

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

January 24, 2006  
8:40 a.m.

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Charlie Huggins, Vice Chair  
Senator Gene Therriault  
Senator Hollis French  
Senator Gretchen Guess

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 218

"An Act relating to periodic polygraph examinations for sex offenders released on probation or parole and to sentencing for sex offenders and habitual criminals."

MOVED CSSB 218(JUD) OUT OF COMMITTEE

SENATE BILL NO. 200

"An Act relating to defense of self, other persons, and property."

HEARD AND HELD

SENATE BILL NO. 10

"An Act relating to liability for destruction of property by unemancipated minors; and providing for an effective date."

SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 218

SHORT TITLE: CRIMINAL SENTENCING AND POLYGRAPHS

SPONSOR(s): SENATOR(s) BUNDE

01/09/06	(S)	PREFILE RELEASED 12/30/05
01/09/06	(S)	READ THE FIRST TIME - REFERRALS
01/09/06	(S)	JUD, FIN
01/19/06	(S)	JUD AT 8:30 AM BUTROVICH 205
01/19/06	(S)	Heard & Held
01/19/06	(S)	MINUTE(JUD)

01/24/06 (S) JUD AT 8:30 AM BUTROVICH 205

BILL: SB 200

SHORT TITLE: USE OF FORCE TO PROTECT SELF/HOME

SPONSOR(S): SENATOR(S) THERRIAULT

05/10/05 (S) READ THE FIRST TIME - REFERRALS  
05/10/05 (S) JUD  
01/19/06 (S) JUD AT 8:30 AM BUTROVICH 205  
01/19/06 (S) Heard & Held  
01/19/06 (S) MINUTE(JUD)  
01/24/06 (S) JUD AT 8:30 AM BUTROVICH 205

**WITNESS REGISTER**

Senator Con Bunde  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of SB 218

Ms. Portia Parker, Deputy Commissioner  
Department of Corrections  
431 N. Franklin, Suite 400  
Juneau, AK 99801

**POSITION STATEMENT:** Commented on SB 218

Ms. Susan Parkes, Deputy Attorney General  
Criminal Division  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Commented on SB 218

Mr. Dean Guaneli, Chief Assistant Attorney General  
Criminal Division  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300

**POSITION STATEMENT:** Commented on SB 218 and SB 200

Mr. Dave Stancliff  
Staff to Senator Therriault  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Commented on SB 200

**ACTION NARRATIVE**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 8:40:16 AM. Present were Senators Hollis French, Charlie Huggins, Gretchen Guess, and Chair Ralph Seekins.

**SB 218-CRIMINAL SENTENCING AND POLYGRAPHS**

8:40:16 AM

CHAIR RALPH SEEKINS announced SB 218 to be up for consideration. The committee was hearing version I.

SENATOR CON BUNDE, bill sponsor, informed the committee that Alaska has the highest per capita rate of sexual assault and sexual abuse of minors. Rehabilitation has proven unlikely so longer sentences seem necessary in order to protect society. The polygraph requirement has worked well in other states in getting offenders to abide by their parole agreements. This is not an inexpensive answer but the current cost to society merits the measure.

8:42:38 AM

SENATOR GRETCHEN GUESS moved Amendment 1.

24-LS1307\I.2  
Luckhaupt

**A M E N D M E N T 1**

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSSB 218( ), Draft Version "I"

Page 7, line 18:

Delete "Act"

Insert "section"

Page 7, line 19:

Delete the second occurrence of "Act"

Insert "section"

Page 7, line 20:

Delete all material and insert:

**\* Sec. 9.** Sections 2 and 7 of this Act take effect July 1, 2007.

**\* Sec. 10.** Except as provided in sec. 9 of this Act, this Act takes effect immediately under AS 01.10.070(c)."

SENATOR GUESS explained at the request of the Department of Corrections (DOC) the polygraph portion of the bill would take effect in 2007. Everything else would take immediate effect. Hearing no objections, Amendment 1 was adopted.

8:44:19 AM

SENATOR GUESS moved Amendment 2.

24-LS1307\I.1  
Luckhaupt

A M E N D M E N T 2

OFFERED IN THE SENATE

BY SENATOR GUESS

TO: CSSB 218( ), Draft Version "I"

Page 1, line 3:

Delete the first occurrence of "and"

Insert "; relating to sexual abuse of a minor; relating"

Page 1, following line 5:

Insert a new bill section to read:

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

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

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes, or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

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

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

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under

16 years of age to engage in conduct described in AS 11.41.455(a)(2) - (6); [OR]

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

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

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

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

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

Page 1, line 6:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 7, following line 14:

Insert a new bill section to read:

"\* **Sec. 9.** AS 11.41.438(a)(2) and 11.41.438(a)(3) are repealed."

Renumber the following bill sections accordingly.

Page 7, line 17:

Delete "Sections 3 - 6"

Insert "Sections 1, 2, 4 - 7, and 9"

Page 7, line 18:

Delete "secs. 3 and 5"

Insert "secs. 4 and 6"

SENATOR GUESS explained the amendment would take sexual abuse of a minor in the third degree and move it up to the second degree. The purpose is to put any crime that is either actual sexual penetration or attempt at sexual penetration of a minor into the felony category.

SENATOR BUNDE added there is a distinction between controlling an impulse and the more egregious act where penetration is involved.

8:46:09 AM

SENATOR HOLLIS FRENCH clarified the committee was moving what is currently a C felony to a B felony level of conduct.

SENATOR GUESS said yes.

SENATOR FRENCH cited a case wherein an Anchorage teacher was found guilty of having sex with his students and law enforcement discovered at the time there was no crime against it. Lawmakers quickly passed a bill to make it against the law. The age of consent in the State of Alaska is 16 years of age but a person in a position of authority should not abuse that authority over a 16-year-old girl. He urged the committee to be mindful that conduct such as that would now become a class B felony punishable by 10 to 15 years in prison.

8:48:41 AM

SENATOR GUESS responded she does not care. She said it is a policy call for the Senate Judiciary Standing Committee. The issue is what Alaskans value in their society. A person with a position of authority causing direct influence over a 16-year-old child is a crime because they would be using that position to get in bed with a young girl. She maintained that it is different when there is a position of authority involved, causing it to be a very serious crime.

8:50:23 AM

SENATOR BUNDE commented the mental duress that a person could impose on a child is stronger than physical force. A person in a position of authority should be held to a higher standard.

CHAIR SEEKINS asked whether SB 218 would change the age differential of current statute.

SENATOR BUNDE said no. The three-year age differential remains due to the consensual situation and then the parent becomes involved.

SENATOR FRENCH said:

There have been cases where a terrible crime has been committed with an abuse of authority and the offender needs to go to prison for a long time. That is why a

wide range of possible sentences is in the hands of a judge who can represent the community and impose a serious sentence but there are always those gut-wrenching cases that are near the line with a girl who is 17 years and 11 months old, maybe out of high school, who has made a bad decision and a coach or a counselor or a university professor has had sex with that person and it is a bad thing and no one should do it and that person should be a sexual felon, is and would be a sexual felon under current law. But I think there will be troubling cases where you might step back and say, "Ten years in prison is a frightfully long time." I'm just pausing a little bit before we take this serious step so that we have an opportunity to think about the tough cases that come down near the line.

SENATOR BUNDE admitted that was an excellent point. He said he had an anecdotal conversation with someone who found himself in the position with the age difference clause and when the relationship ended, the man had to register as a sex offender, when in his mind, he was participating in a willing situation. He said there is the option of pleading down for a lesser sentence.

[8:55:10 AM](#)

CHAIR SEEKINS said on the other hand, it might lead a person of authority to use more discretion. He bet that every person in authority in the school system would be adequately warned.

[8:55:41 AM](#)

CHAIR SEEKINS announced with no objection, Amendment 2 was adopted.

[8:56:42 AM](#)

SENATOR FRENCH said there was one aspect of the bill that was not discussed last time the bill was heard and he wanted to ask the sponsor about it. He asked about the new crime of "failure to report a sex offender or child kidnapper" and wanted to put the intent on the record.

[8:57:28 AM](#)

SENATOR BUNDE responded too many people have an awareness of a situation of abuse and either turn a blind eye or willfully do not report it when, in doing so could have prevented the abuse from occurring. He asked for someone from the Department of Law to address the issue.

SENATOR GUESS added the provision came out of the Jessica Lundford case in Florida. The sister to the perpetrator knew that he was a sex offender, knew he wasn't registered, and did nothing about it, which wasn't a crime at the time. Florida has model legislation for what they did to rectify that. That is where the language comes from.

SENATOR FRENCH asked whether Florida made it a felony offense.

SENATOR GUESS said yes.

SENATOR FRENCH referred to the polygraph section of SB 218. He said he supports it but is curious to hear from the Department of Corrections the number of parolees they anticipate putting under the test.

CHAIR SEEKINS asked for a representative from the Department of Corrections to speak.

MS. PORTIA PARKER, Deputy Commissioner, Department of Corrections (DOC), informed the committee the department is currently pulling the information and looking at a 5-year window. She estimated there to be approximately 780 sex offenders currently under supervision on parole or probation. Most of them are receiving treatment or on a wait list. If they live in a community where treatment is not available, that requirement is often lifted.

[9:02:35 AM](#)

MS PARKER clarified there are between 700-780. Each year the number will be between 120-180 new ones.

SENATOR FRENCH understood that the DOC would be able to add the polygraph as a condition of parole in the future but would have to wait for a new conviction to make it a condition of probation.

MS PARKER said yes. After July 1, 2007 every convicted sex offender that has a condition of probation assigned will be required to submit to periodic polygraph exams, as well as those on parole. Parole conditions happen directly prior to release and so the polygraph requirement can be set immediately so the parole condition will happen a lot faster than the probation condition.

SENATOR FRENCH asked Ms. Parker whether she anticipated adding that as a new parole condition on the people who were already out and under supervision.

MS PARKER said no. However, if they are brought in under the condition of having their parole revoked, the department will work to add that condition.

[9:05:05 AM](#)

CHAIR SEEKINS closed public testimony and asked for discussion among committee members.

SENATOR FRENCH commented that although he supports the bill, he has reservations about the some of the numbers.

One specific area is sex assault in the second degree. It is generally classified as a "touching" crime, not dealing with penetration. The bill would set the penalty range at 10 to 15 years. The bill takes a lesser offense of sexual assault in the third degree and sets the range from three to 10 years and gives the judge a wide range of options given the severity of the case whereas in this bill the most mitigated, the least serious, the least offensive touching case will result in a sentence of 10 years. I'm not going to throw amendments out today because I think the bill is leaving committee and frankly I think it would take a long time to figure out what the right number is, but I just want to say that I have some reservations about that severe penalty for the least serious touching case. So I will be thinking that as the bill moves through the process and perhaps there is some way to fix that or I can find out that it actually has to be there. I just wanted to put that on the record before the bill left committee.

SENATOR BUNDE agreed with Senator French. As they look at the numbers they need to determine the message they want to send to society. Alaska has a terrible record to date and only one out of ten sexual assault crimes are reported so that generally when someone is convicted they have a huge background of victims. The vast majority of people that will be convicted under SB 148 probably deserve the larger sentences. However, he acknowledged it might be accidentally mis-applied at some point but that applies to all Alaska laws and sentencing.

[9:09:03 AM](#)

CHAIR SEEKINS said the intent is to make the law tougher for people who touch inappropriately but sexual offense charges can easily become a social weapon. He expressed hope that the DOL would successfully sort out the guilty from the innocent.

9:13:08 AM

SENATOR BUNDE asserted that confidence and faith in the jury system must be upheld.

9:14:45 AM

SENATOR FRENCH said he had a question for the DOL regarding sentencing of both murder in the second degree and attempted murder.

The current penalty for murder in the second degree is 10-99 years and the current penalty for attempted murder is 5-99 years. I just wanted to get something on the record in the event of a future legal challenge regarding the disparity of a "touching" case that gets you 10 years and an attempted murder case that only gets you five. I just wanted to have some legal foundation, if you will, for that idea.

9:15:35 AM

MS. SUSAN PARKES, Deputy Attorney General, Criminal Division, Department of Law (DOL), responded this subject was discussed at the last hearing. Senator Guess indicated she was working on some findings to be added to the bill. The DOL shares concerns regarding the disparity. It is important for the Legislature to explain the reason that a serious "touching" case would be as serious as attempted murder.

SENATOR FRENCH responded that the challenge would be for an explanation as to the reason that the least serious "touching" case twice be viewed as harmful as the least serious attempted murder case because there is a great disparity. It is a stark contrast.

MS. PARKES said those kinds of cases will be where someone has died and gets a lower sentence than a sex offense where it has been a "touching" or attempted penetration.

9:18:02 AM

SENATOR BUNDE added someone who has had an attempt on their life lives in fear and someone who has suffered a sexual abuse attempt may also live in fear and have a psychological death. He asserted that people who suffer from a sexual assault can be inhibited and destroyed for the rest of their life.

[9:18:27 AM](#)

Senator Gene Therriault joined the meeting.

SENATOR GUESS clarified she would agree to disagree with Senator French regarding severity. She said there are cases of sexual assault of a minor in the second degree (SAM2) that are penetration. It is not just contact. With contact there are situations where the perpetrator is over 16 years of age and the victim is under 13, or it's a position of authority situation and the child is under 16. She disagreed with the characterization of "it's the least."

For the record, "sexual contact" is "knowingly." There is a standard and it does exempt acts that may be reasonably construed to be normal caretaking and affection. It is a policy call and a value statement. It is not just an impact to the victim but also an impact to the community. There is a reasonable argument that the Legislature can make that when it comes to the impact on the community, and generations, and public safety, especially with what is known about recidivism, maybe the punishment is just.

CHAIR SEEKINS agreed with Senator French that defense attorneys would challenge the law and that the courts will hear the challenge.

[9:22:19 AM](#)

SENATOR FRENCH:

Within any statute, and SAM is a good example; SAM 2 has many different prongs. Within any one of those violations, there will be a range of behavior that would satisfy the statute under which a jury could find you guilty. Just as an example, the presence or absence of clothing. You can have a sexual contact with or without clothing. And so the sexual contact with clothing present and without it is something else; both violate the same statute. But there is a range of behavior that will make you guilty of the crime. I am not saying it's not serious. It's very serious. What I'm saying is that within any one of those categories, you'll have behavior that is either more serious or less serious. It still makes you guilty of the crime. And so I'm concerned that the least serious conduct, touching over clothing for example, will get you a 10-year sentence and that will be compared to the least serious attempted murder,

whatever least serious attempted murder conduct satisfies that statute. Again they are both heinous crimes. But what will happen is that someone will compare that - sexual contact over clothing - with an attempted murder case that doesn't look very serious and say, "Why did that person get ten years versus why did that other person get five?"

He said his last concern was the findings would not be reviewed in the Senate Judiciary Standing Committee.

9:24:26 AM

CHAIR SEEKINS agreed Senator French had a legitimate concern.

9:24:50 AM

SENATOR THERRIAULT asked Ms. Parkes whether the judge could impose the polygraph on a sex offender whose probation has been revoked.

MS. PARKES said normally when probation has been revoked the judge imposes additional time. She deferred the question to Mr. Dean Guaneli.

9:26:25 AM

MR. DEAN GUANELI, Chief Assistant Attorney General, Criminal Division, Department of Law (DOL), advised in the case of probation revocation the court could establish new conditions, which could include polygraph testing. It is an open question - whether short of revocation - new conditions could be added. In appropriate cases the DOL would have the probation officer ask the judge to impose the new condition. The only thing the Legislature can do is state the provision that the polygraph condition could apply to offenses committed before SB 218 is enacted.

9:28:25 AM

CHAIR SEEKINS affirmed the intent of the committee is that the courts be able to impose the polygraph requirement anytime to any case after the law becomes affective.

SENATOR THERRIAULT stated that was the intent of the bill. However, he would like to pursue the polygraph testing for those offenders who are currently out on probation.

MR. GUANELI advised that once a sentence is meaningfully imposed on a person, that sentence cannot be increased. The legal question would be whether imposing a polygraph requirement would

be in effect, an increase in the sentence. There is that constitutional question but if the Legislature makes it clear then the DOL could argue the question in the courts.

SENATOR BUNDE added the polygraph would be part of a treatment program aimed at rehabilitation, not added punishment. In other states, the compliance rate with probation limitations was nearly 70 percent compared to 20 percent in states that have no polygraph. It really shouldn't be considered additional punishment.

[9:33:02 AM](#)

SENATOR GUESS moved to report CSSB 218(JUD) from committee with individual recommendations and attached indeterminate fiscal notes. Hearing no objections, the motion carried.

CHAIR SEEKINS called a recess from [9:34:09 AM](#) to [9:42:51 AM](#).

**SB 200-USE OF FORCE TO PROTECT SELF/HOME**

CHAIR RALPH SEEKINS announced SB 200 to be up for consideration and asked Senator Therriault to offer a summary.

[9:43:29 AM](#)

SENATOR GENE THERRIAULT, sponsor, explained since the previous hearing the Department of Law (DOL) has asked whether the committee would consider a complete re-write of the particular section in statute. He forwarded the bill to the legislative legal drafters and asked for a review. He asked for a member of his staff, along with a representative from the DOL for an update on the changes.

[9:45:53 AM](#)

MR. DAVE STANCLIFF, staff to Senator Therriault, and Mr. Dean Guaneli, Chief Assistant Attorney General, Criminal Division, Department of Law, introduced themselves for the record.

MR. GUANELI explained the DOL is attempting to make the self-defense laws more understandable to the public. He referred to the draft document submitted to the committee and explained page 1 and 2 are a cleaned up version of the existing statutes. The rest of the document lists all of the necessary amendments in legislative format. The DOL has cleaned up the language so that it is more understandable.

[9:51:39 AM](#)

For example, Section 11.81.335 is the provision for use of deadly force in defense of self or others. The DOL retained the existing requirement except as provided in subsection (b). A person is authorized to use deadly force if it is necessary to defend against death, physical injury, kidnapping, sexual assault in the first and second degree, sexual abuse of a minor in the first degree, or robbery in any degree. Deadly force is permissible unless the following four exceptions apply:

- Acting to further a felony criminal objective
- Involved in a felony drug transaction
- Gang activity establishing control over a geographic area
- Using an illegal firearm

[9:58:07 AM](#)

MR. GUANELI continued deadly force could be used unless the person knows that, with complete personal safety and with complete safety of others they could avoid deadly force by leaving the area of the encounter unless it is an area that person owns or is residing. The DOL would propose to broaden that to add areas such as a hotel room or a scenario of being a guest of the owner. The word "premises" as defined in Alaska criminal law includes vehicles adapted for overnight accommodations.

Exception 2 [under AS 11.81.335 (b)] says a person would not be required to leave if they were in the course of their employment and exception 3 would be when protecting a child or family member.

The differences between the DOL draft and SB 200 is in the provision just explained. However, the DOL draft would ensure for a tighter, more meaningful self-defense law.

[10:03:44 AM](#)

MR. GUANELI continued AS 11.81.340 is current law and is sometimes overlooked. It says if a third party is lawfully defending themselves, someone else would have the right to come to that person's aid.

[10:04:38 AM](#)

The DOL draft would add some language to AS 11.81.350 by engrafting the car-jacking provision. Subsection (e) would clarify that persons acting under the provision do not have a duty to retreat.

[10:08:07 AM](#)

SENATOR GRETCHEN GUESS asked Mr. Guaneli whether the DOL was making a recommendation on Section 1 of SB 200 regarding immunity.

MR. GUANELI said the DOL had no problem with it.

SENATOR GUESS referred to AS 11.81.335(a)(2) and noted that gangs move around. She asked whether the police are able to delineate gang turf in Alaska.

MR. GUANELI admitted it was difficult to define a gang under law and difficult to identify turf.

[10:11:37 AM](#)

SENATOR GUESS noted that Alaska has a statutory definition for "gang."

MR. GUANELI added there is also a definition for "street gang", which is defined as a group of people that are identified by common clothing, or hand signals, or tattoos, and have engaged in a certain number of criminal offenses over the past three years.

SENATOR GUESS referred to AS 11.81.350(e) of the DOL draft and asked whether a person would be justified in shooting someone stealing their car.

MR. GUANELI said only to the extent it is reasonably necessary to terminate theft of the motor vehicle when another person other than the offender is inside the vehicle.

[10:16:14 AM](#)

MR. STANCLIFF said another thing to consider is the definition of "motor vehicle." Some people believe that boats and airplanes should be included.

SENATOR THERRIAULT wanted to ensure the neighborhood watch was exempt from any territorial issues, as that is something where citizens patrol.

MR. GUANELI observed that neighborhood watches, while attempting to provide security are not trying to establish control over a neighborhood.

SENATOR THERRIAULT asked whether a felon could use a gun that he knows is stored in the house in order to protect himself from a home break-in.

MR. GUANELI said under state law, a non-violent felon may still possess a gun but under federal law, they cannot. That scenario would be a policy call. Technically under federal law the felon would be in violation.

SENATOR THERRIAULT noted a felon who was a guest in a house should be allowed to render assistance to the family if they were being victims of a crime.

[10:21:12 AM](#)

SENATOR FRENCH encouraged the sponsor to use careful wording on the drafting of the bill in relation to the car theft issue. He said it should be worded so that it could not become legal to kill car thieves simply for stealing a vehicle.

[10:22:19 AM](#)

MR. GUANELI agreed there was ambiguity in the draft that should be cleared up.

[10:23:06 AM](#)

CHAIR SEEKINS asked Senator Therriault to bring a committee substitute (CS) to the next hearing.

[10:23:27 AM](#)

SENATOR THERRIAULT replied that was his intention.

[10:23:50 AM](#)

CHAIR SEEKINS held SB 200 in committee.

There being no further business to come before the committee, Chair Seekins adjourned the meeting at [10:24:35 AM](#).