

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

January 27, 2010

1:07 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

HOUSE BILL NO. 307

"An Act relating to sexual assault protective orders."

- MOVED HB 307 OUT OF COMMITTEE

**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

01/25/10 (H) Heard & Held  
01/25/10 (H) MINUTE(JUD)  
01/27/10 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 307

SHORT TITLE: SEXUAL ASSAULT PROTECTIVE ORDERS

SPONSOR(S): HOLMES

01/19/10 (H) READ THE FIRST TIME - REFERRALS  
01/19/10 (H) JUD  
01/27/10 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

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

**POSITION STATEMENT:** Provided comments and responded to questions during discussion of HB 298.

PEGGY BROWN, Executive Director  
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 298.

BYRON CHARLIE  
Minto, Alaska

**POSITION STATEMENT:** Provided comments during discussion of HB 298.

DAVID HOROWITZ, Executive Director  
Media Coalition  
New York, New York

**POSITION STATEMENT:** During discussion of HB 298, expressed concern with Section 8 and the existing statute it's proposing to alter.

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:** Provided comments and responded to questions during discussion of HB 298.

ANNE CARPENETI, Assistant Attorney General

Legal Services Section  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Responded to a question during discussion of HB 298.

BILL EDWARDS, Staff  
Representative Lindsey Holmes  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 307 on behalf of the sponsor, Representative Holmes.

PEGGY BROWN, Executive Director  
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of HB 307.

#### **ACTION NARRATIVE**

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**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at 1:07 p.m. Representatives Ramras, Herron, Gatto, Lynn, Gruenberg, and Holmes were present at the call to order. Representative Dahlstrom arrived as the meeting was in progress.

#### **HB 298 - SEX OFFENSES; OFFENDER REGIS.; SENTENCING**

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CHAIR RAMRAS announced that the first 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."

CHAIR RAMRAS mentioned that proposed amendments would be forthcoming, and that some of the requested statistics have been provided to the committee. He then spoke briefly about other steps and legislation that the administration is proposing to

address the problem of sexual assault and domestic violence (DV) in Alaska. Referring to a letter from the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA) addressed to the governor regarding HB 298, he noted that it read in part [original punctuation provided]:

This bill will close many loopholes that currently exist in Alaska law and no longer provide offenders with an escape mechanism from prosecution. ...

Finally, we know from our work that most sexual assaults occur between people that know each other or are engaged in a relationship. ... Allowing judges to enhance sentencing penalties through an aggravating factor when perpetrators betray the trust in these relationships and sexually assault their intimate partners will send a clear message that when you betray any trust relationship you will be held accountable.

The Network thanks you Governor in bringing forth this legislation which is a first step in reducing the rates of sexual assault in Alaska.

REPRESENTATIVE GRUENBERG referred to a letter from Media Coalition in members' packets expressing concern that provisions of both HB 298 and current statute have constitutional problems; pointed out that the letter doesn't describe the U.S. Supreme Court's three-part test established in Ginsberg v. New York, 390 U.S. 629 (1968); and opined that this issue as it relates to HB 298 needs to be vetted further before the bill moves from committee.

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JOSEPH A. MASTERS, Commissioner, Department of Public Safety (DPS), pointed out that the issue of sexual assault and DV is complex, as will be the solution. He then spoke briefly about some of the steps, in addition to HB 298, being taken by the administration with the goal of reducing the number of such offenses, ideally to the point of eliminating them altogether if possible, and about some of the administration's funding requests and the purposes for which the funding would be used.

CHAIR RAMRAS expressed his hope that the Department of Corrections' (DOC's) funding needs, particularly in light of the aforementioned steps and legislation, would also be addressed.

COMMISSIONER MASTERS, in response to questions, provided some information about Alaska's Village Public Safety Officer (VPSO) program and about DPS and associated agency personnel.

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PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), after providing some information about the ANDVSA, said the ANDVSA supports HB 298, which would strengthen the laws, hold perpetrators accountable, and provide victims with more legal protections. The ANDVSA, she relayed, has provided members with a handout containing forcible rape statistics from the Federal Bureau of Investigation's (FBI's) 2008 Uniform Crime Report (UCR), including statistics comparing Alaska with other states that have similar populations and rural/urban characteristics; with statistics from Standing Together Against Rape (STAR) regarding the Anchorage area; and with statistics from the Interior Alaska Center for Non-violent Living regarding the Fairbanks area. She highlighted some of those statistics, and emphasized that although victims and perpetrators are being addressed by the administration and local agencies, sufficient prevention efforts are still lacking.

CHAIR RAMRAS, in response to comments, relayed that a forthcoming amendment would be addressing the issue of identifying sexual offenders who come to Alaska from states that don't define sexual offenders the way Alaska law does.

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BYRON CHARLIE indicated a belief that providing a safe haven for [people] dealing with the issues of DV and sexual abuse of any kind is key.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

MR. CHARLIE offered his understanding that regardless of how severe jail sentences are, sex offenders will still exist, and it is therefore important to deal with the issue at its source, and, again, provide a safe haven [for victims].

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DAVID HOROWITZ, Executive Director, Media Coalition, mentioned that Media Coalition is a trade association representing other

trade associations, and most publishers, booksellers, librarians, and manufacturers and retailers of recordings, films, videos, and videogames, and their consumers, in the U.S., and does First Amendment work on their behalf with regard to local, state, and federal governments, and the courts. Noting that he'd submitted a memorandum in opposition to HB 298, he indicated that Media Coalition's concern centers on both existing AS 11.61.128(a), and as proposed via Section 8 of the bill.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MR. HOROWITZ noted that existing AS 11.61.128(a) bars the electronic distribution of material that's sexual in nature, whether actual or simulated, to anyone under the age of 16, and that proposed AS 11.61.128(a) would expand that prohibition to include any form of distribution. Proposed AS 11.61.128(a) would make it illegal for a bookstore owner to sell a book on sexual health, for example, to someone under the age of 16, and would make it illegal for a video rental store to rent a video such as Animal House, for example, to someone under the age of 16, and if an electronic version of such items were sold/rented, doing so to someone under the age of 16 would be illegal under existing law.

MR. HOROWITZ explained that in Ginsberg, the U.S. Supreme Court ruled that minors could be restricted from accessing sexual content, and established a three-part test to determine whether doing so in a particular instance would be constitutional; under that test, the material [must predominantly appeal to the prurient, shameful or morbid interest of minors, must be patently offensive to prevailing standards in the adult community as a whole with respect to what's suitable material for minors, and must be utterly without redeeming social importance for minors]. Nothing in either existing law or the bill, however, addresses this test, and so Media Coalition believes that both existing law and the bill are unconstitutional.

MR. HOROWITZ suggested that another way to make it illegal to give minors sexually explicit content would be to tie it to another illegal act, such as enticement. If such a restriction is not tied to another illegal act, then the three-part test, he opined, must be part of the judgment determining what kind of material is at issue.

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REPRESENTATIVE GRUENBERG said that regardless of the unpopularity of certain material, he is not willing to let the constitution be trampled upon, and that he would prefer that the committee, rather than the courts, address this issue and make the bill constitutional. In response to a comment, he surmised that Sections 9 and 10 of HB 298 are also of concern to Media Coalition.

MR. HOROWITZ concurred, but predicted that addressing Section 8 would also cure any potential problems raised by Sections 9 and 10. In response to a question, he agreed to provide the committee with written suggestions for alternative language.

REPRESENTATIVE GRUENBERG suggested to Mr. Horowitz that he also look at Hanby v. State, 479 P.2d 486, 498 (Alaska 1970), a case that dealt with some of these same issues.

MR. HOROWITZ, in response to comments and a question, pointed out that the First Amendment applies throughout the country, and that states have the authority to set standards judging what's appropriate for their minors, as was designed by the aforementioned the three-part test, which provides some flexibility for different sensibilities; in other words, Alaska's juries, prosecutors, and judges have the opportunity to impose Alaska's community standards when judging what's appropriate for Alaska's minors.

REPRESENTATIVE GRUENBERG explained to Mr. Horowitz that both the Alaska Court of Appeals and the Alaska Supreme Court have held that the Alaska State Constitution provides for greater First Amendment rights than the U.S. Constitution.

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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), after briefly describing how the department addresses child pornography cases, explained that in such cases, the hard part is discovering who is in possession of it and who is seeking it out. Many cases end in confessions that corroborate information the department already has, but other cases end with no prosecution because the department is unable to determine who put the child pornography on a particular computer. The department, because of the high burden of proof placed on it, only pursues those cases in which

it can determine who actually possessed and/or distributed or had access to the material.

CHAIR RAMRAS asked whether the DPS is prepared to address any increase in sexual assault and DV cases that results from passage of the bill and the administration's other efforts to combat the problem of sexual assault and DV in Alaska.

MR. DeGRAAF said that the department already has a steady caseload, and indicated that the department's staffing resources are insufficient to address even its current needs.

CHAIR RAMRAS surmised that an increase in such cases would also put a strain on the resources of all the departments, agencies, and entities that address situations involving sexual assault and DV.

REPRESENTATIVE GRUENBERG referred to Section 6, and questioned why it is proposing to delete from AS 11.61.127(c) the phrase, "by a person knowing that the production of the material involved the use of a child under 18 years of age that engaged in the conduct".

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ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), offered her understanding that that language is being deleted as unnecessary because proposed AS 11.61.127(c) references AS 11.41.455(a), which does require that the material depict a child under the age of 18.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 298.

REPRESENTATIVE DAHLSTROM expressed strong disfavor with those who would use the First Amendment to promote the sexual exploitation of children.

[HB 298 was held over.]

**HB 307 - SEXUAL ASSAULT PROTECTIVE ORDERS**

[2:41:13 PM](#)

CHAIR RAMRAS [announced that the final order of business would be] HOUSE BILL NO. 307, "An Act relating to sexual assault protective orders."

[2:41:34 PM](#)

BILL EDWARDS, Staff, Representative Lindsey Holmes, Alaska State Legislature, explained on behalf of the sponsor, Representative Holmes, that HB 307 repairs a gap in magistrate and district court judge jurisdiction with regard to issuing protective orders in cases of sexual assault. Currently there are three types of protective orders - those pertaining to domestic violence (DV), those pertaining to sexual assault, and those pertaining to stalking. Prior to 2001, protective orders were issued only in cases of DV, but House Bill 1 in 2001 extended this protection to cases involving stalking outside of a domestic relationship, and Senate Bill 54 in 2006 further extended this protection to cases involving sexual assault outside of a domestic relationship.

MR. EDWARDS explained that the current problem is that the statute giving magistrates and district court judges the authority to issue protective orders was not amended to specifically state that a protective order could be issued for cases involving sexual assault, as was intended with the aforementioned Senate Bill 54. As a result, magistrates and district court judges in some parts of the state, particularly rural parts of the state, have been saying, quite correctly, that they don't have the authority to issue protective orders in cases involving sexual assault. This means that victims of these crimes have to go to a superior court judge, and this is particularly burdensome on victims who live in communities that are far away from a superior court. House Bill 307 remedies this by amending AS 22.15.100(9)(B) such that magistrates and district court judges would have the authority to issue a protective order in cases involving sexual assault.

MR. EDWARDS, in conclusion, noted that members' packets contain minutes pertaining to the aforementioned Senate Bill 54; e-mail correspondence between himself and that bill's sponsor confirming that the intent of that bill was for magistrates and district court judges to issue protective orders in cases involving sexual assault; and a letter of support for HB 307 from the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA).

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PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), said the ANDVSA supports HB 307, and had noticed the aforementioned oversight that's resulted in some magistrates and district court judges, particularly in rural areas of Alaska, [refusing to issue protective orders in cases involving sexual assault]. Closing such loopholes might seem inconsequential, but doing so has a huge impact out in the field, and provides the tools with which perpetrators can be brought to justice and victims can be protected.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 307.

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REPRESENTATIVE DAHLSTROM moved to report HB 307 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 307 was reported from the House Judiciary Standing Committee.

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#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:46 p.m.