



**Sex Offense Cases Referred to the
State of Alaska, Department of Law
Between July 1, 2020 and June 30, 2021¹**

**Provided by the State of Alaska, Department of Law, Criminal Division
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Between July 1, 2020 and June 30, 2021, the State of Alaska, Department of Law (LAW) received 586 sex offense referrals for prosecution. To date, LAW has accepted 261 (45%) of those referrals as sex offense prosecutions and 16 (3%) of those referrals as some other form of prosecution not including a sex offense. LAW has declined to prosecute 279 referrals (48%) due to some combination of evidentiary or procedural issues. Based on the relative recency of this cohort, the vast majority of these cases are still active prosecutions. Thus, it is premature to reach any conclusions as to the ultimate patterns reflected from this group.

DEFINITIONS

The data used for the following analysis was compiled from the case-management system used by LAW. For purposes of this analysis, a *sex offense* refers to a registerable criminal sex offense under AS 12.63.100(7)². Table 3 in Appendix A displays the current list of those offenses. Beyond the definition of a sex offense, there are a few other terms that will be helpful for understanding this analysis. *Referral* means the grouping of criminal charges alleged against a single suspect that is referred for prosecution to LAW. *Prosecution* means the grouping of charges filed against a single suspect. Lastly, *case* is used synonymously with *referral* or *prosecution* depending on where the case is in the criminal process.

METHODOLOGY

The cohort represented by this analysis is the result of a two-step sampling procedure.

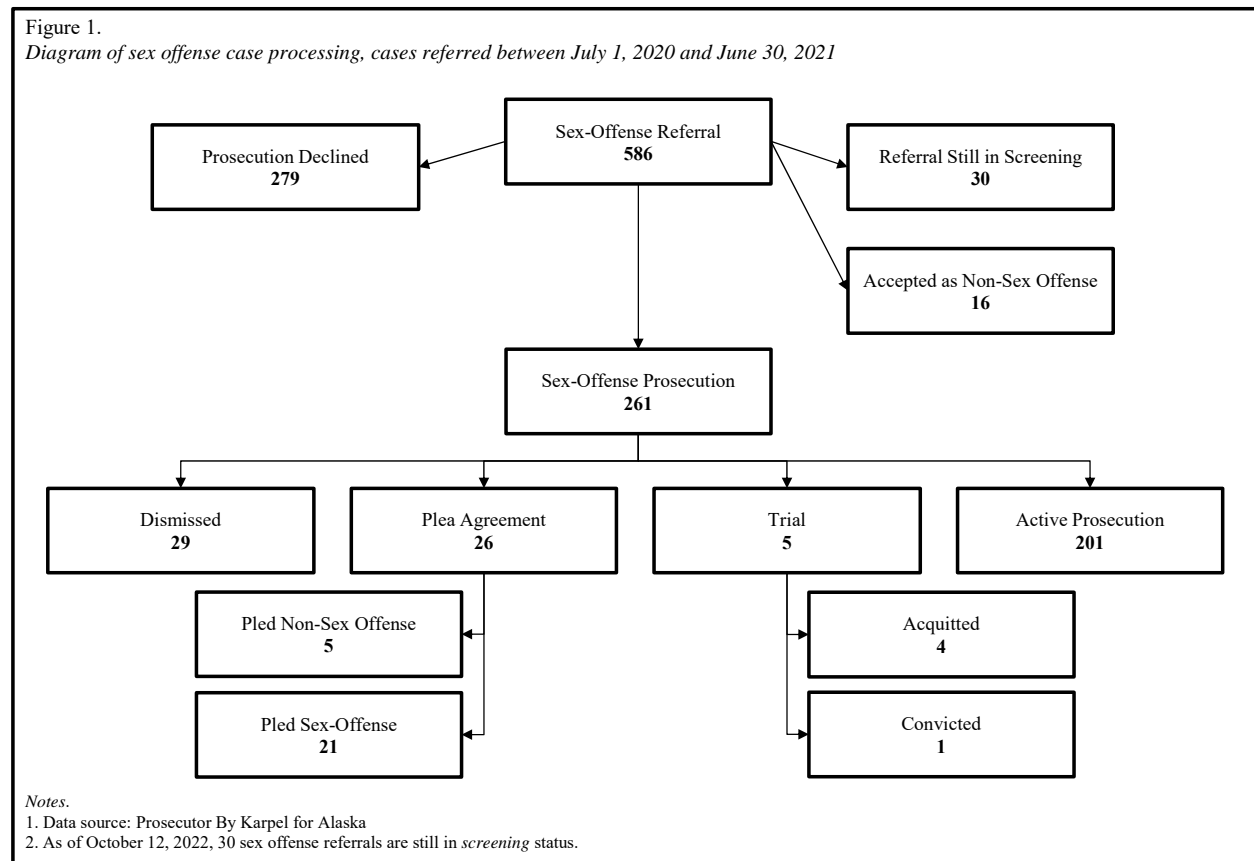
¹ This report is provided pursuant to AS 44.19.647(a)(5), 44.23.020(K), and AS 44.23.040.

² The term “sex offense” was codified under AS 12.63.100(3) as part of H.B. 69 (1994), which established the sex offender registry and registration requirements. The statutory citation and language would change throughout the years. The citation would change from AS 12.63.100(3) to AS 12.63.100(5) in 1999 as part of S.B. 3, then as AS 12.63.100(6) in 2007 as part of H.B. 90, and then as the current citation in 2019 as part of H.B. 49.

First, the sampling frame consisted of every referral for prosecution submitted to LAW between July 1, 2020 and June 30, 2021. From this list, referrals were identified as sex offense referrals, and selected for analysis, if they included at least one sex offense charge. This methodology resulted in 586 sex offense referrals submitted. The status or disposition of cases within this cohort is current as of October 12, 2022.

It is important to note that the statutory definition of “sex offense” has gone through several iterations since it was first codified in 1994 as part of House Bill (H.B.) 69, with different offenses qualifying as a sex offense as well as changes in sex offense qualifications. Table 3 in Appendix A provides a brief historical description of these changes. For purposes of sampling, criminal offenses included in the referrals were anchored in the statutory timeframes in which those offenses qualified (or did not qualify) as sex offenses. For instance, *AS 11.61.123* (indecent viewing or production of a picture) did not qualify as a sex offense until July 9, 2019, the effective date set by the enactment of H.B. 49. Thus, if a referral for prosecution for *AS 11.61.123* was submitted to LAW between July 1, 2020 and June 30, 2021, but the offense was allegedly committed before July 9, 2019, that referral was not considered a sex offense referral. Additionally, if LAW achieved a conviction on an *AS 11.61.123* charge, but the offense was committed prior to July 9, 2019, that scenario is not considered a sex offense conviction.

ANALYSIS AND DISCUSSION



The following analysis is a case-processing analysis. Figure 1 is a diagram showing how,

as of October 12, 2022, the 586 sex offense cases have been processed and resolved. As shown, LAW received 586 sex offense referrals from law enforcement agencies throughout the State of Alaska. To date, LAW has accepted 261 (45%) of those referrals as sex offense prosecutions and 16 (3%) of those referrals as non-sex offense prosecutions. LAW has declined to prosecute 279 (48%) sex offense referrals. The declination reasons are discussed below. Lastly, to date, 30 sex offense referrals (5%) remain in screening. A referral can remain in screening status for various reasons, such as awaiting additional follow-up investigation, DNA testing results, or victim/witness contact.

Regarding the sixteen sex offense referrals accepted as non-sex offense prosecutions, LAW filed one case for Murder in the First Degree; two cases for Assault in the Second Degree; one case for Burglary in the First Degree; one case Assault in the Fourth Degree; six cases for Harassment in the First Degree; two cases for Harassment in the Second Degree; two cases for Contributing to the Delinquency of a Minor; and, one case for Furnishing or Delivery of Alcoholic Beverages to Persons Under the Age of 21.³ Out of these sixteen prosecutions, LAW resolved one as a felony and five as misdemeanors through plea agreements. LAW dismissed four of the prosecutions. As of October 12, 2022, six prosecutions remain active.

Referrals Declined for Prosecution

Table 1 (below) shows the distribution of sex offense referrals declined for prosecution, separated into three categories. The vast majority of referrals were declined for prosecution due to evidentiary issues (82%).

Table 1.
Distribution of sex offense referral declinations, referrals submitted between July 1, 2020 and June 30, 2021.

Reason	Cases (n)	Percentage
Evidentiary Issue	229	82%
Procedural	28	10%
Other	22	8%
Total	279	100%

Note. Data source: Prosecutor By Karpel for Alaska

The law requires anyone accused of a crime to be presumed innocent. To overcome this presumption of innocence, the State is required to prove every element of the crime beyond a reasonable doubt. This level of proof is described in Alaska’s Criminal Pattern Jury Instructions as “the highest level of proof in our legal system.” Jurors are told that, “It is not enough that you believe a defendant is probably or likely guilty or even that the evidence shows a strong probability of guilt; the law requires more. Proof beyond a reasonable doubt is proof that overcomes any reasonable doubt about the defendant’s guilt.” Thus, referrals declined for “evidentiary issues” include reasons such as a lack of corroboration, inadmissible evidence, insufficient evidence to prove a necessary element, and other issues such as an essential witness being unavailable for trial.

³ Under the facts of these cases in combination with the defendants’ criminal histories, the Harassment in the First Degree cases did not qualify as sex offenses under AS 12.63.100.

Secondly, 10 percent of referrals were declined for procedural reasons such as a lack jurisdiction to file charges or issues related to pre-charging delay.⁴ Thirdly, referrals were declined for other reasons, such as to consolidate charges into other referrals or because the suspect was convicted in another case (8%).

Sex Offense Prosecutions and Resolutions

With respect to case resolutions, as displayed in figure 1, resolutions are separated into four categories: dismissals, plea agreements, trials, and active prosecutions. As of October 12, 2022, 60 (23% of 261 cases) sex offense prosecutions have been resolved, and 201 (77%) remain active. Before the COVID-19 pandemic, sex offense prosecutions commonly took two years or more to resolve. However, due to the COVID-19 pandemic, LAW has experienced several additional challenges that have hindered its ability to resolve cases. For example, grand jury proceedings and jury trials were suspended throughout the Alaska Court System between July 1, 2019 and June 30, 2020. To date, only five prosecutions for sex offense referrals July 1, 2020 through June 30 2021 have been resolved by a trial.

The majority of the cases in this cohort that have resolved by October 12, 2022 resolved as a dismissal (29 of 60 cases = 48%) or through plea agreements (26 of 60 cases = 43%). Furthermore, the most frequent conviction scenario has been defendants pleading guilty to a sex offense (21 cases out of 27 case convictions: 78%). Among the five prosecutions resulting a plea agreement for a non-sex offense, three defendants pled to violent felonies and two defendants pled to nonviolent misdemeanors.

⁴ “Pre-charging delay” refers to whether a defendant’s ability to respond to charges is prejudiced by the lapse of time from the incident to the date of filing charges. *See Wright v. State*, 347 P.3d 1000 (Alaska App. 2015) rev’d on other grounds *State v. Wright* 404 P.3d 166 (Alaska 2017); *Also see State v. Gonzales*, 156 P.3d 407 (Alaska 2007). Pre-charging delay can occur for many reasons, but most commonly for a combination of reasons such as a delay in the crime being reported to the police, the length of time to locate and contact witnesses and/or a suspect for statements, sometimes multiple statements are necessary, the length of time to collect physical evidence, the time to test physical evidence, and the time for a case to be screened by a prosecutor for filing of charges—including requested follow-up investigation.

Dismissals

Table 2 (below) shows the distribution of sex offense prosecutions dismissed,⁵ separated into three categories.

Table 2.

Distribution of sex offense case dismissals, sex offense cases referred between July 1, 2020 and June 30, 2021.

Reason	Cases (n)	Percentage
Evidentiary Issue	27	93%
Procedural	1	3%
Other	1	3%
Total	29	99%

Note. Data source: Prosecutor By Karpel for Alaska. Percentages do not sum to 100% due to rounding error.

As of October 12, 2022, 29 sex offense prosecutions (48% of the 60 cases resolved) have been dismissed in this cohort. Nearly all the dismissed prosecutions were dismissed due to an evidentiary issue. A sex offense prosecution is generally dismissed due to an evidentiary issue revealed through additional investigation after charges are filed, or through further analysis of evidence not available to the prosecution at the time the charging decision was made. Cases dismissed for procedural reasons generally occurred because the suspect was found incompetent to stand trial or the charges were consolidated to further another prosecution. In this cohort, dismissals for evidentiary reasons, as previously mentioned, generally occurred because new information proffered or received created corroboration issues such as inconclusive or negative forensic testing results or inconsistent eyewitness testimony not previously known to the prosecution.

SUMMARY

This report is the third sex offense referral summary report submitted to the Alaska Criminal Justice Commission. Similar patterns can be seen regarding the volume and processing of sex offense referrals received by LAW during this reporting period and during previous periods. Each year, LAW received around 600 sex offense referrals from law enforcement agencies throughout the state. A little less than half of those referrals were declined for prosecution, primarily for evidentiary reasons. When accepted, LAW nearly always accepts referrals as sex offense prosecutions. Among the referrals accepted as sex offense prosecutions in each cohort, the vast majority of them remained as active prosecutions at the time of the reports. Additionally, unlike in the 2019 and 2020 cohorts, the most frequent resolution scenario at the time of the report in the current cohort was a dismissal. Importantly, LAW has continued to experience serious procedural delays in resolving prosecutions brought about by the COVID-19 pandemic. Due to the large number of prosecutions still active, it remains premature to draw conclusions on the processing of sex offense cases for each cohort. It is also premature to draw conclusions based on year-to-year comparisons.

⁵ Dismissals occur after charges have been filed.

Appendix A

Table 3.
Sex offenses: registerable criminal offense under Alaska Statute 12.63.100(7) (Registration of Sex Offenders)

Statute Description	Statute	Original Effective Date
<i>Categories</i>		
Sexual Assault in the First Degree	AS 11.41.410	08/10/1994
Sexual Assault in the Second Degree	AS 11.41.420	08/10/1994
Sexual Assault in the Third Degree	AS 11.41.425	08/10/1994
Sexual Assault in the Fourth Degree	AS 11.41.427	08/10/1994
Sexual Abuse of a Minor in the First Degree	AS 11.41.434	08/10/1994
Sexual Abuse of a Minor in the Second Degree	AS 11.41.436	08/10/1994
Sexual Abuse of a Minor in the Third Degree	AS 11.41.438	08/10/1994
Incest	AS 11.41.450	08/10/1994
Enticement of a Minor	AS 11.41.452	06/11/1998
Unlawful Exploitation of a Minor	AS 11.41.455	08/10/1994
Indecent Exposure in the First Degree	AS 11.41.458	06/11/1998
Distribution of Child Pornography	AS 11.61.125	08/10/1994
Possession of Child Pornography	AS 11.61.127	06/11/1998
Distribution of Indecent Material to Minors	AS 11.61.128	07/01/2007
<i>Specific Subsections of Statutes</i>		
Murder in the First Degree	AS 11.41.100(a)(3)	06/05/1999
Murder in the Second Degree	AS 11.41.110(a)(3)	06/05/1999
Sexual Abuse of a Minor in the Fourth Degree	AS 11.41.440(a)(2)	01/01/1999
<i>Specific Conditions Under a Statute</i>		
Indecent Exposure in the Second Degree	AS 11.41.460 ^a	06/11/1998
Harassment in the First Degree	AS 11.61.118(a)(2) ^b	07/01/2010
Indecent Viewing or Production of a Picture	AS 11.61.123 ^c	07/09/2019
Prostitution	AS 11.66.100(a)(2) ^d	07/01/2013
Sex Trafficking in the First Degree	AS 11.66.110 ^e	08/10/1994
Sex Trafficking in the Third Degree	AS 11.66.130(a)(2)(B) ^f	01/01/1999

Notes.

^a12.63.100(7)(C)(iv): "...AS 11.41.460...if the indecent exposure is before a person under 16 years of age and the offender has previously been convicted under AS 11.41.460;" enacted as part of S.B. 323 (1998).

^b12.63.100(7)(C)(viii): "...AS 11.61.118(a)(2) if the offender has a previous conviction for that offense;" enacted as part of S.B. 222 (2010).

^c12.63.100(7)(C)(xv): "...AS 11.61.123 if the offender is subject to punishment under AS 11.61.123(f)(1) or (2);" enacted as part of H.B. 49 (2019). Also in 2019, the revisor redesignated AS 11.61.123(f) to AS 11.61.123(g).

^d12.63.100(7)(C)(ix): "...AS 11.66.100(a)(2) if the offender is subject to punishment under AS 11.66.100(e);" enacted as part of S.B. 22 (2013). In S.B. 22 (2013), the language read: "...subject to punishment under AS 11.66.100(c)," but in S.B. 54 (2017), the language changed to "...subject to punishment under AS 11.66.100(e)."

^e12.63.100(7)(C)(vi): "...AS 11.66.110...if the person who was induced or caused to engage in prostitution was under 20 years of age at the time of the offense;" first enacted as part of H.B. 69 (1994) to read that any AS 11.66.110 offense was a sex offense. In H.B. 252 (1998), the statute changed to: "...AS 11.66.110...if the person who was induced or caused to

engage in prostitution was 16 or 17 years of age at the time of the offense;” This language would change again to the current language in S.B. 22 (2013) to the current language.

¹12.63.100(7)(C)(vi): “...11.66.130(a)(2)(B)...if the person who was induced or caused to engage in prostitution was under 20 years of age at the time of the offense;” first enacted as part of H.B. 252 (1998) to read “...11.66.130(a)(2) if the person who was induced or caused to engage in prostitution was 16 or 17 years of age at the time of the offense.” In S.B. 22 (2013), the language changed to: “...if the person who was induced or caused to engage in prostitution was under 20 years of age at the time of the offense.” In S.B. 54 (2017), the language changed again to the current language.