

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

January 25, 2010

1:02 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative Carl Gatto
Representative Bob Herron
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 298

"An Act relating to the crimes of harassment, possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for certain sex offenses; relating to aggravating factors in sentencing; relating to registration as a sex offender or child kidnapper; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 298

SHORT TITLE: SEX OFFENSES; OFFENDER REGIS.; SENTENCING

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/19/10	(H)	READ THE FIRST TIME - REFERRALS
01/19/10	(H)	JUD, FIN
01/25/10	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DANIEL S. SULLIVAN, Acting Attorney General
Department of Law (DOL)

Juneau, Alaska

POSITION STATEMENT: Along with others, presented HB 298 on behalf of the administration.

JOSEPH A. MASTERS, Commissioner
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Along with others, presented HB 298 on behalf of the administration.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Along with others, presented HB 298 on behalf of the administration.

MICHAEL J. STARK, Member
State Board of Parole
Department of Corrections (DOC)
Anchorage, Alaska

POSITION STATEMENT: Along with others, presented HB 298 on behalf of the administration.

DEREK DeGRAAF, Sergeant, Supervisor
Technical Crimes Unit (TCU)
Alaska Bureau of Investigation (ABI)
Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Along with others, presented HB 298 on behalf of the administration.

DWAYNE PEEPLES, Deputy Commissioner
Office of the Commissioner - Juneau
Department of Corrections (DOC)
Juneau, Alaska

POSITION STATEMENT: Along with others, presented HB 298 on behalf of the administration.

ACTION NARRATIVE

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CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:02 p.m. Representatives Ramras,

Dahlstrom, Herron, Gatto, and Lynn were present at the call to order. Representatives Gruenberg and Holmes arrived as the meeting was in progress.

HB 298 - SEX OFFENSES; OFFENDER REGIS.; SENTENCING

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CHAIR RAMRAS announced that the only order of business would be HOUSE BILL NO. 298, "An Act relating to the crimes of harassment, possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for certain sex offenses; relating to aggravating factors in sentencing; relating to registration as a sex offender or child kidnapper; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date."

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DANIEL S. SULLIVAN, Acting Attorney General, Department of Law (DOL), said that HB 298 is just one of the steps the administration is taking to address the problem of sexual assault and domestic violence (DV) in Alaska. Among other things, HB 298 would prohibit suspended imposition of sentence (SIS) for those convicted of the crimes of human trafficking in the first and second degree, distribution of child pornography, possession of child pornography, and distribution of indecent materials to minors; would make it a crime to access child pornography on a computer with the intention of viewing it - this is in response to an Alaska Court of Appeals ruling in Worden V. State, 213 p.3d 144 (Alaska APP. 2009), which held that current law does not prohibit viewing child pornography on a computer; would provide the courts with the authority to prohibit sex offenders, in cases involving children, from using a computer or communicating with children under the age of 16; would provide for enhanced sentencing, via an aggravating factor, for crimes that involve victims incapacitated due to alcohol or drugs; and would require those who must register in other states as a sex offender or child kidnapper to also register in Alaska regardless of whether the law under which they were convicted is similar to Alaska law.

ACTING ATTORNEY GENERAL SULLIVAN emphasized that most if not all of the provisions in HB 298 were developed by those on the front line at the DOL, and address weaknesses in current law. In conclusion, he again said that HB 298 is [part of] a strong,

comprehensive foundation, but is not the last word, and expressed a willingness to work with the committee to improve the bill and the administration's other efforts towards stopping sexual assault and DV in Alaska, protecting citizens, and bringing perpetrators to justice.

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JOSEPH A. MASTERS, Commissioner, Department of Public Safety (DPS), added that the DPS has worked closely with the Council on Domestic Violence and Sexual Assault (CDVSA) and the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA) on preparing [legislation] to address the problem of sexual assault and DV in Alaska, which currently has the highest rate of sexual assault and DV in the nation; women in Alaska are two and a half times more likely to be raped, with certain communities having an even far higher rate, and children in Alaska are six times more likely to be sexually exploited. Specifically, HB 298 focuses on offender accountability, and would give the DPS some extra tools with which to deal with offenders and would-be offenders, thereby making Alaskans safer.

CHAIR RAMRAS asked that statistics be provided comparing Alaska with other states with similar populations, as well as a further breakdown of the potential costs and potential results of the proposed legislation, so as to be better able to quantify the problem.

COMMISSIONER MASTERS agreed to do so, adding that in Alaska, every year, the Division of Alaska State Troopers alone investigates between 800-1,000 cases wherein women and children have been sexually assaulted.

REPRESENTATIVE GRUENBERG - referring to Section 15, specifically the language of proposed AS 12.63.100(6)(D) - questioned whether the term, "jurisdiction" as used therein means both U.S. jurisdictions and foreign jurisdictions.

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), offered her understanding that it means just U.S. jurisdictions, but agreed to research the issue further.

REPRESENTATIVE GRUENBERG questioned whether the bill also ought to amend existing AS 12.63.030(a) such that when the department

notifies the Federal Bureau of Investigation (FBI) and the state a [registered] sex offender or child kidnapper is moving to, that the department also notify the "local political subdivision."

ACTING ATTORNEY GENERAL SULLIVAN agreed to research that issue further, but surmised that in notifying a state, one is also notifying its political subdivisions as well.

REPRESENTATIVE GRUENBERG pointed out that sometimes there can be a gap in communications between a state and its local subdivisions.

REPRESENTATIVE GATTO questioned whether "bookmarking" an Internet web site that contains child pornography is the same as "downloading" it, since the person would then have direct access to it.

MS. CARPENETI surmised that the representative from the Division of Alaska State Troopers could better address that question.

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MICHAEL J. STARK, Member, State Board of Parole, Department of Corrections (DOC), explained that Sections 1 and 2 of HB 298 were developed at the request of the State Board of Parole, and are meant to correct an error made when AS 11.56.759 was adopted in 2007, making it crime for parolees or probationers who'd been convicted of sex offenses to violate their parole or probation. That provision was meant to focus on probationers, rather than on parolees, since probationers face long periods of probation supervision. He surmised that parolees were included in that 2007 legislation simply because probationers and parolees are often treated the same. However, probationers have part of their sentence suspended and, then, once they've served their period of incarceration, are supervised for a period of time as set by the courts - which can be for as long as 25 years for sex offenders - whereas parolees, both mandatory and discretionary, are supervised for shorter periods of time and are fewer in number.

MR. STARK explained that originally, parolees were not intended to fall under AS 11.56.759, but because they were included, an unintended consequence is that attorneys are now advising sex offender parolees not to admit parole violations or suspect behavior to their parole officers, thus increasing the risk to the public that the sex offenders will reoffend. It is

therefore important that the references to parolees be taken out of AS 11.56.759, just as Sections 1 and 2 of HB 298 propose. In response to a question, he acknowledged that in some instances, an offender can be both a probationer and a parolee and be serving two different periods of time concurrently. In response to another question, he said AS 11.56.759 must apply to probationers because without it, if they violate the conditions of their probation, they can't be prosecuted for that violation; AS 11.56.759 provides probationers with an incentive to comply with the conditions of their probation, but, again, this doesn't really apply to parolees.

MR. STARK, in response to a further question, pointed out that the Alaska State Constitution requires that the State maintain a parole system, and so combining Alaska's probation system and parole system would not be feasible.

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MS. CARPENETI explained that Section 3 of HB 298 rewrites the crime of failure to register as a sex offender or child kidnapper in the second degree, and is intended to clarify the elements required, and address a May 2009 Alaska Court of Appeals case, Moffitt v. State, wherein the court ruled that the State must prove that the defendant made a conscious, deliberate decision not to comply with the law; for purposes of the crime of failure to register as a sex offender or child kidnapper in the second degree, under Section 3, if the state proves that the defendant had an obligation to register, knew of that obligation, but didn't register, the State would have proved the commission of that offense beyond a reasonable doubt. However, Section 3 also provides for an affirmative defense that unforeseen circumstances outside the control of the person - such as being involved in an automobile accident, for example - prevented him/her from registering, and that the person immediately notified the DPS upon being able to do so.

MS. CARPENETI, in response to a question, said that a person who is required to register must notify the DPS of any changes in residence by the next business day, though some leeway could be given on a case-by-case basis. Any delay longer than a few days should be taken very seriously by the prosecutor, since the whole point of sex offender registration is to keep tabs on where these offenders are so that folks who live near the offenders know it.

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MS. CARPENETI explained that Section 4 amends the crime of harassment in the first degree, and addresses situations in which a perpetrator gropes a person without giving him/her time to voice a lack of consent. There have been a couple of recent cases involving the crime of sexual assault in the second degree - which involves sexual contact, i.e., touching - that have been reduced to the crime of harassment in the second degree - a class B misdemeanor - because the conduct happened so fast that the court concluded that the victim didn't have adequate time to indicate a lack of consent. Section 4, therefore, raises that offense - touching sexual areas of the body - to a class A misdemeanor, harassment in the first degree. She relayed that the DOL would also be providing a similar amendment for sexual abuse of a minor crimes, which don't have an element of consent, so that the aforementioned type of behavior can still be addressed without providing a lesser-included offense.

MS. CARPENETI explained that Section 5 amends the crime of possession of child pornography - a class C felony. Again, this is in response to Worden, wherein the Alaska Court of Appeals held that current law does not prohibit viewing child pornography on a computer if the perpetrator doesn't also download it or save it somewhere on the computer. She noted that a similar problem with federal law was addressed with a similar amendment. A child is still victimized regardless of whether the viewing of the child pornography occurs via a computer or via printed matter, and so Section 5 would make it a crime to access child pornography with the intent to view it. Section 6 amends the penalty provision associated with that crime. Section 7 provides an affirmative offense for possession of child pornography; this is meant to address concerns that sometimes computer viruses can make such material appear without the person having taken any steps to access it himself/herself. In order for a person to use the proposed affirmative defense, he/she is required to have contacted law enforcement immediately and to not have shown the material to another person.

MS. CARPENETI explained that Sections 8, 9, and 10 expand the crime of electronic distribution of indecent materials to minors such that the distribution of indecent materials to minors by any means would also be prohibited; such distribution, whether via computer or via other means, is classic "grooming" behavior. Section 11, again, provides that those convicted of the crimes of human trafficking in the first and second degree, distribution of child pornography, possession of child

pornography, and distribution of indecent materials to minors would be precluded from receiving SIS.

CHAIR RAMRAS, referring to Section 11, noted that an SIS might be appropriate in cases where the perpetrator is a minor.

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MS. CARPENETI pointed out, however, that the offenses Section 11 would apply to are class B and C felonies, which cannot automatically be waived to adult court, and so the perpetrators of those crimes who are minors would still be treated as juveniles, and the prosecution of juveniles is extremely different from the prosecution of adults, allowing for the adjustment of cases. She then explained that Section 12 - which repeals and reenacts AS 12.55.100(e) - adds discretionary conditions of probation for those convicted of a sex offense in that when setting the conditions of probation, the court could require such defendants to provide their probation officer with "each electronic mail address, instant messaging address, and other Internet communication identifier" that the defendants use; current law already mandates that submitting to regular periodic polygraph examinations shall be a condition of probation for those who've been convicted of a sex offense.

REPRESENTATIVE GRUENBERG, referring to the existing statutory provision mandating that regular periodic polygraph examinations be a condition of probation for someone convicted of a sex offense, questioned whether discussing potential other crimes during such an examination would violate his/her privilege against self incrimination.

MS. CARPENETI, noting that the bill doesn't alter that provision, relayed that she would discuss that issue further at a later time. She then explained that Section 13 amends the aggravating factor pertaining to a victim's particular vulnerability or incapacity to resist, to include the consumption of alcohol or drugs as a reason for the particular vulnerability or incapacity; this aggravating factor could be applied for any crime wherein the victim was particularly vulnerable or incapacitated, and is not limited to sex offenses.

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MS. CARPENETI explained that Section 14 adopts two new aggravating factors: one that could apply for crimes against a person - AS 11.41 - when the perpetrator had a dating or sexual

relationship with the victim; and one that could apply for the crime of sexual abuse of a minor in the second degree under AS 11.41.436(a)(2) - a person 16 years of age or older having sexual contact with a child under 13 years old - if the defendant is 18 years old or older. She indicated that the DOL would like to have the latter proposed aggravating factor expanded - via a proposed forthcoming amendment - such that it could also apply if the perpetrator of that crime is 10 years or more older than the victim. The rationale behind this is that it is significantly more serious for a person of mature age to participate in sexual abuse of a minor crimes, particularly when there is a large difference in age between the perpetrator and the victim.

MS. CARPENETI explained that Section 15 would require those who must register in other jurisdictions as a sex offender or child kidnapper to also register in Alaska [regardless of whether the law under which they were convicted is similar to Alaska law]. The DPS's sex offender administration, she relayed, has been getting phone calls, fairly regularly, from people in other states who are questioning whether they would still have to register if they move to Alaska. No one wants Alaska to become a safe haven for sex offenders and child kidnappers from other states just because Alaska doesn't have a statute that is substantially similar to the laws under which those perpetrators were convicted, and Section 15 would alleviate that concern.

MS. CARPENETI explained that Section 16 mirrors federal law in that the copying of child pornography as a part of discovery in a criminal prosecution would be prohibited. Currently in Alaska, the defense attorney can get a copy of the evidence, and in a case involving child pornography, this means that the child pornography gets copied and given to the defense attorney, without limitation, regardless that it is a crime to distribute child pornography, and this is just one more victimization of the victim. Under Section 16, the defense attorney, the defendant, and any expert [the defense would use] who wishes to view the child pornography must go to the police and view it there so that it wouldn't again be being copied and distributed.

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DEREK DeGRAAF, Sergeant, Supervisor, Technical Crimes Unit (TCU), Alaska Bureau of Investigation (ABI), Division of Alaska State Troopers, Department of Public Safety (DPS), relayed that the TCU's primary responsibility involves examining electronic evidence submitted by Alaska's various law enforcement agencies,

and conducting proactive investigations of suspects in Alaska who share/distribute child pornography - typically via the Internet; that the TCU is co-located with the [federal] Immigration and Customs Enforcement (ICE) office in Anchorage; that the TCU is part of Alaska's regional Internet Crimes Against Children (ICAC) Task Force; and that the TCU partners with federal agencies and local law enforcement agencies to combat child exploitation.

MR. DeGRAAF, with regard to the earlier question regarding [Section 5 and] bookmarking child pornography, explained that a bookmarked Internet site serves as a pointer and doesn't actually place any material on the computer. However, with the use of certain settings or without the use of certain software, images from an Internet site are cached on the computer in a temporary Internet file; in other words, those images are "saved" to the computer - typically without the knowledge of the computer user - and can then be recovered during the forensic investigation of the computer. In response to a question, he said that although there are various forms of software designed to erase a computer user's tracks on the Internet, they don't always work as advertized, and so the law enforcement is still able to recover the data. Furthermore, such tools are not often used [effectively] by those seeking child pornography.

REPRESENTATIVE GATTO - referring to the proposed aggravating factor in Section 14 pertaining to dating and sexual relationships, and noting that young people don't seem to be using the term "date" anymore - questioned whether using that terminology in the bill is sufficient.

MR. DeGRAAF declined to speculate. In response to another question [regarding Section 5], he explained that file sharing software is now the number one way of sharing child pornography throughout the world, and that this same technology is being used to track suspects, because even when suspects attempt to erase their tracks, other software on the computer can be used to show that they were accessing child pornography. In response to comments and a question, he said that law enforcement is targeting cases wherein the victims are infants and prepubescent children who are being sexually violated in movies, in pictures, and in training materials designed to show other perpetrators how to sexually abuse children without getting caught.

REPRESENTATIVE HOLMES asked how much child pornography is being created in Alaska.

MR. DeGRAAF indicated that some is being created in Alaska, but law enforcement doesn't have any statistics yet. He pointed out that in child pornography cases, the much greater evil is the sexual abuse of the child that's occurring while the pornography is being made. He added, "All the images that we are able to obtain through our examinations are sent to the National Center for Missing & Exploited Children [NCMEC], and they can actually tell us who a lot of these kids are, and most of them are not from Alaska." In response to a question, he indicated that the ICAC Task Force in Alaska is aware of and supportive of the legislation.

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REPRESENTATIVE LYNN questioned how someone conducting legitimate research on child pornography would be protected from prosecution.

MR. DeGRAAF offered his understanding that there is some protection for researchers, and that they would coordinate with federal law enforcement agencies and couldn't engage in file sharing. In response to another question, he said the bill doesn't address this issue.

MS. CARPENETI, in response to a question regarding Section 12, explained that the proposed new conditions of probation are discretionary, not mandatory, and are just another tool the courts can use to help combat recidivism. In general, conditions of probation must be reasonable, related to the crime, and make sense under the circumstances. In response to questions regarding Section 14's proposed aggravating factor pertaining to the crime of sexual abuse of a minor in the second degree, she explained that most of the sexual abuse of a minor crimes involve an age difference between the perpetrator and the victim; that which of those crimes certain behavior would constitute depends on many factors such as when the case was referred to law enforcement, how old the perpetrator was, how old the victim was, and the progression and length of the victimization; that currently there is no statute of limitations for sexual abuse of a minor crimes; that the age thresholds in those crimes progress; that a subsequent change in the perpetrator's age won't necessarily result in him/her being charged differently; and that the statutes pertaining to sexual abuse of a minor crimes are gender neutral.

MS. CARPENETI, in response to comments and questions, pointed out that HB 298 focuses on sexual offenses - including those

pertaining to child pornography - and is just one of the steps the administration is taking to address the problem of sexual assault and domestic violence (DV) in Alaska.

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REPRESENTATIVE GRUENBERG referred to Section 3, and noted that the language in proposed AS 11.56.840(b) specifies that no culpable mental state is required for the crime of failure to register as a sex offender or child kidnapper, and yet the language in proposed AS 11.56.840(a)(2) appears to require a mens rea of knowing. Should subsection (b) be amended to clarify that no culpable mental state is required except as provided in subsection (a)(2)?

MS. CARPENETI offered her understanding that the current language is intended to mean that "that particular element of the offense does not require a specific, separate, culpable mental state." She observed that if the current language isn't clear on that point, then further clarification would be in order.

REPRESENTATIVE GRUENBERG agreed to work on that point. Noting that a violation of proposed AS 11.56.840 would be a class A misdemeanor, which has a maximum one-year jail sentence, he asked whether a strict malum in se offense would be constitutionally problematic if the perpetrator served that entire year, since no mens rea would be required for such an offense.

MS. CARPENETI explained that whenever a crime doesn't require a culpable mental state, the legislature must clarify that that's the intent, and this provision does that. Furthermore, the crime of failure to register as a sex offender or child kidnapper in the second degree is not a malum in se offense, either under the bill or current law, because the State still has to prove that the defendant knew he/she had to register.

REPRESENTATIVE GRUENBERG posited that once that point is clarified, no further legal discussion on the issue need take place. He then referred to Section 15, and asked whether the language in proposed AS 12.63.100(6)(D) should be altered such that it also refers to foreign jurisdictions.

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MS. CARPENETI again indicated that she would research that issue further.

REPRESENTATIVE GRUENBERG again asked whether the bill also ought to amend existing AS 12.63.030(a) such that when the department notifies the Federal Bureau of Investigation (FBI) and the state a [registered] sex offender or child kidnapper is moving to, that the department also notify the local political subdivision.

MS. CARPENETI offered her understanding that currently the department notifies the State registry, which is then responsible for notifying other entities.

CHAIR RAMRAS surmised that there could be difficulties with requiring notification of local political subdivisions. For example, if an offender were moving to the Fairbanks area, would notice have to be given to the Fairbanks North Star Borough, the City of Fairbanks, or the City of North Pole?

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REPRESENTATIVE HOLMES referred to Section 3, specifically to proposed AS 11.56.840(c)(2), and noted that in order to use the affirmative defense provided for in subsection (c), the perpetrator is required to have contacted the DPS both orally and in writing. She asked whether the term, "orally" is really necessary.

MS. CARPENETI explained that this provision would apply to sex offenders who have not met their obligations to register, and so it is important for such people to let the department know right away when they move, and a letter can sometimes take a long time to get where it's sent, whereas a telephone call is pretty immediate. She indicated that she would be amenable to researching this issue further.

REPRESENTATIVE HOLMES referred to Section 7, and questioned whether the affirmative defense therein could be used by someone who intentionally downloads child pornography but doesn't download more than three images.

MS. CARPENETI acknowledged that point, suggested possibly deleting the word, "accessed", and agreed to work on the issue further.

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REPRESENTATIVE HOLMES referred to Section 16, and asked how its proposed court rule amendment would work, and how it would affect defense counsel's ability to represent clients.

MS. CARPENETI noted that [the Public Defender Agency (PDA)] has relayed that it would make things more difficult. However, regardless that defense counsel would no longer be able to simply mail child pornography to expert witnesses, it would allow everyone to comply with federal law. Such material should not be copied [and distributed], but it must be available for inspection.

REPRESENTATIVE LYNN referred to Section 8, and asked why AS 11.61.128(a) uses the term, "female breast". Why not just use the term, "breast"? Why specify the gender? Lewd touching is lewd touching regardless of gender, he opined.

MS. CARPENETI acknowledged that point, but explained that Alaska's statutes pertaining to sexual assault and sexual abuse of a minor crimes have always made the distinction between a female breast and a male breast, and so if the language were to be changed in the bill, it would require significant conforming changes throughout those statutes. In response to questions regarding the potential effects of HB 298, she proffered that [among other things], making the prosecution of sex-offender registrants who don't live up to their obligations clearer will help the department keep the registry current so that people will know where sex offenders are living; that requiring offenders from other jurisdictions to register in Alaska, if they are required to register in another jurisdiction, will make a huge difference in protecting people because offenders shopping around for a "safe" state to move to would be discouraged from moving to Alaska; and that it could result in the prosecution of more cases involving offensive physical contact when the state can't prove a lack of consent.

MS. CARPENETI, in response to further questions, said:

I think sexual assault and abuse in our state is pervasive. It's a hugely complicated problem, and we don't have a silver bullet to say that "this" is what we need to fix the problem. We do what we can and we do what creative people suggest to us, but nobody has come to me and said, "Please write ... a statute that will forbid sexual assault and abuse and ... protect our children." We ... do what we can.

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REPRESENTATIVE GATTO referred to Section 4, and questioned whether the term "buttocks" ought to be added to proposed AS 11.61.118(a)(2).

MS. CARPENETI offered her understanding that the behavior of offensively touching another person's buttocks is already addressed in [AS 11.61.120] - harassment in the second degree - but acknowledged that that term could be added to proposed AS 11.61.118(a)(2).

REPRESENTATIVE GATTO questioned whether under the term, "computer", the committee ought to address other technology that has Internet capacity.

MS. CARPENETI offered her belief that such technology would already fall under the definition of "computer". In response to a comment, she indicated that [for purposes of the statutes related to child pornography] the computer has to have a screen. In response to another question regarding Section 4, she explained that the harassment statutes don't have the same flaw regarding a lack of consent that the sexual assault statutes do, and indicated that other forthcoming legislation would be addressing that point further.

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DWAYNE PEEPLES, Deputy Commissioner, Office of the Commissioner - Juneau, Department of Corrections (DOC), relayed that the DOC has submitted a fiscal note based on past and current convictions, and estimates provided by the DOL, but had some difficulty quantifying the potential effects of some of the bill's sections, and so intends to monitor them once they are enacted. The DOC can't predict how many people will be affected by HB 298, particularly the provisions related to aggravating factors. In response to questions and comments, he concurred that the fiscal note estimates a cost of [\$136,900] in 2012, and explained that the statewide average cost of incarceration per person per day is approximately \$126, that page 2 of the DOC's fiscal note provides information specific to the bill's various sections, and that the estimated convictions/sentences are a gross aggregate. For example, with regard to just two sections of the bill, Section 3 is estimated to generate three new convictions per year with an average sentence of two months, and Section 4 is estimated to generate eighteen convictions per year with an average of sentence of thirty days.

REPRESENTATIVE HOLMES commented on the DOC's fiscal note's lack of specific estimates for most of the bill's sections, and suggested that the other departments work more closely with the DOC to provide it with the information it needs to generate its estimates.

CHAIR RAMRAS expressed dissatisfaction with the bill's limited scope and fiscal impact.

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REPRESENTATIVE GRUENBERG questioned whether the term "another jurisdiction" as used in Section 15 is intended to define that same term as used in Section 11.

MS. CARPENETI said no. Taking the term "substantially" out of proposed AS 12.55.085(f) via Section 11 is meant to address litigation issues raised with regard to what constitutes "substantially similar" in terms of presumptive sentencing and criminal laws that place significance on other offenses in other jurisdictions, and when such is the case, using just the term, "similar" results in a more common-sense comparison between criminal laws in Alaska and those of other states, and this change has already been made to some of Alaska's other statutes, but not yet to AS 12.55.085(f). [With regard to Section 15,] given the fact that many sex offenders in other states do have to register for their crimes in those states but currently don't have to in Alaska because those crimes are not substantially similar to Alaska's, the DOL would prefer that such people be required to register in Alaska when they move here, and the bill would effect just such a change.

REPRESENTATIVE GRUENBERG asked what the policy reason is for requiring someone who has to register in another state to register in Alaska when the underlying behavior isn't a crime in Alaska. In response to a request, he agreed to wait until the bill's next hearing to pursue this issue further.

CHAIR RAMRAS characterized HB 298 as a good piece of legislation, but again commented on its limited scope.

[HB 298 was held over.]

3:02:09 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:02 p.m.