

CS FOR HOUSE BILL NO. 359(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/21/12

Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to conspiracy to commit human trafficking in the first degree or sex**
2 **trafficking in the first degree; relating to the crime of distribution of indecent material**
3 **to minors, the crime of online enticement of a minor, the crime of prostitution, and the**
4 **crime of sex trafficking; relating to forfeiture of property used in prostitution offenses;**
5 **relating to testimony by video conference; adding Rule 38.3, Alaska Rules of Criminal**
6 **Procedure; and providing for an effective date."**

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

8 * **Section 1.** AS 04.06.110 is amended to read:

9 **Sec. 04.06.110. Peace officer powers.** The director and the persons employed
10 for the administration and enforcement of this title may, with the concurrence of the
11 commissioner of public safety, exercise the powers of peace officers when those
12 powers are specifically granted by the board. Powers granted by the board under this
13 section may be exercised only when necessary for the enforcement of the criminally

1 punishable provisions of this title, regulations of the board, and other criminally
 2 punishable laws and regulations, including investigation of violations of laws against
 3 prostitution and **sex trafficking** [PROMOTING PROSTITUTION] described in
 4 **AS 11.66.100 - 11.66.135** [AS 11.66.100 - 11.66.130] and laws against gambling,
 5 promoting gambling, and related offenses described in AS 11.66.200 - 11.66.280.

6 * **Sec. 2.** AS 04.11.370(a) is amended to read:

7 (a) A license or permit shall be suspended or revoked if the board finds

8 (1) misrepresentation of a material fact on an application made under
 9 this title or a regulation adopted under this title;

10 (2) continuation of the manufacture, sale, or service of alcoholic
 11 beverages by the licensee or permittee would be contrary to the best interests of the
 12 public;

13 (3) failure on the part of the licensee to correct a defect that constitutes
 14 a violation of this title, a condition or restriction imposed by the board, a regulation
 15 adopted under this title, or other laws after receipt of notice issued by the board or its
 16 agent;

17 (4) conviction of a licensee of a violation of this title, a regulation
 18 adopted under this title, or an ordinance adopted under AS 04.21.010;

19 (5) conviction of an agent or employee of a licensee of a violation of
 20 this title, a regulation adopted under this title, or an ordinance adopted under
 21 AS 04.21.010, if the licensee is found by the board to have either knowingly allowed
 22 the violation or to have recklessly or with criminal negligence failed to act in
 23 accordance with the duty prescribed under AS 04.21.030 with the result that the agent
 24 or employee violates a law, regulation, or ordinance;

25 (6) failure of the licensee to comply with the public health, fire, or
 26 safety laws and regulations in the state;

27 (7) use of the licensed premises as a resort for illegal possessors or
 28 users of narcotics, prostitutes, or **sex traffickers** [PROMOTERS OF
 29 PROSTITUTION]; in addition to any other legally competent evidence, the character
 30 of the premises may be proved by the general reputation of the premises in the
 31 community as a resort for illegal possessors or users of narcotics, prostitutes, or **sex**

1 **traffickers** [PROMOTERS OF PROSTITUTION];

2 (8) occurrence of illegal gambling within the limits of the licensed
3 premises;

4 (9) the licensee permitted a public offense involving moral turpitude to
5 occur on the licensed premises;

6 (10) violation by a licensee of this title, a condition or restriction
7 imposed by the board, a regulation adopted under this title, or an ordinance adopted
8 under AS 04.21.010; or

9 (11) violation by an agent or employee of a licensee of a provision of
10 this title, a condition or restriction imposed by the board, a regulation adopted under
11 this title, or an ordinance adopted under AS 04.21.010, if the licensee is found by the
12 board to have either knowingly allowed the violation or to have recklessly or with
13 criminal negligence failed to act in accordance with the duty prescribed under
14 AS 04.21.030 with the result that the agent or employee violates the law, condition or
15 restriction, regulation, or ordinance.

16 * **Sec. 3.** AS 11.31.120(h)(2) is amended to read:

17 (2) "serious felony offense" means an offense

18 (A) against the person under AS 11.41, punishable as an
19 unclassified or class A felony;

20 (B) involving controlled substances under AS 11.71,
21 punishable as an unclassified, class A, or class B felony;

22 (C) that is criminal mischief in the first degree under
23 AS 11.46.475; [OR]

24 (D) that is terroristic threatening in the first degree under
25 AS 11.56.807;

26 **(E) that is human trafficking in the first degree under**
27 **AS 11.41.360; or**

28 **(F) that is sex trafficking in the first degree under**
29 **AS 11.66.110.**

30 * **Sec. 4.** AS 11.61.128(a) is amended to read:

31 (a) A person commits the crime of distribution of indecent material to minors

1 if

2 (1) the person, being 18 years of age or older, **intentionally**
 3 [KNOWINGLY] distributes **or possesses with intent to distribute any material**
 4 **described in (2) and (3) of this subsection to either**

5 **(A) a child that the person knows is under 16 years of age;**

6 **or**

7 **(B) another person that the person believes is a child under**
 8 **16 years of age;**

9 **(2) the person knows that the material** [TO ANOTHER PERSON
 10 ANY MATERIAL THAT] depicts the following actual or simulated conduct:

11 (A) sexual penetration;

12 (B) the lewd touching of a person's genitals, anus, or female
 13 breast;

14 (C) masturbation;

15 (D) bestiality;

16 (E) the lewd exhibition of a person's genitals, anus, or female
 17 breast; or

18 (F) sexual masochism or sadism; **and**

19 **(3) [(2)] the material is harmful to minors [; AND**

20 **(3) EITHER**

21 (A) THE OTHER PERSON IS A CHILD UNDER 16 YEARS
 22 OF AGE; OR

23 (B) THE PERSON BELIEVES THAT THE OTHER PERSON
 24 IS A CHILD UNDER 16 YEARS OF AGE].

25 * **Sec. 5.** AS 11.66.100(b) is amended to read:

26 (b) **Except as provided in (c) of this section, prostitution**
 27 [PROSTITUTION] is a class B misdemeanor.

28 * **Sec. 6.** AS 11.66.100 is amended by adding new subsections to read:

29 (c) Prostitution is a class C felony if

30 (1) the defendant violates (a) of this section as a patron of a prostitute;

31 (2) the prostitute is under 18 years of age; and

1 (3) the defendant is over 18 years of age and at least three years older
2 than the prostitute.

3 (d) In a prosecution under (c) of this section, it is an affirmative defense that,
4 at the time of the alleged offense, the defendant

5 (1) reasonably believed the prostitute to be 18 years of age or older;
6 and

7 (2) undertook reasonable measures to verify that the prostitute was 18
8 years of age or older.

9 * **Sec. 7.** AS 11.66.110(a) is amended to read:

10 (a) A person commits the crime of **sex trafficking** [PROMOTING
11 PROSTITUTION] in the first degree if the person

12 (1) induces or causes a person to engage in prostitution through the use
13 of force;

14 (2) as other than a patron of a prostitute, induces or causes a person
15 under 18 years of age to engage in prostitution; or

16 (3) induces or causes a person in that person's legal custody to engage
17 in prostitution.

18 * **Sec. 8.** AS 11.66.110(c) is amended to read:

19 (c) Except as provided in (d) of this section, **sex trafficking** [PROMOTING
20 PROSTITUTION] in the first degree is a class A felony.

21 * **Sec. 9.** AS 11.66.120 is amended to read:

22 **Sec. 11.66.120. Sex trafficking [PROMOTING PROSTITUTION] in the**
23 **second degree.** (a) A person commits the crime of **sex trafficking** [PROMOTING
24 PROSTITUTION] in the second degree if the person

25 (1) manages, supervises, controls, or owns, either alone or in
26 association with others, a prostitution enterprise other than a place of prostitution;

27 (2) procures or solicits a patron for a prostitute; or

28 (3) offers, sells, advertises, promotes, or facilitates travel that includes
29 commercial sexual conduct as enticement for the travel; in this paragraph,
30 "commercial sexual conduct" means sexual conduct for which anything of value is
31 given or received by any person.

1 (b) **Sex trafficking** [PROMOTING PROSTITUTION] in the second degree is
2 a class B felony.

3 * **Sec. 10.** AS 11.66.130 is amended to read:

4 **Sec. 11.66.130. Sex trafficking [PROMOTING PROSTITUTION] in the**
5 **third degree.** (a) A person commits the crime of **sex trafficking** [PROMOTING
6 PROSTITUTION] in the third degree if, with intent to promote prostitution, the
7 person

8 (1) manages, supervises, controls, or owns, either alone or in
9 association with others, a place of prostitution;

10 (2) as other than a patron of a prostitute, induces or causes a person 18
11 years of age or older to engage in prostitution;

12 (3) as other than a prostitute receiving compensation for personally
13 rendered prostitution services, receives or agrees to receive money or other property
14 **under** [PURSUANT TO] an agreement or understanding that the money or other
15 property is derived from prostitution; or

16 (4) engages in conduct that institutes, aids, or facilitates a prostitution
17 enterprise.

18 (b) **Sex trafficking** [PROMOTING PROSTITUTION] in the third degree is a
19 class C felony.

20 * **Sec. 11.** AS 11.66.135 is amended to read:

21 **Sec. 11.66.135. Sex trafficking [PROMOTING PROSTITUTION] in the**
22 **fourth degree.** (a) A person commits the crime of **sex trafficking** [PROMOTING
23 PROSTITUTION] in the fourth degree if the person engages in conduct that institutes,
24 aids, or facilitates prostitution under circumstances not proscribed under
25 AS 11.66.130(a)(4).

26 (b) **Sex trafficking** [PROMOTING PROSTITUTION] in the fourth degree is
27 a class A misdemeanor.

28 * **Sec. 12.** AS 11.66.140 is amended to read:

29 **Sec. 11.66.140. Corroboration of certain testimony not required.** In a
30 prosecution under **AS 11.66.110 - 11.66.135** [AS 11.66.110 - 11.66.130], it is not
31 necessary that the testimony of the person whose prostitution is alleged to have been

1 compelled or promoted be corroborated by the testimony of any other witness or by
2 documentary or other types of evidence.

3 * **Sec. 13.** AS 11.66.145 is amended to read:

4 **Sec. 11.66.145. Forfeiture.** Property used to institute, aid, or facilitate, or
5 received or derived from, a violation of **AS 11.66.100(c) or 11.66.110 - 11.66.135**
6 [AS 11.66.110 - 11.66.135] shall be forfeited.

7 * **Sec. 14.** AS 11.81.250(a) is amended to read:

8 (a) For purposes of sentencing under AS 12.55, all offenses defined in this
9 title, except murder in the first and second degree, attempted murder in the first
10 degree, solicitation to commit murder in the first degree, conspiracy to commit murder
11 in the first degree, murder of an unborn child, sexual assault in the first degree, sexual
12 abuse of a minor in the first degree, misconduct involving a controlled substance in the
13 first degree, **sex trafficking** [PROMOTING PROSTITUTION] in the first degree
14 under AS 11.66.110(a)(2), and kidnapping, are classified on the basis of their
15 seriousness, according to the type of injury characteristically caused or risked by
16 commission of the offense and the culpability of the offender. Except for murder in the
17 first and second degree, attempted murder in the first degree, solicitation to commit
18 murder in the first degree, conspiracy to commit murder in the first degree, murder of
19 an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first
20 degree, misconduct involving a controlled substance in the first degree, **sex**
21 **trafficking** [PROMOTING PROSTITUTION] in the first degree under
22 AS 11.66.110(a)(2), and kidnapping, the offenses in this title are classified into the
23 following categories:

24 (1) class A felonies, which characteristically involve conduct resulting
25 in serious physical injury or a substantial risk of serious physical injury to a person;

26 (2) class B felonies, which characteristically involve conduct resulting
27 in less severe violence against a person than class A felonies, aggravated offenses
28 against property interests, or aggravated offenses against public administration or
29 order;

30 (3) class C felonies, which characteristically involve conduct serious
31 enough to deserve felony classification but not serious enough to be classified as A or

1 B felonies;

2 (4) class A misdemeanors, which characteristically involve less severe
3 violence against a person, less serious offenses against property interests, less serious
4 offenses against public administration or order, or less serious offenses against public
5 health and decency than felonies;

6 (5) class B misdemeanors, which characteristically involve a minor
7 risk of physical injury to a person, minor offenses against property interests, minor
8 offenses against public administration or order, or minor offenses against public health
9 and decency;

10 (6) violations, which characteristically involve conduct inappropriate
11 to an orderly society but which do not denote criminality in their commission.

12 * **Sec. 15.** AS 11.81.250(b) is amended to read:

13 (b) The classification of each felony defined in this title, except murder in the
14 first and second degree, attempted murder in the first degree, solicitation to commit
15 murder in the first degree, conspiracy to commit murder in the first degree, murder of
16 an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first
17 degree, misconduct involving a controlled substance in the first degree, **sex**
18 **trafficking in the first degree under AS 11.66.110(a)(2)**, and kidnapping, is
19 designated in the section defining it. A felony under **the** [ALASKA] law **of this state**
20 defined outside this title for which no penalty is specifically provided is a class C
21 felony.

22 * **Sec. 16.** AS 12.47.100 is amended by adding a new subsection to read:

23 (h) In a hearing to determine competency under this section, the court may, at
24 the court's discretion, allow a witness, including a psychiatrist or psychologist who
25 examined the defendant, to testify concerning the competency of the defendant by
26 contemporaneous two-way video conference if the witness is in a place from which
27 people customarily travel by air to the court, and the procedure allows the parties a fair
28 opportunity to examine the witness. The video conference technician shall be the only
29 person in the presence of the witness unless the court, at the court's discretion,
30 determines that another person may be present. Any person present with the witness
31 must be identified on the record. In this subsection, "contemporaneous two-way video

1 conference"

2 (1) means a conference among people at different places by means of
3 transmitted audio and video signals;

4 (2) includes all communication technologies that allow people at two
5 or more places to interact by two-way video and audio transmissions simultaneously.

6 * **Sec. 17.** AS 12.55.035(b) is amended to read:

7 (b) Upon conviction of an offense, a defendant who is not an organization may
8 be sentenced to pay, unless otherwise specified in the provision of law defining the
9 offense, a fine of **not** [NO] more than

10 (1) \$500,000 for murder in the first or second degree, attempted
11 murder in the first degree, murder of an unborn child, sexual assault in the first degree,
12 sexual abuse of a minor in the first degree, kidnapping, **sex trafficking**
13 [PROMOTING PROSTITUTION] in the first degree under AS 11.66.110(a)(2), or
14 misconduct involving a controlled substance in the first degree;

15 (2) \$250,000 for a class A felony;

16 (3) \$100,000 for a class B felony;

17 (4) \$50,000 for a class C felony;

18 (5) \$10,000 for a class A misdemeanor;

19 (6) \$2,000 for a class B misdemeanor;

20 (7) \$500 for a violation.

21 * **Sec. 18.** AS 12.55.125(i) is amended to read:

22 (i) A defendant convicted of

23 (1) sexual assault in the first degree, sexual abuse of a minor in the
24 first degree, or **sex trafficking** [PROMOTING PROSTITUTION] in the first degree
25 under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not
26 more than 99 years and shall be sentenced to a definite term within the following
27 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

28 (A) if the offense is a first felony conviction, the offense does
29 not involve circumstances described in (B) of this paragraph, and the victim
30 was

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

1 (ii) 13 years of age or older, 20 to 30 years;

2 (B) if the offense is a first felony conviction and the defendant
3 possessed a firearm, used a dangerous instrument, or caused serious physical
4 injury during the commission of the offense, 25 to 35 years;

5 (C) if the offense is a second felony conviction and does not
6 involve circumstances described in (D) of this paragraph, 30 to 40 years;

7 (D) if the offense is a second felony conviction and the
8 defendant has a prior conviction for a sexual felony, 35 to 45 years;

9 (E) if the offense is a third felony conviction and the defendant
10 is not subject to sentencing under (F) of this paragraph or (I) of this section, 40
11 to 60 years;

12 (F) if the offense is a third felony conviction, the defendant is
13 not subject to sentencing under (I) of this section, and the defendant has two
14 prior convictions for sexual felonies, 99 years;

15 (2) unlawful exploitation of a minor under AS 11.41.455(c)(2), online
16 enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to
17 commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or
18 sex trafficking [PROMOTING PROSTITUTION] in the first degree under
19 AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more
20 than 99 years and shall be sentenced to a definite term within the following
21 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

22 (A) if the offense is a first felony conviction, the offense does
23 not involve circumstances described in (B) of this paragraph, and the victim
24 was

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

26 (ii) 13 years of age or older, 15 to 30 years;

27 (B) if the offense is a first felony conviction and the defendant
28 possessed a firearm, used a dangerous instrument, or caused serious physical
29 injury during the commission of the offense, 25 to 35 years;

30 (C) if the offense is a second felony conviction and does not
31 involve circumstances described in (D) of this paragraph, 25 to 35 years;

1 (D) if the offense is a second felony conviction and the
2 defendant has a prior conviction for a sexual felony, 30 to 40 years;

3 (E) if the offense is a third felony conviction, the offense does
4 not involve circumstances described in (F) of this paragraph, and the defendant
5 is not subject to sentencing under (I) of this section, 35 to 50 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 years;

9 (3) sexual assault in the second degree, sexual abuse of a minor in the
10 second degree, online enticement of a minor under AS 11.41.452(d), unlawful
11 exploitation of a minor under AS 11.41.455(c)(1), or distribution of child pornography
12 under AS 11.61.125(e)(2) may be sentenced to a definite term of imprisonment of not
13 more than 99 years and shall be sentenced to a definite term within the following
14 presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

15 (A) if the offense is a first felony conviction, five to 15 years;

16 (B) if the offense is a second felony conviction and does not
17 involve circumstances described in (C) of this paragraph, 10 to 25 years;

18 (C) if the offense is a second felony conviction and the
19 defendant has a prior conviction for a sexual felony, 15 to 30 years;

20 (D) if the offense is a third felony conviction and does not
21 involve circumstances described in (E) of this paragraph, 20 to 35 years;

22 (E) if the offense is a third felony conviction and the defendant
23 has two prior convictions for sexual felonies, 99 years;

24 (4) sexual assault in the third degree, incest, indecent exposure in the
25 first degree, possession of child pornography, distribution of child pornography under
26 AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual assault in
27 the second degree, sexual abuse of a minor in the second degree, unlawful exploitation
28 of a minor, or distribution of child pornography, may be sentenced to a definite term
29 of imprisonment of not more than 99 years and shall be sentenced to a definite term
30 within the following presumptive ranges, subject to adjustment as provided in
31 AS 12.55.155 - 12.55.175:

1 (A) if the offense is a first felony conviction, two to 12 years;

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

6 (D) if the offense is a third felony conviction and does not
7 involve circumstances described in (E) of this paragraph, 15 to 25 years;

8 (E) if the offense is a third felony conviction and the defendant
9 has two prior convictions for sexual felonies, 99 years.

10 * **Sec. 19.** AS 12.55.185(10) is amended to read:

11 (10) "most serious felony" means

12 (A) arson in the first degree, **sex trafficking** [PROMOTING
13 PROSTITUTION] in the first degree under AS 11.66.110(a)(2), **online**
14 **enticement of a minor under AS 11.41.452(e)**, or any unclassified or class A
15 felony prescribed under AS 11.41; or

16 (B) an attempt, or conspiracy to commit, or criminal
17 solicitation under AS 11.31.110 of, an unclassified felony prescribed under
18 AS 11.41;

19 * **Sec. 20.** AS 15.80.010(9) is amended to read:

20 (9) "felony involving moral turpitude" includes those crimes that are
21 immoral or wrong in themselves such as murder, manslaughter, assault, sexual assault,
22 sexual abuse of a minor, unlawful exploitation of a minor, robbery, extortion,
23 coercion, kidnapping, incest, arson, burglary, theft, forgery, criminal possession of a
24 forgery device, offering a false instrument for recording, scheme to defraud, falsifying
25 business records, commercial bribe receiving, commercial bribery, bribery, receiving a
26 bribe, perjury, perjury by inconsistent statements, endangering the welfare of a minor,
27 escape, promoting contraband, interference with official proceedings, receiving a bribe
28 by a witness or a juror, jury tampering, misconduct by a juror, tampering with physical
29 evidence, hindering prosecution, terroristic threatening, riot, criminal possession of
30 explosives, unlawful furnishing of explosives, **sex trafficking** [PROMOTING
31 PROSTITUTION], criminal mischief, misconduct involving a controlled substance or

1 an imitation controlled substance, permitting an escape, promoting gambling,
 2 possession of gambling records, distribution of child pornography, and possession of
 3 child pornography;

4 * **Sec. 21.** AS 28.15.046(c) is amended to read:

5 (c) The department may not issue a license under this section to an applicant
 6 who has been convicted of any of the following offenses within 20 years of the time of
 7 application:

8 (1) sexual abuse of a minor in any degree under AS 11.41.434 -
 9 11.41.440;

10 (2) sexual assault in any degree under AS 11.41.410 - 11.41.425;

11 (3) incest under AS 11.41.450;

12 (4) unlawful exploitation of a minor under AS 11.41.455;

13 (5) contributing to the delinquency of a minor under AS 11.51.130;

14 (6) a felony involving possession of a controlled or imitation
 15 controlled substance under AS 11.71 or AS 11.73;

16 (7) a felony or misdemeanor involving distribution of a controlled or
 17 imitation controlled substance under AS 11.71 or AS 11.73;

18 (8) **sex trafficking** [PROMOTING PROSTITUTION] in the first or
 19 second degree under AS 11.66.110 or 11.66.120;

20 (9) indecent exposure in the first or second degree under AS 11.41.458
 21 or 11.41.460.

22 * **Sec. 22.** AS 47.12.110(d) is amended to read:

23 (d) Notwithstanding (a) of this section, a court hearing on a petition seeking
 24 the adjudication of a minor as a delinquent shall be open to the public, except as
 25 prohibited or limited by order of the court, if

26 (1) the department files with the court a motion asking the court to
 27 open the hearing to the public, and the petition seeking adjudication of the minor as a
 28 delinquent is based on

29 (A) the minor's alleged commission of an offense, and the
 30 minor has knowingly failed to comply with all the terms and conditions
 31 required of the minor by the department or imposed on the minor in a court

1 order entered under AS 47.12.040(a)(2) or 47.12.120;

2 (B) the minor's alleged commission of

3 (i) a crime against a person that is punishable as a
4 felony;

5 (ii) a crime in which the minor employed a deadly
6 weapon, as that term is defined in AS 11.81.900(b), in committing the
7 crime;

8 (iii) arson under AS 11.46.400 - 11.46.410;

9 (iv) burglary under AS 11.46.300;

10 (v) distribution of child pornography under
11 AS 11.61.125;

12 (vi) sex trafficking [PROMOTING PROSTITUTION]
13 in the first degree under AS 11.66.110; or

14 (vii) misconduct involving a controlled substance under
15 AS 11.71 involving the delivery of a controlled substance or the
16 possession of a controlled substance with intent to deliver, other than
17 an offense under AS 11.71.040 or 11.71.050; or

18 (C) the minor's alleged commission of a felony and the minor
19 was 16 years of age or older at the time of commission of the offense when the
20 minor has previously been convicted or adjudicated a delinquent minor based
21 on the minor's commission of an offense that is a felony; or

22 (2) the minor agrees to a public hearing on the petition seeking
23 adjudication of the minor as a delinquent.

24 * **Sec. 23.** AS 47.12.315(a) is amended to read:

25 (a) Notwithstanding AS 47.12.310, when an agency takes action under
26 AS 47.12.040(a)(1) to adjust a matter, or when, under AS 47.12.040(a)(2), the court
27 directs the agency to adjust the matter, the agency

28 (1) shall, for a minor who is at least 13 years of age at the time of
29 commission of the offense, disclose to the public the name of the minor, the name or
30 names of the parent, parents, or guardian of the minor, the action required by the
31 agency to be taken by the minor under AS 47.12.060 to adjust the matter, and

1 information about the offense exclusive of information that identifies the victim of the
 2 offense, if the minor was, under AS 47.12.020, previously alleged to be a delinquent
 3 minor on the basis of the minor's commission of at least one offense and, on the basis
 4 of that allegation, a state agency has, under AS 47.12.040(a), been asked to make a
 5 preliminary inquiry to determine if any action on that matter is appropriate, and, if the
 6 minor is alleged to be a delinquent minor on the basis of the minor's commission of
 7 another offense, exercise of agency jurisdiction is based on the minor's alleged
 8 commission of that other offense, and that other offense is one of the following:

9 (A) a crime against a person that is punishable as a felony;

10 (B) a crime in which the minor employed a deadly weapon, as
 11 that term is defined in AS 11.81.900(b), in committing the crime;

12 (C) arson under AS 11.46.400 - 11.46.410;

13 (D) burglary under AS 11.46.300;

14 (E) distribution of child pornography under AS 11.61.125;

15 (F) sex trafficking [PROMOTING PROSTITUTION] in the
 16 first degree under AS 11.66.110; or

17 (G) misconduct involving a controlled substance under
 18 AS 11.71 involving the delivery of a controlled substance or the possession of
 19 a controlled substance with intent to deliver, other than an offense under
 20 AS 11.71.040 or 11.71.050; and

21 (2) may, for a minor who is at least 13 years of age at the time of
 22 commission of the offense, disclose to the public the name of the minor, the name or
 23 names of the parent, parents, or guardian of the minor, the action required by the
 24 agency to be taken by the minor under AS 47.12.060 to adjust the matter, and
 25 information about the offense exclusive of information that identifies the victim of the
 26 offense if the minor has knowingly failed to comply with all terms and conditions
 27 required of the minor by the agency to adjust the matter under AS 47.12.060(b).

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

30 DIRECT COURT RULE AMENDMENT. The Alaska Rules of Criminal
 31 Procedure are amended by adding a new section to read:

1 **Rule 38.3. Video Conference Testimony. (a) In General.** In every trial, the
2 testimony of witnesses shall be taken in open court, unless otherwise provided by
3 statute or rule.

4 (b) **Testimony by Video Conference.** The parties may agree to take
5 testimony from a witness by contemporaneous two-way video conference presented in
6 open court. Absent the parties' agreement, the court may, at the court's discretion,
7 authorize the contemporaneous two-way video conference testimony at trial of a
8 witness only if

9 (1) the requesting party establishes that testimony by two-way video
10 conference is necessary to further an important public policy;

11 (2) the requesting party establishes that the witness is unavailable; and

12 (3) the testimony is given under oath and subject to cross-examination.

13 (c) **Procedures for Taking Video Conference Testimony.** If the trial court
14 authorizes video conference testimony under (b) of this rule, it shall determine the
15 procedures for taking the contemporaneous two-way video conference testimony. The
16 parties, the court, the trier of fact, and the public must be able to see and hear the
17 witness; and the witness must see and hear the courtroom proceedings, including the
18 defendant, as if the witness were sitting in the courtroom's witness stand. The video
19 conference technician shall be the only person in the presence of the witness unless the
20 court, at the court's discretion, determines that another person may be present. Any
21 person present with the witness must be identified.

22 (d) **Definitions.**

23 (1) **Contemporaneous Two-Way Video Conference.** Contemporaneous
24 two-way video conference means a conference among people at different places by
25 means of transmitted audio and video signals. It includes all communication
26 technologies that allow two or more places to interact by two-way video and audio
27 transmissions simultaneously.

28 (2) **Unavailable.** In this rule, a witness is unavailable if

29 (A) by clear and convincing evidence the court finds under
30 Rule 804(a)(4) or (5), Alaska Rules of Evidence, or Rule 15(e)(4), Alaska
31 Rules of Criminal Procedure, that the witness is unavailable;

1 (B) by clear and convincing evidence the court finds that under
2 the circumstances the witness is unavailable; or

3 (C) the parties agree that the witness is unavailable.

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

6 APPLICABILITY. (a) Sections 1, 2, 7 - 11, 14, and 17 - 23 of this Act apply to
7 offenses committed before, on, or after the effective date of the Act.

8 (b) Sections 3 - 6, 12, 13, 16, and 24 of this Act apply to offenses committed on or
9 after the effective date of this Act.

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

12 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the
13 heading of AS 11.66.110 from "Promoting prostitution in the first degree" to "Sex trafficking
14 in the first degree."

15 * **Sec. 27.** This Act takes effect July 1, 2012.