From: [redacted]
To: House Community and Regional Affairs
Subject: Public Testimony HB 47
Date: Thursday, March 13, 2025 8:55:50 AM

Public Testimony of HB 47

Chairperson and Honorable members of the Committee

It would be nice if you kept to the time line. I OPPOSE.

HB 47 presents a complex set of provisions that intertwine criminal law, victim protection, and constitutional considerations. The bill includes mandates around prosecution exemptions, changes to statutes of limitations, polygraph testing, mandatory sentencing for specific crimes, and victim rights. This comprehensive legal analysis explores how **HB 47** interacts with constitutional protections, judicial precedents, and statutory interpretation across 15 points.

1. Constitutionality of Exemptions from Prosecution

Legal Analysis:

The exemption from prosecution for individuals who report crimes in good faith raises **due process** concerns. Critics could argue that this provision allows individuals who may have committed crimes to escape prosecution simply for offering information.

Equal Protection Clause: The provision that treats individuals who report crimes differently, based on their status as a witness or victim, may run afoul of the **Equal Protection Clause** if not carefully designed.

Judicial Precedent:

Courts have historically allowed **witness immunity** in cases where testimony is critical, but there are limitations, especially where **self-incrimination** or the integrity of the judicial process is in question. **Hoffa v. United States** (1966) allowed for immunity, but focused on the good faith of the witness.

2. Statutes of Limitation (Elimination of Statute of Limitations for Certain Crimes)

Legal Analysis:

HB 47 eliminates statutes of limitation for certain crimes like murder, sexual abuse of minors, and trafficking, potentially infringing upon **due process** rights.

Constitutional Concerns: The **Sixth Amendment** guarantees a right to a speedy trial, and eliminating statutes of limitations could undermine this guarantee, especially if it

leads to trials based on outdated or unreliable evidence.
Ex Post Facto: Retroactively applying this provision to crimes committed before the law's enactment could violate the **Ex Post Facto Clause**.

Judicial Precedent:

Stogner v. California (2003) held that applying new statutes of limitations to crimes retroactively violates the Ex Post Facto Clause of the U.S. Constitution.

3. Exemption from Suspended Judgment (Violent/Sexual Crimes)

Legal Analysis:

The **suspension of judgment** provision for certain serious offenses like sexual abuse and trafficking could face challenges under the **Eighth Amendment** if it leads to unduly harsh sentences.

This provision may also conflict with the **separation of powers**, as it limits judicial discretion in sentencing and limits the ability to balance mitigating factors.

Judicial Precedent:

The Supreme Court has upheld mandatory minimum sentences in cases like *Mandatory Minimums v. United States* (1997), but limiting suspended sentences for particular crimes may be scrutinized under the Eighth Amendment for being disproportionate.

4. Polygraph Examinations in Probation Conditions

Legal Analysis:
Polygraph examinations raise concerns under the **Fifth Amendment**, as they may compel self-incriminating behavior. The use of polygraphs in probation conditions could potentially violate a defendant's right to remain silent.

Fourth Amendment: Mandating polygraph tests as a condition of probation or parole could be seen as an **unreasonable search** if the conditions are overly broad.

Judicial Precedent:

Griffin v. Wisconsin (1987) upheld certain probation-related searches, but the mandatory use of polygraphs for probationers may be questioned, especially if it constitutes an unreasonable search or seizure.

5. Restrictions on Internet Usage and Communication with Minors

Legal Analysis:

The bill's restrictions on internet usage and communication with minors could violate the **First Amendment**, particularly **freedom of speech** and **freedom of association**.

These restrictions may also raise **Fourth Amendment** concerns if they involve extensive monitoring of communications or internet activity without sufficient cause.

Judicial Precedent:

In *Reno v. ACLU* (1997), the Court struck down overly broad restrictions on free speech on the internet, emphasizing that internet usage is entitled to the same First Amendment protections as traditional speech.

6. Mandatory Polygraph Testing and Electronic Monitoring

Legal Analysis:

Mandatory polygraph testing and **electronic monitoring** raise serious **Fifth Amendment** concerns regarding **self-incrimination**, particularly if results are used against the individual in future legal proceedings.

Fourth Amendment: Continuous electronic monitoring may be considered an **unreasonable search or seizure** under the Constitution, especially if not conducted with due process protections.

Judicial Precedent:

The Court in *United States v. Jones* (2012) held that long-term GPS tracking of an individual constitutes a search under the Fourth Amendment, suggesting that constant monitoring, including electronic surveillance, may be constitutionally problematic.

7. Use of Firearms in Sexual Offenses and Trafficking

Legal Analysis:

The involvement of firearms in the commission of violent crimes such as sexual assault and trafficking enhances penalties but may infringe upon the **Second Amendment** rights of individuals who are prohibited from possessing firearms.

The bill’s treatment of firearm use in crime could lead to legal challenges based on the **Second Amendment**, especially if penalties are disproportionately severe.

Judicial Precedent:

In *District of Columbia v. Heller* (2008), the Court affirmed the right to possess firearms but allowed for restrictions when firearms are involved in criminal activity, particularly

in violent crimes.

8. Mandatory Sentencing Ranges for Sexual and Violent Crimes

Legal Analysis:

Mandatory sentencing provisions may violate the **Eighth Amendment** if they lead to disproportionately harsh sentences, especially for individuals convicted of sexual or violent crimes where the circumstances may vary.

The removal of **judicial discretion** in sentencing could raise constitutional concerns, as courts are generally expected to tailor sentences to individual circumstances.

Judicial Precedent:

In *United States v. Booker* (2005), the Supreme Court ruled that mandatory sentencing guidelines that restricted judicial discretion were unconstitutional, affirming the need for individualized sentencing.

9. Eliminating Probation for Certain Violent or Sexual Offenses

Legal Analysis:

The elimination of probation for certain crimes undermines **judicial discretion** and could raise concerns under the **Ex Post Facto Clause** if applied retroactively.

Removing probation options could disproportionately affect lower-level offenders who might otherwise have been eligible for parole or probation under prior laws.

Judicial Precedent:

Weaver v. Graham (1981) highlighted the importance of the **Ex Post Facto Clause**, which prohibits the retroactive application of new, harsher penalties that alter the terms of an individual's punishment.

10. Violence against Minors and Enhanced Sentences

Legal Analysis:

Enhanced penalties for crimes involving minors may lead to **discriminatory** practices if not narrowly tailored. The increased sentences may disproportionately impact certain demographic groups and raise **equal protection** concerns under the **Fourteenth Amendment**.

Judicial Precedent:

In **Roper v. Simmons** (2005), the Court ruled that sentencing minors to death violated the **Eighth Amendment**, emphasizing the need for careful consideration of age and developmental factors in sentencing.

11. Victim Testimonies and Legal Immunity

Legal Analysis:

Granting immunity to victims and witnesses for their testimony could violate the **Sixth Amendment** right of the accused to confront their accusers. Immunity provisions might result in the withholding of potentially exculpatory evidence, which undermines a fair trial.

Judicial Precedent:

In **Crawford v. Washington** (2004), the Court ruled that the **Confrontation Clause** guarantees defendants the right to challenge witnesses and evidence, and immunity granted to witnesses must be narrowly defined to avoid conflicts with the defendant's rights.

12. Admissibility of Polygraph Results in Court

Legal Analysis:

Polygraph results are generally not admissible in court because they lack sufficient **scientific validity** and may be considered unreliable under the **Frye Standard**.

The use of polygraph tests in probation or post-conviction hearings could raise issues of **due process** and **reliability** if used as the basis for significant legal decisions.

Judicial Precedent:

Frye v. United States (1923) ruled that scientific evidence must be generally accepted by the scientific community to be admissible in court, and polygraph tests often fail to meet this threshold.

13. Rights of Minor Victims

Legal Analysis:

HB 47 must align with **international treaties** on child rights, such as the **Convention on the Rights of the Child**, ensuring the **protection** of minors in criminal cases and providing clear avenues for their legal recourse.

The **due process** rights of minor victims should be protected to prevent the imposition of

excessive or unfair sentences or restrictions.

Judicial Precedent:

New York v. Ferber (1982) upheld child protection laws related to pornography, stressing the government's duty to safeguard minor victims from exploitation.

14. Impact on Marginalized Communities

Legal Analysis:

Provisions of **HB 47** that target certain crimes, particularly **trafficking** and **sexual abuse**, may disproportionately impact marginalized communities. This could lead to **disparate impact** claims under **equal protection** principles.

The bill should be scrutinized to ensure that its provisions do not disproportionately affect racial minorities or economically disadvantaged individuals.

Judicial Precedent:

Grutter v. Bollinger (2003) examined **discrimination** and fairness under the Equal Protection Clause, which can also apply to how laws affect marginalized groups in criminal justice.

15. Judicial Discretion and Sentencing Guidelines

Legal Analysis:

The **mandatory sentencing guidelines** set forth by **HB 47** limit judicial discretion, which could run counter to constitutional principles of individualized sentencing and fair treatment.

These provisions may challenge **separation of powers** and limit the judge's ability to make determinations based on case-specific facts.

Judicial Precedent:

In **Blakely v. Washington** (2004), the Court ruled that mandatory sentencing guidelines that constrain judicial discretion violate the Sixth Amendment right to a fair trial.

Conclusion

HB 47 raises significant constitutional and legal concerns, particularly with regard to the **due process** rights of individuals, the right to **a speedy trial**, **equal protection** under the law, **judicial discretion**, and the **Fourth, Fifth, and Sixth Amendments**. Many

provisions, including the elimination of statutes of limitation, mandatory polygraph testing, and victim testimony immunity, may face constitutional challenges. **Judicial precedents** provide important context, guiding future litigation around **HB 47**. If passed, **HB 47** will likely be subject to multiple challenges that could reshape its applicability and scope in the legal system.

And when you look at corporate **tribal law** considerations into the testimony, here are a few aspects that could be added:

Impact on Tribal Jurisdiction
HB 47 may inadvertently infringe upon **tribal sovereignty** in cases involving crimes on tribal lands or crimes committed by tribal members.

Tribal Law Consideration: Tribes have **exclusive jurisdiction** over certain crimes occurring within their territories, particularly those affecting **tribal citizens**. By potentially granting **state jurisdiction** or imposing mandates that override tribal law, **HB 47** could violate **tribal sovereignty** and interfere with tribal governance.

Legal Precedent: In **United States v. Wheeler**, 435 U.S. 313 (1978), the U.S. Supreme Court recognized the **inherent sovereignty** of tribes to prosecute crimes occurring within their jurisdiction.

Conflict with the Indian Child Welfare Act (ICWA)
If **HB 47** includes provisions regarding child welfare or family law that affect **Native children**, it could conflict with the **Indian Child Welfare Act (ICWA)**, which grants tribes **exclusive jurisdiction** over the removal of Native children from their families.

Tribal Law Consideration: ICWA was designed to protect **Native children** from the harmful effects of state intervention and to ensure that **tribal authority** is respected. Any provision in HB 47 that undermines this authority, such as bypassing tribal consent for the removal of Native children or placing restrictions on tribal courts, could be **contrary to federal law** and violate **tribal sovereignty**.

Legal Precedent: **Mississippi Band of Choctaw Indians v. Holyfield**, 490 U.S. 30 (1989) affirmed that **ICWA** requires state courts to defer to tribal jurisdiction in child custody matters involving Native children.

Tribal Sovereignty and Due Process Protections
Any provision in **HB 47** that impacts the **due process rights** of **Native individuals** should be carefully reviewed to ensure it respects the **tribal court system** and due process protections under **tribal law**.

Tribal Law Consideration: Tribes have their own legal systems with due process protections for their citizens. If **HB 47** imposes additional restrictions on Native

individuals that do not align with tribal law, it could undermine **tribal courts'** ability to ensure fairness and equity for tribal members.

Legal Precedent: **Crawford v. Washington**, 541 U.S. 36 (2004), highlights the importance of the **right to confront witnesses** in criminal trials, a right that must be respected by both state and tribal courts in accordance with their respective **legal systems**.

Tribal Consultations and Protections
Given that HB 47 may impact tribes' ability to govern effectively, it is important that the bill include a provision for **consultation with tribal governments** before implementation. This ensures that **tribal nations** have a voice in how the legislation affects their sovereignty and citizens.

Tribal Law Consideration: The **Tribal Consultation Policy**, a framework established by the federal government, mandates that tribes be consulted on laws and policies that could affect them. Failure to consult with tribal leaders before passing laws like HB 47 could violate these **tribal consultation requirements**.

Legal Precedent: **Executive Order 13175**, titled "Consultation and Coordination with Indian Tribal Governments," establishes a legal requirement for tribes to be consulted on legislation that impacts them.

In conclusion, while HB 47 proposes various changes to the criminal justice system, it is essential that these provisions be evaluated for their potential **impact on tribal sovereignty** and **tribal laws**. Ensuring that the bill respects tribal jurisdiction, including child welfare cases under **ICWA** and protecting the due process rights of Native individuals, will be critical in avoiding potential conflicts with **tribal governance** and **tribal sovereignty**.

References:

Crawford v. Washington, 541 U.S. 36 (2004).

Indian Child Welfare Act (ICWA), 25 U.S.C. § 1901 et seq.

Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989).

United States v. Wheeler, 435 U.S. 313 (1978).

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 Fed. Reg. 67249 (2000).

I am sickened by the over reach of the government into our civil rights and vehemently oppose this bill moving forward. You are there to make things safer not take away our

civil rights.

Susan Allmeroth
Two Rivers
Myself

STAR
SEXUAL TRAUMA PREVENTION & RESPONSE
1057 W. Fireweed Lane, Suite 230
Anchorage, AK 99503
Crisis Lines: 907.276.7273 or 800.478.8999
Tel. 907.276.7279 | staralaska.com

March 13, 2025

Dear House Community and Regional Affairs Committee:

I am writing to you today in full support of HB47, a bill intended to criminalize child sexual abuse material that is generated by artificial intelligence or other types of computer software.

Predators use AI technology to alter images of actual minors and create realistic nude images of children. Predators are increasingly leveraging AI-generated nude images to extort children for money, explicit images, or sexual contact. The psychological impacts to victims are very real and potentially lifelong.

AI-generated child sexual abuse material can be so realistic, it is difficult to differentiate between AI-generated material and that depicting child sexual abuse occurring in real life. This makes it challenging for law enforcement to identify children who need immediate assistance.

Thirty-seven states and the federal government have already criminalized AI child sexual abuse material. Alaska should be next. In fact, we know these crimes are already happening here, most recently at Joint Base Elmendorf-Richardson in Anchorage: https://www.justice.gov/archives/opa/pr/army-soldier-arrested-using-ai-generate-child-pornography

Had it not been for the fact the perpetrator was in the military and federal laws were used in order to arrest and prosecute him, the accused may have escaped any accountability within our state.

I would challenge legislators to google AI-generated child sexual abuse material to see how widespread the problem is becoming. Technology offers great advances, but our laws must keep up with the unintended consequences that come with it.

Thank you for your time and attention to this critical legislation.

Kindly,

Keeley D Olson

Keeley Olson
Executive Director

Alaska Children's Alliance

PO Box 91054
Anchorage, AK 99509
907-688-0163

3/13/25

Re: HB47: AI Generated Child Sexual Abuse Materials (CSAM)

Dear House Community and Regional Affairs,

My name is Mari Mukai and I am the Executive Director of the Alaska Children's Alliance. We are a standalone non-profit and the statewide membership organization for Alaska's Child Advocacy Centers (CACs), which strive to hold child abuse offenders accountable and to support healing for child victims and their families.

Alaska consistently struggles with some of the nation's highest rates of child abuse, and CACs are a critical part of the frontline response to the most serious abuse cases. In FY24, Alaska's CACs served 2,061 children who had been referred by law enforcement and/or the Office of Children's Services for concerns of sexual abuse, felony level physical abuse, and/or witnessing violent crimes.

I am writing to express support for HB47, which would expand Alaska statute to criminalize Child Sexual Abuse Material (CSAM) that is generated by Artificial Intelligence (AI) or other types of computer software. 37 states have laws criminalizing AI CSAM, and despite our high rates of child abuse, Alaska is one of 13 states that does not. I urge the Committee to prioritize the safety of Alaska's children and criminalize this emerging form of abuse.

Thank you for your leadership in making Alaska a stronger and safer place for us all.

Respectfully,

Mari Mukai
Executive Director
Alaska Children's Alliance
akchildrensalliance@gmail.com
907-688-0163
www.alaskachildrensalliance.org