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Source

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Chapter No.

AN ACT

Relating to sex offenders and child kidnappers; relating to periodic polygraph examinations for sex offenders released on probation or parole; relating to sexual abuse of a minor; relating to the definitions of "aggravated sex offense" and "child kidnapping"; relating to penalties for failure to report child abuse or neglect; relating to sentencing for sex offenders and habitual criminals; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to sex offenders and child kidnappers; relating to periodic polygraph examinations
2 for sex offenders released on probation or parole; relating to sexual abuse of a minor; relating
3 to the definitions of "aggravated sex offense" and "child kidnapping"; relating to penalties for
4 failure to report child abuse or neglect; relating to sentencing for sex offenders and habitual
5 criminals; and providing for an effective date.

6

7 * **Section 1.** AS 11.41.436(a) is amended to read:

8 (a) An offender commits the crime of sexual abuse of a minor in the second
9 degree if,

10 (1) being **17** [16] years of age or older, the offender engages in sexual
11 penetration with a person who is 13, 14, or 15 years of age and at least **four** [THREE]
12 years younger than the offender, or aids, induces, causes, or encourages a person who
13 is 13, 14, or 15 years of age and at least **four** [THREE] years younger than the

1 offender to engage in sexual penetration with another person;

2 (2) being 16 years of age or older, the offender engages in sexual
3 contact with a person who is under 13 years of age or aids, induces, causes, or
4 encourages a person under 13 years of age to engage in sexual contact with another
5 person;

6 (3) being 18 years of age or older, the offender engages in sexual
7 contact with a person who is under 18 years of age, and the offender is the victim's
8 natural parent, stepparent, adopted parent, or legal guardian;

9 (4) being 16 years of age or older, the offender aids, induces, causes,
10 or encourages a person who is under 16 years of age to engage in conduct described in
11 AS 11.41.455(a)(2) - (6); [OR]

12 (5) being 18 years of age or older, the offender engages in sexual
13 contact with a person who is under 16 years of age, and

14 (A) the victim at the time of the offense is residing in the same
15 household as the offender and the offender has authority over the victim; or

16 (B) the offender occupies a position of authority in relation to
17 the victim;

18 **(6) being 20 years of age or older, the offender engages in sexual**
19 **penetration with a person who is 16 or 17 years of age and at least four years**
20 **younger than the offender, and the offender occupies a position of authority in**
21 **relation to the victim; or**

22 **(7) being under 16 years of age, the offender engages in sexual**
23 **penetration with a person who is under 13 years of age and at least three years**
24 **younger than the offender.**

25 * **Sec. 2.** AS 11.41.438(a) is amended to read:

26 (a) An offender commits the crime of sexual abuse of a minor in the third
27 degree if

28 [(1)] being **17** [16] years of age or older, the offender engages in
29 sexual contact with a person who is 13, 14, or 15 years of age and at least **four**
30 [THREE] years younger than the offender [;

31 (2) BEING 18 YEARS OF AGE OR OLDER, THE OFFENDER

1 ENGAGES IN SEXUAL PENETRATION WITH A PERSON WHO IS 16 OR 17
2 YEARS OF AGE AND AT LEAST THREE YEARS YOUNGER THAN THE
3 OFFENDER, AND THE OFFENDER OCCUPIES A POSITION OF AUTHORITY
4 IN RELATION TO THE VICTIM; OR

5 (3) BEING UNDER 16 YEARS OF AGE, THE OFFENDER
6 ENGAGES IN SEXUAL PENETRATION WITH A PERSON WHO IS UNDER 13
7 YEARS OF AGE AND AT LEAST THREE YEARS YOUNGER THAN THE
8 OFFENDER].

9 * **Sec. 3.** AS 12.55.100 is amended by adding a new subsection to read:

10 (e) While on probation and as a condition of probation for a sex offense, the
11 defendant shall be required to submit to regular periodic polygraph examinations. In
12 this subsection, "sex offense" has the meaning given in AS 12.63.100.

13 * **Sec. 4.** AS 12.55.125(i) is amended to read:

14 (i) A defendant convicted of

15 (1) sexual assault in the first degree or sexual abuse of a minor in the
16 first degree may be sentenced to a definite term of imprisonment of not more than 99
17 years and shall be sentenced to a definite term within the following presumptive
18 ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

19 (A) if the offense is a first felony conviction, **the offense**
20 [AND] does not involve circumstances described in (B) of this paragraph, **and**
21 **the victim was**

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

23 **(ii) 13 years of age or older, 20 to 30 [EIGHT TO 12]**

24 years;

25 (B) if the offense is a first felony conviction and the defendant
26 possessed a firearm, used a dangerous instrument, or caused serious physical
27 injury during the commission of the offense, **25 to 35** [12 TO 16] years;

28 (C) if the offense is a second felony conviction and does not
29 involve circumstances described in (D) of this paragraph, **30 to 40** [15 TO 20]
30 years;

31 (D) if the offense is a second felony conviction and the

1 defendant has a prior conviction for a sexual felony, **35 to 45** [20 TO 30]
2 years;

3 (E) if the offense is a third felony conviction and the defendant
4 is not subject to sentencing under (F) of this paragraph or (I) of this section, **40**
5 **to 60** [25 TO 35] years;

6 (F) if the offense is a third felony conviction, the defendant is
7 not subject to sentencing under (I) of this section, and the defendant has two
8 prior convictions for sexual felonies, **99** [30 TO 40] years;

9 (2) attempt, conspiracy, or solicitation to commit sexual assault in the
10 first degree or sexual abuse of a minor in the first degree may be sentenced to a
11 definite term of imprisonment of not more than **99** [30] years and shall be sentenced to
12 a definite term within the following presumptive ranges, subject to adjustment as
13 provided in AS 12.55.155 - 12.55.175:

14 (A) if the offense is a first felony conviction, **the offense**
15 [AND] does not involve circumstances described in (B) of this paragraph, **and**
16 **the victim was**

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

18 **(ii) 13 years of age or older, 15 to 30** [FIVE TO
19 EIGHT] years;

20 (B) if the offense is a first felony conviction [,] and the
21 defendant possessed a firearm, used a dangerous instrument, or caused serious
22 physical injury during the commission of the offense, **25 to 35** [10 TO 14]
23 years;

24 (C) if the offense is a second felony conviction and does not
25 involve circumstances described in (D) of this paragraph, **25 to 35** [12 TO 16]
26 years;

27 (D) if the offense is a second felony conviction and the
28 defendant has a prior conviction for a sexual felony, **30 to 40** [15 TO 20]
29 years;

30 (E) if the offense is a third felony conviction, **the offense** does
31 not involve circumstances described in (F) of this paragraph, and the defendant

1 is not subject to sentencing under (I) of this section, **35 to 50** [15 TO 25] years;

2 (F) if the offense is a third felony conviction, the defendant is
3 not subject to sentencing under (I) of this section, and the defendant has two
4 prior convictions for sexual felonies, **99** [20 TO 30] years;

5 (3) sexual assault in the second degree, sexual abuse of a minor in the
6 second degree, unlawful exploitation of a minor, or distribution of child pornography
7 may be sentenced to a definite term of imprisonment of not more than **99** [20] years
8 and shall be sentenced to a definite term within the following presumptive ranges,
9 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

10 (A) if the offense is a first felony conviction, **five to 15** [TWO
11 TO FOUR] years;

12 (B) if the offense is a second felony conviction and does not
13 involve circumstances described in (C) of this paragraph, **10 to 25** [FIVE TO
14 EIGHT] years;

15 (C) if the offense is a second felony conviction and the
16 defendant has a prior conviction for a sexual felony, **15 to 30** [10 TO 14]
17 years;

18 (D) if the offense is a third felony conviction and does not
19 involve circumstances described in (E) of this paragraph, **20 to 35** [10 TO 14]
20 years;

21 (E) if the offense is a third felony conviction and the defendant
22 has two prior convictions for sexual felonies, **99** [15 TO 20] years;

23 (4) sexual assault in the third degree, incest, indecent exposure in the
24 first degree, possession of child pornography, or attempt, conspiracy, or solicitation to
25 commit sexual assault in the second degree, sexual abuse of a minor in the second
26 degree, unlawful exploitation of a minor, or distribution of child pornography, may be
27 sentenced to a definite term of imprisonment of not more than **99** [10] years and shall
28 be sentenced to a definite term within the following presumptive ranges, subject to
29 adjustment as provided in AS 12.55.155 - 12.55.175:

30 (A) if the offense is a first felony conviction, **two to 12** [ONE
31 TO TWO] years;

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

4 (C) if the offense is a second felony conviction and the
5 defendant has a prior conviction for a sexual felony, **12 to 20** [THREE TO
6 SIX] years;

7 (D) if the offense is a third felony conviction and does not
8 involve circumstances described in (E) of this paragraph, **15 to 25** [THREE TO
9 SIX] years;

10 (E) if the offense is a third felony conviction and the defendant
11 has two prior convictions for sexual felonies, **99** [SIX TO 10] years.

12 * **Sec. 5.** AS 12.55.125(j) is amended to read:

13 (j) A defendant sentenced to a (1) mandatory term of imprisonment of 99
14 years under (a) of this section may apply once for a modification or reduction of
15 sentence under the Alaska Rules of Criminal Procedure after serving one-half of the
16 mandatory term without consideration of good time earned under AS 33.20.010, or (2)
17 definite term of imprisonment under (l) of this section may apply once for a
18 modification or reduction of sentence under the Alaska Rules of Criminal Procedure
19 after serving [THE GREATER OF (A)] one-half of the definite term [OR (B) 30
20 YEARS]. A defendant may not file and a court may not entertain more than one
21 motion for modification or reduction of a sentence subject to this subsection,
22 regardless of whether or not the court granted or denied a previous motion.

23 * **Sec. 6.** AS 12.55.125(l) is amended to read:

24 (l) Notwithstanding any other provision of law, a defendant convicted of an
25 unclassified or class A felony offense, and not subject to a mandatory 99-year
26 sentence under (a) of this section, shall be sentenced to a definite term of
27 imprisonment of [AT LEAST 40 YEARS BUT NOT MORE THAN] 99 years when
28 the defendant has been previously convicted of two or more most serious felonies
29 [AND THE PROSECUTING ATTORNEY HAS FILED A NOTICE OF INTENT TO
30 SEEK A DEFINITE SENTENCE UNDER THIS SUBSECTION AT THE TIME
31 THE DEFENDANT WAS ARRAIGNED IN SUPERIOR COURT]. If a defendant is

1 sentenced to a definite term under this subsection,

2 (1) imprisonment for the prescribed definite term may not be
3 suspended under AS 12.55.080;

4 (2) imposition of sentence may not be suspended under AS 12.55.085;

5 (3) imprisonment for the prescribed definite term may not be reduced,
6 except as provided in (j) of this section.

7 * **Sec. 7.** AS 12.55.125 is amended by adding a new subsection to read:

8 (o) Other than for convictions subject to a mandatory 99-year sentence, the
9 court shall impose, in addition to an active term of imprisonment imposed under (i) of
10 this section, a minimum period of (1) suspended imprisonment of five years and a
11 minimum period of probation supervision of 15 years for conviction of an unclassified
12 felony, (2) suspended imprisonment of three years and a minimum period of probation
13 supervision of 10 years for conviction of a class A or class B felony, or (3) suspended
14 imprisonment of two years and a minimum period of probation supervision of five
15 years for conviction of a class C felony. The period of probation is in addition to any
16 sentence received under (i) of this section and may not be suspended or reduced. Upon
17 a defendant's release from confinement in a correctional facility, the defendant is
18 subject to this probation requirement and shall submit and comply with the terms and
19 requirements of the probation.

20 * **Sec. 8.** AS 12.63.100(1) is amended to read:

21 (1) "aggravated sex offense" means

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

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

30 (i) sexual assault in the first degree;

31 (ii) sexual assault in the second degree;

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

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

3 (C) a crime, or an attempt, solicitation, or conspiracy to commit
4 a crime, under AS 11.41.410, 11.41.434, or a similar law of another
5 jurisdiction **or a similar provision under a former law of this state;**

6 * **Sec. 9.** AS 12.63.100(2) is amended to read:

7 (2) "child kidnapping" means

8 (A) a crime under AS 11.41.100(a)(3), or a similar law of
9 another jurisdiction, in which the person committed or attempted to commit
10 kidnapping;

11 (B) a crime under AS 11.41.110(a)(3), or a similar law of
12 another jurisdiction, in which the person committed or attempted to commit
13 kidnapping if the victim was under 18 years of age at the time of the offense;
14 or

15 (C) a crime, or an attempt, solicitation, or conspiracy to commit
16 a crime, under AS 11.41.300, or a similar law of another jurisdiction **or a**
17 **similar provision under a former law of this state,** if the victim was under
18 18 years of age at the time of the offense;

19 * **Sec. 10.** AS 33.16.150(a) is amended to read:

20 (a) As a condition of parole, a prisoner released on special medical,
21 discretionary, or mandatory parole

22 (1) shall obey all state, federal, or local laws or ordinances, and any
23 court orders applicable to the parolee;

24 (2) shall make diligent efforts to maintain steady employment or meet
25 family obligations;

26 (3) shall, if involved in education, counseling, training, or treatment,
27 continue in the program unless granted permission from the parole officer assigned to
28 the parolee to discontinue the program;

29 (4) shall report

30 (A) upon release to the parole officer assigned to the parolee;

31 (B) at other times, and in the manner, prescribed by the board

1 or the parole officer assigned to the parolee;

2 (5) shall reside at a stated place and not change that residence without
3 notifying, and receiving permission from, the parole officer assigned to the parolee;

4 (6) shall remain within stated geographic limits unless written
5 permission to depart from the stated limits is granted the parolee;

6 (7) may not use, possess, handle, purchase, give, distribute, or
7 administer a controlled substance as defined in AS 11.71.900 or under federal law or a
8 drug for which a prescription is required under state or federal law without a
9 prescription from a licensed medical professional to the parolee;

10 (8) may not possess or control a firearm; in this paragraph, "firearm"
11 has the meaning given in AS 11.81.900;

12 (9) may not enter into an agreement or other arrangement with a law
13 enforcement agency or officer that will place the parolee in the position of violating a
14 law or parole condition without the prior approval of the board;

15 (10) may not contact or correspond with anyone confined in a
16 correctional facility of any type serving any term of imprisonment or a felon without
17 the permission of the parole officer assigned to a parolee;

18 (11) shall agree to waive extradition from any state or territory of the
19 United States and to not contest efforts to return the parolee to the state;

20 (12) shall provide a blood sample, an oral sample, or both, when
21 requested by a health care professional acting on behalf of the state to provide the
22 sample or samples, or an oral sample when requested by a juvenile or adult
23 correctional, probation, or parole officer, or a peace officer, if the prisoner is being
24 released after a conviction of an offense requiring the state to collect the sample or
25 samples for the deoxyribonucleic acid identification system under AS 44.41.035;

26 **(13) from a conviction for a sex offense shall submit to regular**
27 **periodic polygraph examinations; in this paragraph, "sex offense" has the**
28 **meaning given in AS 12.63.100.**

29 * **Sec. 11.** AS 47.17.068 is amended to read:

30 **Sec. 47.17.068. Penalty for failure to report.** A person who fails to comply
31 with the provisions of AS 47.17.020 or 47.17.023 and who knew or should have

1 known that the circumstances gave rise to the need for a report, is guilty of a **class A**
2 [CLASS B] misdemeanor.

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

5 DIRECTION TO DEPARTMENT OF PUBLIC SAFETY CONCERNING
6 CENTRAL REGISTRY OF SEX OFFENDERS AND CHILD KIDNAPPERS. The
7 Department of Public Safety shall provide on the Internet website that the department
8 maintains for the central registry of sex offenders and child kidnappers information as to how
9 members of the public using the website may access or compile the information relating to
10 sex offenders or child kidnappers for a particular geographic area on a map. The information
11 may direct members to mapping programs available on the Internet and to Internet websites
12 where information contained in the registry has already been converted to a map or
13 geographic format.

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

16 APPLICABILITY. Sections 1, 2, 4 - 7, and 11 of this Act apply to offenses committed
17 on or after the effective date of this section. References to prior offenses or convictions in
18 secs. 4 and 6 of this Act include offenses committed before, on, or after the effective date of
19 this section. Sections 3 and 10 of this Act apply to persons on probation or parole for offenses
20 committed before, on, or after the effective date of secs. 3 and 10 of this Act.

21 * **Sec. 14.** Sections 3 and 10 of this Act take effect July 1, 2007.

22 * **Sec. 15.** Except as provided in sec. 14 of this Act, this Act takes effect immediately under
23 AS 01.10.070(c).