of sex trafficking and human trafficking.

Sections 3 and 4 amend the crime of sexual assault in the third degree to prohibit a probation or parole officer from engaging in sexual penetration with a person on probation or parole. This is similar to the law prohibiting a police officer or a correctional officer from this conduct with a person in the officer's custody. The terms probation and parole officer are defined; the definition of probation officer includes a person who supervises therapeutic court participants.

These sections also prohibit a juvenile probation officer or juvenile facility staff to engage in sexual penetration with an 18 or 19 year old on juvenile probation or in a juvenile facility. This conduct is a class C felony.

Sections 5 and 6 amend the crime of sexual assault in the fourth degree to prohibit a probation or parole officer from engaging in sexual contact with a person on probation or parole. They also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual contact with an 18 or 19 year old on probation/or in a juvenile facility. This conduct is a class A misdemeanor.

Section 7 adds a defense that the offender and the person were married for the crime of sexual assault in the fourth degree. It also adds the defense that the offender was mentally incapable for the crime of sexual assault in the fourth degree.

Section 8 fills a gap in the law that prohibits a person ordered by a court not to contact a victim or witness as part of a sentence or a condition of release. It prohibits a defendant who has been ordered by the court not to contact a victim or witness, but who has not been released from jail, to refrain from contacting the victim or witness. This conduct is a class A misdemeanor.

Section 9 allows the state to forfeit property of a patron of a prostitute if the property was used to institute, aid, or facilitate prostitution, or was received or derived from prostitution. It makes the forfeiture discretionary with the court and requires the defendant to be convicted before any property may be forfeited.

Section 10 allows the state to prosecute a person for distribution of child pornography, felony sex trafficking, and human trafficking at any time without regard to the time elapsed from the commission of the crime.

Sections 11 and 12 allow the court the discretion, in releasing on bail a person in connection with a crime involving domestic violence or stalking, to require the defendant to participate in electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Corrections in consultation with the Department of Public Safety.

Section 13 requires that a person arrested for a violation of a condition of release in connection with a domestic violence crime appear before a judge in person or by telephone before release from custody.

Section 14 authorizes the attorney general to make a written application to a court for an order allowing interception of the private communications of a person that may provide evidence that the person is committing or planning to commit sex trafficking in the first or second degree, or human trafficking in the first degree. Sex trafficking and human trafficking are crimes that would require cooperation among perpetrators. Interception of the communications of a person under these circumstances would facilitate the investigation of these crimes.

Section 15 expands the protection of a victim of sexual assault, sexual abuse of a minor, and unlawful exploitation of minor by excluding evidence of the victim's sexual conduct both before and after the person was victimized. Current law provides this protection for evidence of sexual conduct before the offense charged. This rule is commonly referred to as the rape shield law, and the purpose is to

exclude evidence of the victim's private sexual conduct unless the proponent has a valid evidentiary reason for its admission. **Section 15** also requires the defendant to make the request to admit this evidence at least five days before trial, unless the request is based on information learned after the deadline.

Sections 16, 17, 42, and 43 strengthen the procedure for determining whether a witness who claims a Fifth Amendment right not to testify actually is entitled to constitutional protection and a grant of immunity from prosecution if the person testifies. The prosecution does not participate in the procedure to determine whether a person has a valid Fifth Amendment claim and should be awarded immunity from prosecution. The court in a closed hearing with the witness and counsel for the witness makes the decision. **Sections 16 and 17** require the court to personally interview the witness at this closed hearing; the testimony is privileged and cannot be used for any other purpose. The court must then make written findings of fact and conclusions of law in a sealed order. **Sections 42 and 43** amend Rule 216(a) and (b) to allow the state the right to an immediate appeal of the decision to the Court of Appeals.

Section 18 requires a defendant claiming credit for time spent in a treatment program as a condition of bail release to file written notice 10 days before the sentencing hearing on that offense. The notice must include the number of days the person is claiming. A court may not consider a request for credit made more than 90 days after the deadline except for good cause.

Section 18 also requires a person to make a request for credit for time spent in a treatment program pending appeal within 90 days after the case is returned to the trial court following appeal.

Section 19 requires a defendant claiming credit for time spent in a treatment program as a condition of probation or a condition of bail release in connection with a petition to revoke probation to file notice of the request 10 days before the disposition hearing on the petition. The notice must include the number of requested days of credit. A court may not consider a request for credit made more than 90 days after the deadline except for good cause.

Section 20 makes a person convicted for sex trafficking ineligible for a suspended imposition of sentence.

Sections 21 requires the court in sentencing a person convicted of two or more crimes of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors to give some consecutive time for each crime or attempted or solicited crime for which the defendant is being sentenced.

Sections 22 and 23 – please refer to discussion at **Section 1.**

Section 24 corrects an error in the definition of sexual felony by including the crimes of sex trafficking in the first degree and online enticement of a minor in the definition. The term is used in AS 12.55.125(i), which adopts higher sentencing ranges for most sex felonies, including sex trafficking in the first degree and online enticement of a minor.

Section 25 adds the felony of being a patron of a prostitute who is under 18 years of age in violation of AS 11.66.100 to those crimes that require registration as a sex offender, if the patron is 18 years or older and at least three years older than the prostitute. It also corrects a reference to the crime of sex trafficking in the first degree and the third degree in the sex offender law.

Section 26 makes a conforming amendment to the warning on domestic violence protective orders. Certain violations of a domestic violence protective order are a class A misdemeanor under AS 11.56.740. The maximum fine for a class A misdemeanor has been raised to $10,000 under AS 12.55.035. **Section 26** updates the warning to describe the maximum fine.

Section 27 adds to the definition of victim counseling centers to include victim counseling centers operated by or contracted by a branch of the armed forces of the United States. The effect of this change is to extend the privilege for confidential communications between a victim of sexual assault or domestic violence and their counselors to counseling organizations that provide services to victims connected with the military.

Section 28 amends the law addressing persons who are eligible for violent crimes compensation to include victims of sex trafficking, human trafficking, and unlawful exploitation of a minor.

Sections 29, 39, and 40 strengthen and make more explicit statutes and court rules that require a court to consider the crime's impact on the victim. **Section 39** requires the presentence report to include a victim impact statement or an explanation of why the victim or victim's representative could not be interviewed. **Section 40** requires the court to take the victim's impact statement into account when preparing the sentencing report and for other purposes. **Section 29** requires the Alaska Judicial Council to include information about a judge's compliance with AS 12.55.025(a)(5), with other information about the judge for a retention election. AS 12.55.025(a)(5) requires a court in preparing the sentencing report to include information about the financial, emotional, and medical effects of the crime on the victim, and the victim's need for restitution.

Section 30 provides that a person convicted of an unclassified or class A sexual felony is not eligible for mandatory parole (also called good time).

Sections 32 -- 34 address the procedure for a law enforcement officer to obtain an administrative subpoena for the business records of an Internet service provider. These subpoenas may be issued in the investigation of the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, and distribution of indecent material to a minor. The amendments allow the attorney general to designate the deputy attorney general for the civil division or the criminal division to evaluate applications for the subpoena, in addition to the attorney general. The investigation of these cases often requires a prompt response to a request for a subpoena, and having two attorneys who may approve them will assist law enforcement in their investigations.

Section 35 adds to those circumstances that allow a court to decide that reasonable efforts by the Office of Children's Services to reunite a child who is in an out-of-home placement with the child's family are not required. It provides that the court may make this determination if it finds by clear and convincing evidence that the parent or guardian has committed sexual abuse against the child or another child of the parent or guardian, or that the parent or guardian is registered or required to register as a sex offender.

Sections 36 and 37 add athletic coaches to those persons who are required to report to authorities if the coach has reasonable cause to believe that a child has suffered harm from child abuse or neglect. Athletic coach is defined to include both paid and volunteer coaches.

Section 38 adopts a court rule that limits the publication of child pornography that is required during the discovery process in a prosecution for unlawful exploitation of a minor. Because every viewing of child pornography is an additional harm to the victim, this section requires the defendant and the defendant's attorney to view the material where it is stored. If a defendant is not represented, it requires the court to arrange for the defendant to be supervised while viewing the material. If the defendant requests that an expert witness out of state view the material, it requires the court to arrange to send the material directly to the expert.

Sections 39 and 40 – please refer to discussion at **Section 29**.

Section 41 amends Rule 404(b)(2)(i), Alaska Rules of Evidence. Under Rule 404, evidence of the defendant's prior bad acts is generally not admissible. There are several exceptions to this rule. Evidence in the prosecution of a physical or sexual assault or abuse of a minor that describes other similar acts by the defendant

toward the same victim or other similar victims may be admissible. Current law, however, limits the admissible evidence to acts committed within 10 years preceding the date of the currently charged crime. **Section 41** removes this time limitation. Other exceptions to the general rule, for example, sexual assault and domestic violence prosecutions, do not limit the use of prior acts to those committed within 10 years of the current offense. Further, the 10 year limit is problematic because a person convicted of a crime against a child may have been incarcerated for a significant period for the previous offense. The question of whether the prior act occurred too far in the past is then left to the judge to determine under the circumstances of the case.

Sections 42 and 43 – please refer to discussion at **Sections 16 and 17.**

Section 44 adopts applicability provisions.

Section 45 provides an effective date of July 1, 2013.

28th Alaska State Legislature

Senator John Coghill, Chairman
State Capitol Building
Room 119
Juneau, AK 99801-1182
(907) 465-3717

Senator Lesil McGuire
Vice-Chair
State Capitol Building
Room 103
Juneau, AK 99801-1182
(907) 465-2995

Senate Judiciary Committee

Date: February 15, 2013

To: Senator McGuire
Senator Dyson
Senator Olson
Senator Wielechowski

From: Karen Lidster, Committee Aide

Re: Changes to CS for SB 22 (JUD)

From "working draft" changes, and additional changes from testimony, CS for SB 22 (JUD) is attached for discussion at today's Senate Judiciary meeting

1. Proposed prohibition of a probation or parole officer from engaging in sexual conduct, add the offense to the other sexual assault offenses for which marriage is a defense. Sec. 7 Page 6, line 3.
2. Clarification on when the court orders or when the Parole Board orders no contact. Sec. 8 Page 6, lines 7-22.
3. Forfeiture of property discretionary and requires conviction before forfeiture is ordered. Sec 9, line 26.
4. Relating to GPS. Sec. 11 Page 7 lines 31- Page 8 lines 1-3; and Sec 12 Page 8 lines 15 – 18 – added in that a person may be required to participate in a GPS monitoring program that meets the guidelines by DOC in consultation with DPS. Additionally, GPS monitoring will not apply to civil protective orders.
5. Request for evidence. Sec 15 Page 9, line 21 – changed "evidence discovered" to "information learned".
6. Adopt deadlines for claiming credit for treatment program as a condition of bail. Sec. 18, Page 10, line 25 changed "30" to "10 days"; and on line 29 – added in "except for good cause."
   AND: adopted deadlines for claiming credit toward sentence of imprisonment from "30" to "10 days" Page 11, line 13, and on same Page, line 16 added in "except for good cause"

7. Sec 22, Page 12, line 9 – 15 and lines 23 – 24 removed "youthful offender"
8. Removed the court requiring a respondent to participate in a global positioning device monitoring program for civil protective orders. Page 14, lines 3 – 4.
9. Further defines victim counseling center operated by a military organization. Page 14, lines 17 – 18.
10. Clarifies the evaluation of the judges and changed "data" to information. Page 15, lines 29-30.
11. Sec 34, defines "attorney general's designee. Page 17, lines 12 – 15
12. Sec 38, limits publication of child pornography and clarifies rule to material that is prohibited by Alaska law or defined in federal law. Page 20, line 9-24.

kll

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THE STATE
of ALASKA
GOVERNOR SEAN PARNELL

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SENATE BILL 22

Changes in informal working document from original SB 22:

1 • For the proposed prohibition of a probation or parole officer from engaging in sexual contact with a probationer or parolee, the draft would add the offense to the other sexual assault offenses for which marriage is a defense. (draft page 5, line 31)

2 • Makes drafting changes (no substantive change) in amendment to unlawful contact; it does so by clarifying that the court orders no contact in most cases; while the Parole Board orders no contact for parolees. (draft page 6, lines 5 – 18)

3 • For forfeiture of property in prostitution cases, it makes the forfeiture discretionary with the court and requires that the defendant be convicted before forfeiture may be ordered. (draft page 6, lines 22 – 23)

4 • Would allow, as a condition of bail release in a prosecution for stalking or a crime involving domestic violence, the court in its discretion to order the defendant to participate in a global positioning monitoring program that meets guidelines adopted by the Department of Corrections in consultation with the Department of Public Safety. (draft page 7, lines 28 – 31 – draft page 8, lines 1 – 15)

5 • Gives the defendant in a sexual assault, sexual abuse, or unlawful exploitation of a minor prosecution the chance to request that evidence about the complaining witness' sexual conduct be admissible after the deadline of five days before trial if the evidence was discovered after the deadline. (draft page 9, lines 17 and 18)

6 • The bill would adopt deadlines for a person claiming credit for time spent in a treatment program under certain circumstances. The draft would allow more time for the defendant to request the credit (90 days after the hearing). The draft would also adopt a deadline for requesting credit for time served after an appeal is returned to the trial court. (draft page 10, lines 18 – 31, and page 11, lines 1 – 13)

7 • The bill would have the effect of reversing the decision in *Collins v. State,* 287 P.3d 791 (Alaska App. 2012). The draft would remove the factor that the defendant is a youthful offender. (draft page 12, line 18; page 12, line 28).

8 • The draft would remove the possibility of a court requiring a respondent, in a matter involving a stalking or domestic violence protective order, to participate in a global positioning device monitoring program. (see removal at page 13, between lines 30 and 31)

9 • Clarifies that a victim counseling center that is operated by a military organization means a military organization operated by or contracted by a branch of the United States military service. (draft page 14, line 12)

10 • Clarifies that the evaluation of judges and recommendation by the Alaska Judicial Council at the time of judicial retention include information about the judge's compliance with the requirements of AS 12.55.025(a)(5) (effects of the offense on the victim), rather than data. (draft page 15, lines 23 – 25)

11 • Requires that the Attorney General's designee, for purposes of issuing administrative subpoenas to an Internet service provider, be either the deputy attorney general for the civil division or the criminal division. (page 17, line 8)

12 • In the rule limiting the publication of child pornography that may be part of the discovery process in a criminal prosecution, it clarifies rule applies to material that is prohibited by Alaska law or defined as child pornography under federal law. (page 23, lines 3 – 19)

28-GS1587\N
Strasbaugh
3/4/13

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:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"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 in a prosecution for stalking or a crime involving domestic violence or 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 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 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 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 forms for sexual assault, stalking, and domestic violence protective orders; 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, Rules 404(a) and (b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 21 AND 22 OF THIS ACT. (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

(b) The legislature finds that

(1) in 2006, the legislature did not intend, by enacting ch. 14, SLA 2006, and the legislature does not now intend to create new or additional means for a defendant

convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel;

(2) the legislature did not, in 2006, intend nor does the legislature now intend for a court to create new or additional means for a defendant convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel.

(c) It is the intent of the legislature in AS 12.55.165, as amended by sec. 21 of this Act, and AS 12.55.175, as amended by sec. 22 of this Act, to overturn the majority decision in Collins v. State, 287 P.3d 791 (Alaska App. 2012), and to endorse the dissenting opinion in the same case.

*** Sec. 2.** AS 09.10.065(a) is amended to read:

(a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses:

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor**;**

(4) felony sex trafficking; or

(5) felony human trafficking.

*** Sec. 3.** AS 11.41.425(a) is amended to read:

(a) An offender commits the crime of sexual assault in the third degree if the offender

(1) engages in sexual contact with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and

Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; [OR]

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency;

(5) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual penetration with a person with reckless disregard that the person is on probation or parole; or

(6) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual penetration with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

*** Sec. 4.** AS 11.41.425(b) is repealed and reenacted to read:

(b) In this section,

(1) "juvenile facility staff" means a person employed in a juvenile detention or treatment facility;

(2) "juvenile probation officer" means a person assigned to supervise another person 18 or 19 years of age who is committed to the probationary supervision of the Department of Health and Social Services;

(3) "parole officer" has the meaning given in AS 18.65.290;

(4) "peace officer" has the meaning given in AS 01.10.060;

(5) "probation officer" includes a

(A) probation officer as defined in AS 18.65.290; or

(B) person who supervises a participant in a specialty court, including a therapeutic or wellness court addressing alcohol or drug use, a court addressing the needs of veterans, an adult or juvenile mental health court, a fetal alcohol spectrum disorder court, or a family care or preservation court.

*** Sec. 5.** AS 11.41.427(a) is amended to read:

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; [OR]

(3) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, the offender engages in sexual contact with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency**;**

(4) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual contact with a person with reckless disregard that the person is on probation or parole; or

(5) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual contact with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

*** Sec. 6.** AS 11.41.427(b) is repealed and reenacted to read:

(b) In this section,

(1) "juvenile facility staff" has the meaning given in AS 11.41.425;

(2) "juvenile probation officer" has the meaning given in AS 11.41.425;

(3) "parole officer" has the meaning given in AS 18.65.290;

(4) "peace officer" has the meaning given in AS 01.10.060;

(5) "probation officer" has the meaning given in AS 11.41.425.

*** Sec. 7.** AS 11.41.432(a) is amended to read:

(a) It is a defense to a crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), [OR] 11.41.425**, or 11.41.427** that the offender is

(1) mentally incapable; or

(2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.

*** Sec. 8.** AS 11.41.432 is amended by adding a new subsection to read:

(c) It is an affirmative defense to a crime charged under AS 11.41.425(a)(5) or 11.41.427(a)(4) that the offender and the person on probation or parole had, before the person was placed on probation or parole, a dating relationship or a sexual relationship, and the relationship continued until the date of the alleged offense.

*** Sec. 9.** AS 11.56.750(a) is amended to read:

(a) A person commits the crime of unlawful contact in the first degree if the person

(1) has been ordered

(A) by the court not to contact a victim or witness of the offense

(i) as [(A)] part of a sentence imposed under AS 12.55.015;

(ii) as [OR (B)] a condition of [(i)] release under AS 12.30 **or** [; (ii)] probation under AS 12.55.101; or

(iii) **while under official detention; or**

(B) as a condition of parole not to contact a victim or witness of the offense under AS 33.16.150 [PAROLE UNDER AS 33.16.150]; and

(2) either directly or indirectly, knowingly contacts or attempts to contact the victim or witness in violation of the order.

*** Sec. 10.** AS 11.66.145 is amended to read:

Sec. 11.66.145. Forfeiture. Property used to institute, aid, or facilitate, or received or derived from, a violation of **AS 11.66.100 - 11.66.135 may** [AS 11.66.100(c) OR 11.66.110 - 11.66.135 SHALL] be forfeited **at sentencing**.

* **Sec. 11.** AS 12.10.010 is amended to read:

Sec. 12.10.010. General time limitations. (a) Prosecution for the following offenses may be commenced at any time:

(1) murder;

(2) attempt, solicitation, or conspiracy to commit murder or hindering the prosecution of murder;

(3) felony sexual abuse of a minor;

(4) sexual assault that is an unclassified, class A, or class B felony or a violation of AS 11.41.425(a)(2) - (4);

(5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458, AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person who, at the time of the offense, was under 18 years of age;

(6) kidnapping**;**

(7) distribution of child pornography in violation of AS 11.61.125;

(8) sex trafficking in violation of AS 11.66.110 - 11.66.130 that is an unclassified, class A, or class B felony or that is committed against a person who, at the time of the offense, was under 20 years of age;

(9) human trafficking in violation of AS 11.41.360 or 11.41.365.

(b) Except as otherwise provided by law or in (a) of this section, a person may not be prosecuted, tried, or punished for an offense unless the indictment is found or the information or complaint is instituted not later than

(1) 10 years after the commission of a felony offense in violation of **AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370], 11.41.425(a)(1), **11.41.425(a)(5), 11.41.425(a)(6),** or 11.41.450 - 11.41.458; or

(2) five years after the commission of any other offense.

* **Sec. 12.** AS 12.30.016(e) is amended to read:

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting**,** in any manner, including by telephone or

electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior**;**

(4) participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety.

*** Sec. 13.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the judicial officer shall consider the safety of the victim or other household member. To protect the victim, household member, other persons, and the community and to reasonably **ensure** [ASSURE] the person's appearance, the judicial officer

(1) shall impose conditions required under AS 12.30.011**;**

(2) [, AND] may impose any of the conditions authorized under AS 12.30.011**;**

(3) may impose [,] any of the provisions of AS 18.66.100(c)(1) - (7) and (11)**;**

(4) may order the person to participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety; [,] and

(5) may impose any other condition necessary to protect the victim, household member, other persons, and the community, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

*** Sec. 14.** AS 12.30.027(e) is amended to read:

(e) A person arrested for a crime involving domestic violence **or for violation of a condition of release in connection with a crime involving domestic violence** may not be released from custody until the person has appeared in person before a

judicial officer or telephonically for arraignment.

* **Sec. 15.** AS 12.37.010 is amended to read:

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 an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

*** Sec. 17.** AS 12.55.025 is amended by adding new subsections to read:

(k) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail in connection with an offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecutor 10 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except as provided in (*l*) of this section, except for good cause, a court may not consider a request for credit made under this subsection more than 90 days after the sentencing hearing.

(*l*) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail while pending appeal, the defendant shall file notice with the court and the prosecutor not later than 90 days after return of the case to the trial court following appeal. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except for good cause, the court may not consider a request for credit made under this subsection after the deadline.

*** Sec. 18.** AS 12.55.027 is amended by adding a new subsection to read:

(e) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program either as a condition of probation or as a condition of bail release after a petition to revoke probation has been filed, the defendant shall file notice with the court and the prosecutor 10 days before the disposition hearing. The notice shall include the amount of time the defendant is claiming. The defendant must prove by a preponderance of the evidence that the credit claimed meets the requirements of this section. A court may not consider, except for

good cause, a request for credit made under this subsection more than 90 days after the disposition hearing.

*** Sec. 19.** AS 12.55.085(f) is amended to read:

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR] AS 11.61.125 - 11.61.128**, or AS 11.66.110 - 11.66.135**;

(2) uses a firearm in the commission of the offense for which the person is convicted; or

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this section or under the equivalent provision of the laws of another jurisdiction.

*** Sec. 20.** AS 12.55.127 is amended by adding a new subsection to read:

(e) If the defendant is being sentenced for two or more crimes of distribution of child pornography under AS 11.61.125, possession of child pornography under AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a consecutive term of imprisonment shall be imposed for some additional term of imprisonment for each additional crime or each additional attempt or solicitation to commit the offense.

*** Sec. 21.** AS 12.55.165 is amended by adding a new subsection to read:

(c) A court may not refer a case to a three-judge panel under (a) of this section if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the request for the referral is based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or

(2) a history free of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 22.** AS 12.55.175 is amended by adding a new subsection to read:

(f) A defendant being sentenced for a sexual felony under AS 12.55.125(i) may not establish, nor may the three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposition of a sentence within the presumptive range based solely on the claim that the defendant, either singly or in combination, has

(1) prospects for rehabilitation that are less than extraordinary; or

(2) a history free of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 23.** AS 12.55.185(16) is amended to read:

(16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, **sex trafficking in the first degree,** sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, **online enticement of a minor,** and felony attempt, conspiracy, or solicitation to commit those crimes;

*** Sec. 24.** AS 12.63.100(6) is amended to read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 - 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was **under 20** [16 OR 17] years of age at the time of the offense;

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200; [OR]

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense; **or**

(ix) AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(c);

*** Sec. 25.** AS 18.65.865(b) is amended to read:

(b) The Alaska Court System shall prepare forms for petitions and protective orders and instructions for their use by a person seeking a protective order under AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. Filing fees may not be charged in any action seeking only the relief provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the following warning in boldface type: "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to **$10,000** [$5,000]."

*** Sec. 26.** AS 18.66.130(d) is amended to read:

(d) In addition to other required information contained in a protective order, the order must include in bold face type the following statements:

(1) "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and up to a **$10,000** [$5,000] fine";

(2) "If you are ordered to have no contact with the petitioner or to stay away from the petitioner's residence, vehicle, or other place designated by the court, an invitation by the petitioner to have the prohibited contact or to be present at or enter the residence, vehicle, or other place does not in any way invalidate or nullify the order."

*** Sec. 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;

(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 compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses.** 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 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced

(1) to a mandatory 99-year term of imprisonment under AS 12.55.125(a) after June 27, 1996;

(2) to a definite term under AS 12.55.125(*l*); or

(3) for a sexual felony under AS 12.55.125(i)

(A) and has one or more prior sexual felony convictions as determined under AS 12.55.145(a)(4)**; or**

(B) that is an unclassified or a class A felony.

*** Sec. 31.** AS 44.23.080(a) is amended to read:

(a) If there is reasonable cause to believe that an Internet service account has been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other information about the account owner will assist in obtaining evidence that is relevant to the offense, a law enforcement officer may apply to the attorney general **or the attorney general's designee** for an administrative subpoena to obtain the business records of the Internet service provider located inside or outside of the state.

*** Sec. 32.** AS 44.23.080(b) is amended to read:

(b) If an application meets the requirements of (a) of this section, the attorney general **or the attorney general's designee** may issue an administrative subpoena to the Internet service provider requiring the production of the following records:

(1) the name and other identifying information of the account holder;

(2) the address and physical location associated with the account;

(3) a description of the length of service, service start date, and types of service associated with the account.

*** Sec. 33.** AS 44.23.080(e) is amended to read:

(e) If the Internet service provider refuses to obey a subpoena issued under (b) of this section, the superior court may, upon application of the attorney general **or the**

attorney general's designee, issue an order requiring the Internet service provider to appear at the office of the attorney general with the information described in the subpoena.

* **Sec. 34.** AS 44.23.080 is amended by adding a new subsection to read:

(i) For purposes of this section, the attorney general's designee may be the deputy attorney general of the division of the Department of Law that has responsibility for civil cases or the division of the Department of Law that has responsibility for criminal cases.

* **Sec. 35.** AS 47.10.086(c) is amended to read:

(c) The court may determine that reasonable efforts of the type described in (a) of this section are not required if the court has found by clear and convincing evidence that

(1) the parent or guardian has subjected the child to circumstances that pose a substantial risk to the child's health or safety; these circumstances include abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

(2) the parent or guardian has

(A) committed homicide under AS 11.41.100 - 11.41.130 of a parent of the child or of a child;

(B) aided or abetted, attempted, conspired, or solicited under AS 11.16 or AS 11.31 to commit a homicide described in (A) of this paragraph;

(C) committed an assault that is a felony under AS 11.41.200 - 11.41.220 and results in serious physical injury to a child; or

(D) committed the conduct described in (A) - (C) of this paragraph that violated a law or ordinance of another jurisdiction having elements similar to an offense described in (A) - (C) of this paragraph;

(3) the parent or guardian has, during the 12 months preceding the permanency hearing, failed to comply with a court order to participate in family support services;

(4) the department has conducted a reasonably diligent search over a time period of at least three months for an unidentified or absent parent and has failed

to identify and locate the parent;

(5) the parent or guardian is the sole caregiver of the child and the parent or guardian has a mental illness or mental deficiency of such nature and duration that, according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months;

(6) the parent or guardian has previously been convicted of a crime involving a child in this state or in another jurisdiction and, after the conviction, the child was returned to the custody of the parent or guardian and later removed because of an additional substantiated report of physical or sexual abuse by the parent or guardian;

(7) a child has suffered substantial physical harm as the result of abusive or neglectful conduct by the parent or guardian or by a person known by the parent or guardian and the parent or guardian knew or reasonably should have known that the person was abusing the child;

(8) the parental rights of the parent have been terminated with respect to another child because of child abuse or neglect, the parent has not remedied the conditions or conduct that led to the termination of parental rights, and the parent has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm;

(9) the child has been removed from the child's home on at least two previous occasions, family support services were offered or provided to the parent or guardian at those times, and the parent or guardian has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm; [OR]

(10) the parent or guardian is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and need for care by an adult**; or**

(11) the parent or guardian

(A) has sexually abused the child or another child of the parent or guardian; or

(B) is registered or required to register as a sex offender or child kidnapper under AS 12.63.

*** Sec. 36.** AS 47.17.020(a) is amended to read:

(a) The following persons who, in the performance of their occupational duties, or with respect to (8) of this subsection, in the performance of their appointed duties, have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department:

(1) practitioners of the healing arts;

(2) school teachers and school administrative staff members of public and private schools;

(3) peace officers and officers of the Department of Corrections;

(4) administrative officers of institutions;

(5) child care providers;

(6) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.990;

(7) paid employees of an organization that provides counseling or treatment to individuals seeking to control their use of drugs or alcohol;

(8) members of a child fatality review team established under AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created under AS 47.14.300**;**

(9) athletic coaches.

*** Sec. 37.** AS 47.17.290 is amended by adding a new paragraph to read:

(17) "athletic coach" includes a paid leader or assistant of a sports team in a public or private school, in a public or private postsecondary institution, or sponsored by a municipality of the state or other local government organization, or of a sports team that receives public funding.

*** Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any material prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the prosecuting attorney makes the material reasonably available for inspection by the defendant and defense counsel. The material shall be considered to be made reasonably available to the defendant or defense counsel if the prosecuting attorney provides, at a law enforcement or prosecution facility, ample opportunity for inspection, viewing, and examination of the material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial. If the defendant is not represented by counsel and demonstrates a need to view the material, the court shall make arrangements for the defendant to be supervised while viewing the material. If the defendant or the defendant's attorney identifies an expert outside the state who must view the material, the court shall make arrangements for the court or the law enforcement agency that possesses it to send the material directly to the expert.

*** Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.1(b)(1), Alaska Rules of Criminal Procedure, is amended to read:

(1) Contents and Filing. If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. **If the crime involved a victim, the court may not accept a report that does not include a victim's impact statement, unless the report explains the reason why the victim or the victim's representative could not be interviewed.**

The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

*** Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.2(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Consideration of Victim's Statement.** If a victim as defined in AS 12.55.185 prepares and submits a written statement, gives sworn testimony or makes an unsworn oral presentation under AS 12.55.023, the court shall take the content of the statement, testimony, or presentation into consideration when preparing those elements of the sentencing report required by AS 12.55.025 that relate to the effect of the offense on the victim, and when considering the need for restitution under AS 12.55.045. **The court shall also take the content of the victim's impact statement in the presentence report into consideration in preparing the sentencing report required under AS 12.55.025.** The court also may take the content of the statement, testimony, **victim's impact statement,** or presentation into consideration for any other appropriate purpose.

*** Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 404(b)(2), Alaska Rules of Evidence, is amended to read:

(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another rule of evidence and if the prior offenses

(i) [OCCURRED WITHIN THE 10 YEARS PRECEDING THE DATE OF THE OFFENSE CHARGED;

(ii)] are similar to the offense charged; and

(ii) [(iii)] were committed upon persons similar to the prosecuting witness.

*** Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to

read:

DIRECT COURT RULE AMENDMENT. Rule 216(a), Alaska Rules of Appellate Procedure, is amended to read:

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

(1) Extradition appeals;

(2) Peremptory challenge appeals**;**

(3) Claim of privilege appeal under AS 12.50.101(g).

*** Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 216(b), Alaska Rules of Appellate Procedure, is amended by adding a new paragraph to read:

(3) A "claim of privilege appeal" is an appeal by the State of Alaska from a finding after a hearing under AS 12.50.101(g) that a witness has a valid claim of privilege.

*** Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 12.45.045(a), as amended by sec. 16 of this Act, has the effect of amending Rule 404(a), Alaska Rules of Evidence, by providing, with some exceptions, that a defendant must request admission of certain evidence about the complaining witness five days before trial and by applying the rule to the conduct of the complaining witness after the alleged offense.

*** Sec. 45.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 2 - 15, 19, 20, 24, and 30 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 16, 21 - 23, 27, and 28 of this Act apply to offenses committed before, on, or after the effective date of this Act.

(c) Section 17 of this Act applies to sentencing hearings occurring on or after the effective date of this Act.

(d) Section 18 of this Act applies to disposition hearings occurring in proceedings on

petitions to revoke probation filed on or after the effective date of this Act.

*** Sec. 46.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 16 of this Act, amending AS 12.45.045(a), takes effect only if sec. 44 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 47.** This Act takes effect July 1, 2013.

28-GS1587\U
Strasbaugh
2/14/13

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:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"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 in a prosecution for stalking or a crime involving domestic violence or 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 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 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."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS AND INTENT FOR SECS. 22 AND 23 OF THIS ACT. (a) The legislature reaffirms the findings made by the Senate letter of intent for ch. 14, SLA 2006, as published in the 2006 Senate Journal dated February 16, 2006, on pages 2207 - 2214.

(b) The legislature finds that

(1) in 2006, the legislature did not intend, by enacting ch. 14, SLA 2006, and the legislature does not now intend to create new or additional means for a defendant

convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel;

(2) the legislature did not, in 2006, intend nor does the legislature now intend for a court to create new or additional means for a defendant convicted of a sexual felony and sentenced under AS 12.55.125(i) to obtain referral to a three-judge panel.

(c) It is the intent of the legislature in AS 12.55.165, as amended by sec. 22 of this Act, and AS 12.55.175, as amended by sec. 23 of this Act, to overturn the majority decision in Collins v. State, 287 P.3d 791 (Alaska App. 2012), and to endorse the dissenting opinion in the same case.

*** Sec. 2.** AS 09.10.065(a) is amended to read:

(a) A person may bring an action at any time for conduct that would have, at the time the conduct occurred, violated provisions of any of the following offenses:

(1) felony sexual abuse of a minor;

(2) felony sexual assault; [OR]

(3) unlawful exploitation of a minor**;**

(4) felony sex trafficking; or

(5) felony human trafficking.

*** Sec. 3.** AS 11.41.425(a) is amended to read:

(a) An offender commits the crime of sexual assault in the third degree if the offender

(1) engages in sexual contact with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and

Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; [OR]

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency;

(5) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual penetration with a person with reckless disregard that the person is on probation or parole; or

(6) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual penetration with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

*** Sec. 4.** AS 11.41.425(b) is repealed and reenacted to read:

(b) In this section,

(1) "juvenile facility staff" means a person employed in a juvenile detention or treatment facility;

(2) "juvenile probation officer" means a person assigned to supervise another person 18 or 19 years of age who is committed to the probationary supervision of the Department of Health and Social Services;

(3) "parole officer" has the meaning given in AS 18.65.290;

(4) "peace officer" has the meaning given in AS 01.10.060;

(5) "probation officer" includes a

(A) probation officer as defined in AS 18.65.290; or

(B) person who supervises a participant in a specialty court, including a therapeutic or wellness court addressing alcohol or drug use, a court addressing the needs of veterans, an adult or juvenile mental health court, a fetal alcohol spectrum disorder court, or a family care or preservation court.

*** Sec. 5.** AS 11.41.427(a) is amended to read:

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; [OR]

(3) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, the offender engages in sexual contact with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency**;**

(4) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual contact with a person with reckless disregard that the person is on probation or parole; or

(5) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual contact with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

*** Sec. 6.** AS 11.41.427(b) is repealed and reenacted to read:

(b) In this section,

(1) "juvenile facility staff" has the meaning given in AS 11.41.425;

(2) "juvenile probation officer" has the meaning given in AS 11.41.425;

(3) "parole officer" has the meaning given in AS 18.65.290;

(4) "peace officer" has the meaning given in AS 01.10.060;

(5) "probation officer" has the meaning given in AS 11.41.425.

*** Sec. 7.** AS 11.41.432(a) is amended to read:

(a) It is a defense to a crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), [OR] 11.41.425**, or 11.41.427** that the offender is

(1) mentally incapable; or

(2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.

*** Sec. 8.** AS 11.56.750(a) is amended to read:

(a) A person commits the crime of unlawful contact in the first degree if the person

(1) has been ordered

(A) by the court not to contact a victim or witness of the offense

(i) as [(A)] part of a sentence imposed under AS 12.55.015;

(ii) as [OR (B)] a condition of [(i)] release under AS 12.30 **or** [; (ii)] probation under AS 12.55.101; or

(iii) **while under official detention; or**

(B) as a condition of parole not to contact a victim or witness of the offense under AS 33.16.150 [PAROLE UNDER AS 33.16.150]; and

(2) either directly or indirectly, knowingly contacts or attempts to contact the victim or witness in violation of the order.

*** Sec. 9.** AS 11.66.145 is amended to read:

Sec. 11.66.145. Forfeiture. Property used to institute, aid, or facilitate, or received or derived from, a violation of **AS 11.66.100(a)(2), 11.66.100(c),** [AS 11.66.100(c)] or 11.66.110 - 11.66.135 **may** [SHALL] be forfeited **at sentencing**.

*** Sec. 10.** AS 12.10.010 is amended to read:

Sec. 12.10.010. General time limitations. (a) Prosecution for the following offenses may be commenced at any time:

(1) murder;

(2) attempt, solicitation, or conspiracy to commit murder or hindering

the prosecution of murder;

(3) felony sexual abuse of a minor;

(4) sexual assault that is an unclassified, class A, or class B felony or a violation of AS 11.41.425(a)(2) - (4);

(5) a violation of AS 11.41.425, 11.41.427, 11.41.450 - 11.41.458, AS 11.66.110 - 11.66.130, or former AS 11.41.430, when committed against a person who, at the time of the offense, was under 18 years of age;

(6) kidnapping;

(7) distribution of child pornography in violation of AS 11.61.125;

(8) sex trafficking in violation of AS 11.66.110 - 11.66.130 that is an unclassified, class A, or class B felony or that is committed against a person who, at the time of the offense, was under 20 years of age;

(9) human trafficking in violation of AS 11.41.360 or 11.41.365.

(b) Except as otherwise provided by law or in (a) of this section, a person may not be prosecuted, tried, or punished for an offense unless the indictment is found or the information or complaint is instituted not later than

(1) 10 years after the commission of a felony offense in violation of **AS 11.41.120 - 11.41.330** [AS 11.41.120 - 11.41.370], 11.41.425(a)(1), **11.41.425(a)(5), 11.41.425(a)(6),** or 11.41.450 - 11.41.458; or

(2) five years after the commission of any other offense.

*** Sec. 11.** AS 12.30.016(e) is amended to read:

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting, in any manner, including by telephone or electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior;

(4) participate in a monitoring program with a global positioning

device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety.

*** Sec. 12.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the judicial officer shall consider the safety of the victim or other household member. To protect the victim, household member, other persons, and the community and to reasonably **ensure** [ASSURE] the person's appearance, the judicial officer

(1) shall impose conditions required under AS 12.30.011**;**

(2) [, AND] may impose any of the conditions authorized under AS 12.30.011**;**

(3) may impose [,] any of the provisions of AS 18.66.100(c)(1) - (7) and (11)**;**

(4) may order the person to participate in a monitoring program with a global positioning device or similar technological means that meets guidelines for a monitoring program adopted by the Department of Corrections in consultation with the Department of Public Safety; [,] and

(5) may impose any other condition necessary to protect the victim, household member, other persons, and the community, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

*** Sec. 13.** AS 12.30.027(e) is amended to read:

(e) A person arrested for a crime involving domestic violence **or for violation of a condition of release in connection with a crime involving domestic violence** may not be released from custody until the person has appeared in person before a judicial officer or telephonically for arraignment.

*** Sec. 14.** AS 12.37.010 is amended to read:

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

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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. 15.** 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 PRELIMINARY HEARING]. **The defendant may apply for an order during trial if the request is based on information learned after the deadline or during the trial.** 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 an order stating what evidence may be introduced and the nature of the questions that may be permitted. The defendant may then offer evidence under the order of the court.

*** Sec. 16.** AS 12.50.101(g) is amended to read:

(g) At the hearing under (f) of this section, the attorney for the witness, in the

form of a proffer, shall describe the testimony or other information that the witness claims is privileged. The proffer must include a description of how the testimony or other information could connect the witness with a crime. **The court shall conduct a personal inquiry under oath of the witness concerning the facts giving rise to the claim or claims of privilege in the proffer.** The proffer **and the testimony of the witness are** [IS] privileged and inadmissible for any other purpose. If the proffer **and the testimony establish** [ESTABLISHES] a factual basis that there is a real or substantial danger that the testimony or other information to be compelled would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime, the court may find that the witness has a valid claim of privilege.

*** Sec. 17.** AS 12.50.101 is amended by adding a new subsection to read:

(j) If the court finds, after a hearing under (f) of this section and the personal inquiry under (g) of this section, that the witness has a valid claim of privilege, the court shall enter its findings of fact and conclusions of law in a sealed, written order that explains the real or substantial danger that the proffer or testimony would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime. The attorney general may bring an immediate, interlocutory appeal of the court's decision to the court of appeals. The court issuing the order appealed under this section shall stay its proceeding while the appeal is pending.

*** Sec. 18.** AS 12.55.025 is amended by adding new subsections to read:

(k) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail in connection with an offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecutor 10 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except as provided in (*l*) of this section, except for good cause, a court may not consider a request for credit made under this subsection more than 90 days after the sentencing hearing.

(*l*) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a treatment program as a condition of bail while pending appeal, the defendant shall file notice with the court and the prosecutor not later than 90 days after return of the case to the trial court following appeal. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. The court may not consider a request for credit made under this subsection after the deadline. except for good cause

*** Sec. 19.** AS 12.55.027 is amended by adding a new subsection to read:

(e) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program either as a condition of probation or as a condition of bail release after a petition to revoke probation has been filed, the defendant shall file notice with the court and the prosecutor 10 days before the disposition hearing. The notice shall include the amount of time the defendant is claiming. The defendant must prove by a preponderance of the evidence that the credit claimed meets the requirements of this section. A court may not consider, except for good cause, a request for credit made under this subsection more than 90 days after the disposition hearing.

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*** Sec. 20.** AS 12.55.085(f) is amended to read:

(f) The court may not suspend the imposition of sentence of a person who

(1) is convicted of a violation of AS 11.41.100 - 11.41.220, 11.41.260 - 11.41.320, 11.41.360 - 11.41.370, 11.41.410 - 11.41.530, AS 11.46.400, [OR] AS 11.61.125 - 11.61.128**, or AS 11.66.110 - 11.66.135**;

(2) uses a firearm in the commission of the offense for which the person is convicted; or

(3) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony and the person has one or more prior convictions for a misdemeanor violation of AS 11.41 or for a felony or for a violation of a law in this or another jurisdiction having similar elements to an offense defined as a misdemeanor in AS 11.41 or as a felony in this state; for the purposes of this paragraph, a person shall be considered to have a prior conviction even if that conviction has been set aside under (e) of this

section or under the equivalent provision of the laws of another jurisdiction.

*** Sec. 21.** AS 12.55.127 is amended by adding a new subsection to read:

(e) If the defendant is being sentenced for two or more crimes of distribution of child pornography under AS 11.61.125, possession of child pornography under AS 11.61.127, or distribution of indecent material to minors under AS 11.61.128, a consecutive term of imprisonment shall be imposed for some additional term of imprisonment for each additional crime or each additional attempt or solicitation to commit the offense.

*** Sec. 22.** AS 12.55.165 is amended by adding a new subsection to read:

(c) A court may not refer a case to a three-judge panel under (a) of this section if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the request for the referral is based on the claim that the defendant, either singly or in combination,

(1) has prospects for rehabilitation that are less than extraordinary; or

(2) does not have a history of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 23.** AS 12.55.175 is amended by adding a new subsection to read:

(f) A defendant being sentenced for a sexual felony under AS 12.55.125(i) may not establish, nor may the three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposition of a sentence within the presumptive range of law by a showing that the defendant, either singly or in combination,

(1) has prospects for rehabilitation that are less than extraordinary; or

(2) does not have a history of unprosecuted, undocumented, or undetected sexual offenses.

*** Sec. 24.** AS 12.55.185(16) is amended to read:

(16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, **sex trafficking in the first degree,** sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography,

online enticement of a minor, and felony attempt, conspiracy, or solicitation to commit those crimes;

*** Sec. 25.** AS 12.63.100(6) is amended to read:

(6) "sex offense" means

(A) a crime under AS 11.41.100(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit a sexual offense, or a similar offense under the laws of the other jurisdiction; in this subparagraph, "sexual offense" has the meaning given in AS 11.41.100(a)(3);

(B) a crime under AS 11.41.110(a)(3), or a similar law of another jurisdiction, in which the person committed or attempted to commit one of the following crimes, or a similar law of another jurisdiction:

(i) sexual assault in the first degree;

(ii) sexual assault in the second degree;

(iii) sexual abuse of a minor in the first degree; or

(iv) sexual abuse of a minor in the second degree; or

(C) a crime, or an attempt, solicitation, or conspiracy to commit a crime, under the following statutes or a similar law of another jurisdiction:

(i) AS 11.41.410 - 11.41.438;

(ii) AS 11.41.440(a)(2);

(iii) AS 11.41.450 - 11.41.458;

(iv) AS 11.41.460 if the indecent exposure is before a person under 16 years of age and the offender has a previous conviction for that offense;

(v) AS 11.61.125 - 11.61.128;

(vi) AS 11.66.110 or 11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was **under 20** [16 OR 17] years of age at the time of the offense;

(vii) former AS 11.15.120, former 11.15.134, or assault with the intent to commit rape under former AS 11.15.160, former AS 11.40.110, or former 11.40.200; [OR]

(viii) AS 11.61.118(a)(2) if the offender has a previous conviction for that offense; **or**

(ix) AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(c);

*** Sec. 26.** AS 18.66.130(d) is amended to read:

(d) In addition to other required information contained in a protective order, the order must include in bold face type the following statements:

(1) "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and up to a **$10,000** [$5,000] fine";

(2) "If you are ordered to have no contact with the petitioner or to stay away from the petitioner's residence, vehicle, or other place designated by the court, an invitation by the petitioner to have the prohibited contact or to be present at or enter the residence, vehicle, or other place does not in any way invalidate or nullify the order."

*** Sec. 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;

(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 compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses.** The judicial council shall also provide the information and any recommendation to the office of the

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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 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner follows the rules of the correctional facility in which the prisoner is confined. A prisoner is not eligible for a good time deduction if the prisoner has been sentenced

(1) to a mandatory 99-year term of imprisonment under AS 12.55.125(a) after June 27, 1996;

(2) to a definite term under AS 12.55.125(*l*); or

(3) for a sexual felony under AS 12.55.125(i)

(A) and has one or more prior sexual felony convictions as determined under AS 12.55.145(a)(4)**; or**

(B) that is an unclassified or a class A felony.

*** Sec. 31.** AS 44.23.080(a) is amended to read:

(a) If there is reasonable cause to believe that an Internet service account has been used in connection with a violation of AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128, and that the identity, address, and other information about the account owner will assist in obtaining evidence that is relevant to the offense, a law enforcement officer may apply to the attorney general **or the attorney general's designee** for an administrative subpoena to obtain the business records of the Internet service provider located inside or outside of the state.

*** Sec. 32.** AS 44.23.080(b) is amended to read:

(b) If an application meets the requirements of (a) of this section, the attorney general **or the attorney general's designee** may issue an administrative subpoena to the Internet service provider requiring the production of the following records:

(1) the name and other identifying information of the account holder;

(2) the address and physical location associated with the account;

(3) a description of the length of service, service start date, and types of service associated with the account.

*** Sec. 33.** AS 44.23.080(e) is amended to read:

(e) If the Internet service provider refuses to obey a subpoena issued under (b) of this section, the superior court may, upon application of the attorney general **or the attorney general's designee**, issue an order requiring the Internet service provider to appear at the office of the attorney general with the information described in the subpoena.

*** Sec. 34.** AS 44.23.080 is amended by adding a new subsection to read:

(i) For purposes of this section, the attorney general's designee may be the deputy attorney general of the division of the Department of Law that has responsibility for civil cases or the division of the Department of Law that has responsibility for criminal cases.

*** Sec. 35.** AS 47.10.086(c) is amended to read:

(c) The court may determine that reasonable efforts of the type described in (a) of this section are not required if the court has found by clear and convincing evidence that

(1) the parent or guardian has subjected the child to circumstances that pose a substantial risk to the child's health or safety; these circumstances include abandonment, sexual abuse, torture, chronic mental injury, or chronic physical harm;

(2) the parent or guardian has

(A) committed homicide under AS 11.41.100 - 11.41.130 of a parent of the child or of a child;

(B) aided or abetted, attempted, conspired, or solicited under AS 11.16 or AS 11.31 to commit a homicide described in (A) of this paragraph;

(C) committed an assault that is a felony under AS 11.41.200 - 11.41.220 and results in serious physical injury to a child; or

(D) committed the conduct described in (A) - (C) of this

paragraph that violated a law or ordinance of another jurisdiction having elements similar to an offense described in (A) - (C) of this paragraph;

(3) the parent or guardian has, during the 12 months preceding the permanency hearing, failed to comply with a court order to participate in family support services;

(4) the department has conducted a reasonably diligent search over a time period of at least three months for an unidentified or absent parent and has failed to identify and locate the parent;

(5) the parent or guardian is the sole caregiver of the child and the parent or guardian has a mental illness or mental deficiency of such nature and duration that, according to the statement of a psychologist or physician, the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury even if the department were to provide family support services to the parent or guardian for 12 months;

(6) the parent or guardian has previously been convicted of a crime involving a child in this state or in another jurisdiction and, after the conviction, the child was returned to the custody of the parent or guardian and later removed because of an additional substantiated report of physical or sexual abuse by the parent or guardian;

(7) a child has suffered substantial physical harm as the result of abusive or neglectful conduct by the parent or guardian or by a person known by the parent or guardian and the parent or guardian knew or reasonably should have known that the person was abusing the child;

(8) the parental rights of the parent have been terminated with respect to another child because of child abuse or neglect, the parent has not remedied the conditions or conduct that led to the termination of parental rights, and the parent has demonstrated an inability to protect the child from substantial harm or the risk of substantial harm;

(9) the child has been removed from the child's home on at least two previous occasions, family support services were offered or provided to the parent or guardian at those times, and the parent or guardian has demonstrated an inability to

protect the child from substantial harm or the risk of substantial harm; [OR]

(10) the parent or guardian is incarcerated and is unavailable to care for the child during a significant period of the child's minority, considering the child's age and need for care by an adult**; or**

(11) the parent or guardian

(A) has sexually abused the child or another child of the parent or guardian; or

(B) is registered or required to register as a sex offender or child kidnapper under AS 12.63.

*** Sec. 36.** AS 47.17.020(a) is amended to read:

(a) The following persons who, in the performance of their occupational duties, [OR] with respect to (8) of this subsection, in the performance of their appointed duties, **or, with respect to (9) of this subsection, in performance of their occupational or volunteer duties,** have reasonable cause to suspect that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department:

(1) practitioners of the healing arts;

(2) school teachers and school administrative staff members of public and private schools;

(3) peace officers and officers of the Department of Corrections;

(4) administrative officers of institutions;

(5) child care providers;

(6) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.990;

(7) paid employees of an organization that provides counseling or treatment to individuals seeking to control their use of drugs or alcohol;

(8) members of a child fatality review team established under AS 12.65.015(e) or 12.65.120 or the multidisciplinary child protection team created under AS 47.14.300**;**

(9) athletic coaches.

*** Sec. 37.** AS 47.17.290 is amended by adding a new paragraph to read:

(17) "athletic coach" includes a paid or volunteer leader or assistant of a sports team in a public or private school, in a public or private postsecondary institution, or sponsored by a municipality of the state or other local government organization, or of a sports team that receives public funding.

*** Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any material prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, if the prosecuting attorney makes the material reasonably available for inspection by the defendant and defense counsel. The material shall be considered to be made reasonably available to the defendant or defense counsel if the prosecuting attorney provides, at a law enforcement or prosecution facility, ample opportunity for inspection, viewing, and examination of the material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial. If the defendant is not represented by counsel and demonstrates a need to view the material, the court shall make arrangements for the defendant to be supervised while viewing the material. If the defendant or the defendant's attorney identifies an expert outside the state who must view the material, the court shall make arrangements for the court or the law enforcement agency that possesses it to send the material directly to the expert.

*** Sec. 39.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.1(b)(1), Alaska Rules of Criminal Procedure, is amended to read:

(1) Contents and Filing. If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the

presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. **The court may not accept a report that does not include a victim's impact statement, unless the report explains the reason why the victim or the victim's representative could not be interviewed.** The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

* **Sec. 40.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 32.2(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Consideration of Victim's Statement.** If a victim as defined in AS 12.55.185 prepares and submits a written statement, gives sworn testimony or makes an unsworn oral presentation under AS 12.55.023, the court shall take the content of the statement, testimony, or presentation into consideration when preparing those elements of the sentencing report required by AS 12.55.025 that relate to the effect of the offense on the victim, and when considering the need for restitution under AS 12.55.045. **The court shall also take the content of the victim's impact statement in the presentence report into consideration in preparing the sentencing report required under AS 12.55.025.** The court also may take the content of the statement, testimony, **victim's impact statement,** or presentation into consideration for any other appropriate purpose.

* **Sec. 41.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 404(b)(2), Alaska Rules of Evidence, is amended to read:

(2) In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another

rule of evidence and if the prior offenses

(i) [OCCURRED WITHIN THE 10 YEARS PRECEDING THE DATE OF THE OFFENSE CHARGED;

(ii)] are similar to the offense charged; and

(ii) [(iii)] were committed upon persons similar to the prosecuting witness.

*** Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 216(a), Alaska Rules of Appellate Procedure, is amended to read:

(a) **Scope.** This rule applies to the following classes of appeals, and supersedes the other appellate rules to the extent that they may be inconsistent with this rule:

(1) Extradition appeals;

(2) Peremptory challenge appeals**;**

(3) Claim of privilege appeal under AS 12.50.101(g).

*** Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 216(b), Alaska Rules of Appellate Procedure, is amended by adding a new paragraph to read:

(3) A "claim of privilege appeal" is an appeal by the State of Alaska from a finding after a hearing under AS 12.50.101(g) that a witness has a valid claim of privilege.

*** Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Sections 2 - 14, 20, 21, 25, 26, and 30 - 35 of this Act apply to offenses committed on or after the effective date of this Act.

(b) Sections 15 - 17, 22 - 24, 27, and 28 of this Act apply to offenses committed before, on, or after the effective date of this Act.

(c) Section 18 of this Act applies to sentencing hearings on or after the effective date of this Act.

(d) Section 19 of this Act applies to disposition hearings occurring in proceedings on

petitions to revoke probation filed on or after the effective date of this Act.

* **Sec. 45.** This Act takes effect July 1, 2013.

CS FOR SENATE BILL 22
(Work Draft)
Sectional Analysis

Sections 1, 22 and 23 are designed to overturn the majority decision in *Collins v. State,* 287 P. 3d 791 (Alaska App. 2012). *Collins* used a mistaken interpretation of legislative intent to adopt lower standards for referring sex offenders to a three-judge sentencing panel. In 2006 the legislature adopted increased penalties for persons convicted of sex felonies. The legislature adopted specific findings, among others, that sex felons are difficult to treat, are much more likely than other felons to reoffend, that many sex offenders begin victimizing others when the offender is relatively young (between 12 and 16 years of age), and that these crimes cause serious harm to victims, particularly to young girls. When the legislature raised the sentencing ranges for sex felonies, it did not intend that different standards be applied to referral of a case involving a sex felony to a three-judge panel than for other felony offenses. **Section 1** adopts legislative findings and intent to address the *Collins* decision. **Sections 22 and 23** adopt new provisions to the law addressing the transfer of a case from the sentencing judge to a three-judge panel in a case involving a sex felony. These three sections overturn the majority decision and endorse the dissent in *Collins v. State,* 287 P. 3d 791 (Alaska App. 2012).

Section 2 allows a person to bring a civil action at any time against a perpetrator for damages based on injuries resulting from the crimes of sex trafficking and human trafficking.

Sections 3 and 4 amend the crime of sexual assault in the third degree to prohibit a probation or parole officer from engaging in sexual penetration with a person on probation or parole. This is similar to the law prohibiting a police officer or a correctional officer from this conduct with a person in the officer's custody. The terms probation and parole officer are defined; the definition of probation officer includes a person who supervises therapeutic court participants.

These sections also prohibit a juvenile probation officer or juvenile facility staff to engage in sexual penetration with an 18 or 19 year old on juvenile probation or in a juvenile facility. This conduct is a class C felony.

Sections 5 and 6 amend the crime of sexual assault in the fourth degree to prohibit a probation or parole officer from engaging in sexual contact with a person on probation or parole. They also prohibit a juvenile probation officer or juvenile facility staff from engaging in sexual contact with an 18 or 19 year old on probation/or in a juvenile facility. This conduct is a class A misdemeanor.

Section 7 adds a defense that the offender and the person were married for the crime of sexual assault in the fourth degree. It also adds the defense that the offender was mentally incapable for the crime of sexual assault in the fourth degree.

Section 8 fills a gap in the law that prohibits a person ordered by a court not to contact a victim or witness as part of a sentence or a condition of release. It prohibits a defendant who has been ordered by the court not to contact a victim or witness, but who has not been released from jail, to refrain from contacting the victim or witness. This conduct is a class A misdemeanor.

Section 9 allows the state to forfeit property of a patron of a prostitute if the property was used to institute, aid, or facilitate prostitution, or was received or derived from prostitution. It makes the forfeiture discretionary with the court and requires the defendant to be convicted before any property may be forfeited.

Section 10 allows the state to prosecute a person for distribution of child pornography, felony sex trafficking, and human trafficking at any time without regard to the time elapsed from the commission of the crime.

Sections 11 and 12 allow the court the discretion, in releasing on bail a person in connection with a crime involving domestic violence or stalking, to require the defendant to participate in electronic monitoring by a global positioning device or similar technology if it meets guidelines adopted by the Department of Corrections in consultation with the Department of Public Safety.

Section 13 requires that a person arrested for a violation of a condition of release in connection with a domestic violence crime appear before a judge in person or by telephone before release from custody.

Section 14 authorizes the attorney general to make a written application to a court for an order allowing interception of the private communications of a person that may provide evidence that the person is committing or planning to commit sex trafficking in the first or second degree, or human trafficking in the first degree. Sex trafficking and human trafficking are crimes that would require cooperation among perpetrators. Interception of the communications of a person under these circumstances would facilitate the investigation of these crimes.

Section 15 expands the protection of a victim of sexual assault, sexual abuse of a minor, and unlawful exploitation of minor by excluding evidence of the victim's sexual conduct both before and after the person was victimized. Current law provides this protection for evidence of sexual conduct before the offense charged. This rule is commonly referred to as the rape shield law, and the purpose is to

exclude evidence of the victim's private sexual conduct unless the proponent has a valid evidentiary reason for its admission. **Section 15** also requires the defendant to make the request to admit this evidence at least five days before trial, unless the request is based on information learned after the deadline.

Sections 16, 17, 42, and 43 strengthen the procedure for determining whether a witness who claims a Fifth Amendment right not to testify actually is entitled to constitutional protection and a grant of immunity from prosecution if the person testifies. The prosecution does not participate in the procedure to determine whether a person has a valid Fifth Amendment claim and should be awarded immunity from prosecution. The court in a closed hearing with the witness and counsel for the witness makes the decision. **Sections 16 and 17** require the court to personally interview the witness at this closed hearing; the testimony is privileged and cannot be used for any other purpose. The court must then make written findings of fact and conclusions of law in a sealed order. **Sections 42 and 43** amend Rule 216(a) and (b) to allow the state the right to an immediate appeal of the decision to the Court of Appeals.

Section 18 requires a defendant claiming credit for time spent in a treatment program as a condition of bail release to file written notice 10 days before the sentencing hearing on that offense. The notice must include the number of days the person is claiming. A court may not consider a request for credit made more than 90 days after the deadline except for good cause.

Section 18 also requires a person to make a request for credit for time spent in a treatment program pending appeal within 90 days after the case is returned to the trial court following appeal.

Section 19 requires a defendant claiming credit for time spent in a treatment program as a condition of probation or a condition of bail release in connection with a petition to revoke probation to file notice of the request 10 days before the disposition hearing on the petition. The notice must include the number of requested days of credit. A court may not consider a request for credit made more than 90 days after the deadline except for good cause.

Section 20 makes a person convicted for sex trafficking ineligible for a suspended imposition of sentence.

Sections 21 requires the court in sentencing a person convicted of two or more crimes of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors to give some consecutive time for each crime or attempted or solicited crime for which the defendant is being sentenced.

Sections 22 and 23 – please refer to discussion at **Section 1.**

Section 24 corrects an error in the definition of sexual felony by including the crimes of sex trafficking in the first degree and online enticement of a minor in the definition. The term is used in AS 12.55.125(i), which adopts higher sentencing ranges for most sex felonies, including sex trafficking in the first degree and online enticement of a minor.

Section 25 adds the felony of being a patron of a prostitute who is under 18 years of age in violation of AS 11.66.100 to those crimes that require registration as a sex offender, if the patron is 18 years or older and at least three years older than the prostitute. It also corrects a reference to the crime of sex trafficking in the first degree and the third degree in the sex offender law.

Section 26 makes a conforming amendment to the warning on domestic violence protective orders. Certain violations of a domestic violence protective order are a class A misdemeanor under AS 11.56.740. The maximum fine for a class A misdemeanor has been raised to $10,000 under AS 12.55.035. **Section 26** updates the warning to describe the maximum fine.

Section 27 adds to the definition of victim counseling centers to include victim counseling centers operated by or contracted by a branch of the armed forces of the United States. The effect of this change is to extend the privilege for confidential communications between a victim of sexual assault or domestic violence and their counselors to counseling organizations that provide services to victims connected with the military.

Section 28 amends the law addressing persons who are eligible for violent crimes compensation to include victims of sex trafficking, human trafficking, and unlawful exploitation of a minor.

Sections 29, 39, and 40 strengthen and make more explicit statutes and court rules that require a court to consider the crime's impact on the victim. **Section 39** requires the presentence report to include a victim impact statement or an explanation of why the victim or victim's representative could not be interviewed. **Section 40** requires the court to take the victim's impact statement into account when preparing the sentencing report and for other purposes. **Section 29** requires the Alaska Judicial Council to include information about a judge's compliance with AS 12.55.025(a)(5), with other information about the judge for a retention election. AS 12.55.025(a)(5) requires a court in preparing the sentencing report to include information about the financial, emotional, and medical effects of the crime on the victim, and the victim's need for restitution.

Section 30 provides that a person convicted of an unclassified or class A sexual felony is not eligible for mandatory parole (also called good time).

Sections 32 -- 34 address the procedure for a law enforcement officer to obtain an administrative subpoena for the business records of an Internet service provider. These subpoenas may be issued in the investigation of the crimes of online enticement of a minor, unlawful exploitation of a minor, distribution of child pornography, possession of child pornography, and distribution of indecent material to a minor. The amendments allow the attorney general to designate the deputy attorney general for the civil division or the criminal division to evaluate applications for the subpoena, in addition to the attorney general. The investigation of these cases often requires a prompt response to a request for a subpoena, and having two attorneys who may approve them will assist law enforcement in their investigations.

Section 35 adds to those circumstances that allow a court to decide that reasonable efforts by the Office of Children's Services to reunite a child who is in an out-of-home placement with the child's family are not required. It provides that the court may make this determination if it finds by clear and convincing evidence that the parent or guardian has committed sexual abuse against the child or another child of the parent or guardian, or that the parent or guardian is registered or required to register as a sex offender.

Sections 36 and 37 add athletic coaches to those persons who are required to report to authorities if the coach has reasonable cause to believe that a child has suffered harm from child abuse or neglect. Athletic coach is defined to include both paid and volunteer coaches.

Section 38 adopts a court rule that limits the publication of child pornography that is required during the discovery process in a prosecution for unlawful exploitation of a minor. Because every viewing of child pornography is an additional harm to the victim, this section requires the defendant and the defendant's attorney to view the material where it is stored. If a defendant is not represented, it requires the court to arrange for the defendant to be supervised while viewing the material. If the defendant requests that an expert witness out of state view the material, it requires the court to arrange to send the material directly to the expert.

Sections 39 and 40 – please refer to discussion at **Section 29**.

Section 41 amends Rule 404(b)(2)(i), Alaska Rules of Evidence. Under Rule 404, evidence of the defendant's prior bad acts is generally not admissible. There are several exceptions to this rule. Evidence in the prosecution of a physical or sexual assault or abuse of a minor that describes other similar acts by the defendant

toward the same victim or other similar victims may be admissible. Current law, however, limits the admissible evidence to acts committed within 10 years preceding the date of the currently charged crime. **Section 41** removes this time limitation. Other exceptions to the general rule, for example, sexual assault and domestic violence prosecutions, do not limit the use of prior acts to those committed within 10 years of the current offense. Further, the 10 year limit is problematic because a person convicted of a crime against a child may have been incarcerated for a significant period for the previous offense. The question of whether the prior act occurred too far in the past is then left to the judge to determine under the circumstances of the case.

Sections 42 and 43 – please refer to discussion at **Sections 16 and 17.**

Section 44 adopts applicability provisions.

Section 45 provides an effective date of July 1, 2013.

LEGAL SERVICES

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MEMORANDUM March 7, 2013

SUBJECT: Incorporation of amendment into CSSB 22(JUD)
(Work Order No 28-GS1587\C)

TO: Senator John Coghill
Chair of the Senate Judiciary Committee
Attn: Karen Lidster

FROM: Kathleen Strasbaugh
Legislative Counsel

Please find enclosed the final version above bill, which incorporates the three amendments made at the Senate Judiciary Committee's March 5, 2013, meeting. Based on my discussion with Ms. Lidster Wednesday morning about the conceptual amendment concerning the obligation of athletic coaches to report child abuse under AS 47.17.020, I have incorporated amendment U.13 (with the deletion of "a week" from line 8 -- an error in the original), and restored associated language from the "U" version for which U.13 was originally drafted. I believe the enclosed "C" version of the bill accurately incorporates the amendment as intended by the committee, but if it does not, please let me know.

If I can be of further assistance, please advise.

KJS:ljw
13-148.ljw

Enclosure