

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 1, 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

**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
01/27/10	(H)	Heard & Held
01/27/10	(H)	MINUTE(JUD)

**WITNESS REGISTER**

JANE W. PIERSON, Staff  
Representative Jay Ramras  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided explanations and responded to questions during discussion of proposed amendments to HB 298.

JEFFREY A. MITTMAN, Executive Director  
American Civil Liberties Union of Alaska (ACLU of Alaska)  
Anchorage, Alaska

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

SUE STANCLIFF, Special Assistant  
Office of the Commissioner  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** Responded to questions during discussion of proposed amendments to HB 298.

RON TIDLER, Detective Sergeant  
Cyber Crimes Unit  
Anchorage Police Department (APD)  
Municipality of Anchorage (MOA);  
Commander  
Alaska Region  
Internet Crimes Against Children (ICAC) Task Force  
Anchorage, Alaska

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

GERALD LUCKHAUPT, Attorney  
Legislative Legal Counsel  
Legislative Legal and Research Services  
Legislative Affairs Agency (LAA)  
Juneau, Alaska

**POSITION STATEMENT:** As the drafter, provided comments and responded to questions during discussion of proposed Amendments to HB 298.

RICHARD SVOBODNY, Deputy Attorney General  
Central Office  
Criminal Division

Department of Law (DOL)  
Juneau, Alaska

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

**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, Lynn, Gruenberg, Holmes, Dahlstrom, Herron, and Gatto were present at the call to order.

[1:07:44 PM](#)

[The committee entertained brief comments from the new executive director of the Department of Public Safety's (DPS's) Council on Domestic Violence and Sexual Assault (CDVSA).]

The committee took an at-ease from 1:13 p.m. to 1:14 p.m.

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

[1:14:17 PM](#)

[CHAIR RAMRAS announced that the only other 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 relayed that the committee would be addressing proposed amendments to HB 298; that public testimony had previously been closed; and that members' packets now include written testimony from the American Civil Liberties Union of Alaska (ACLU of Alaska).

[1:16:35 PM](#)

CHAIR RAMRAS referred to Amendment 1, labeled 26-GH2859\A.7, Luckhaupt, 1/27/10, which read:

Page 1, line 1, following "harassment,":  
Insert "**distribution and**"

Page 3, following line 19:  
Insert a new bill section to read:

"\* **Sec. 5** AS 11.61.125(a) is amended to read:

(a) A person commits the crime of distribution of child pornography if the person **distributes in this state or advertises, promotes, solicits, or offers to distribute in this state** [BRINGS OR CAUSES TO BE BROUGHT INTO THE STATE FOR DISTRIBUTION, OR IN THE STATE DISTRIBUTES, OR IN THE STATE POSSESSES, PREPARES, PUBLISHES, OR PRINTS WITH INTENT TO DISTRIBUTE,] any material that **is proscribed under AS 11.61.127** [VISUALLY OR AURALLY DEPICTS CONDUCT DESCRIBED IN AS 11.41.455(a), KNOWING THAT THE PRODUCTION OF THE MATERIAL INVOLVED THE USE OF A CHILD UNDER 18 YEARS OF AGE WHO ENGAGED IN THE CONDUCT]."

Renumber the following bill sections accordingly.

Page 3, lines 21 - 26:

Delete all material and insert:

"(a) A person commits the crime of possession of child pornography if the person knowingly possesses **or knowingly accesses on a computer with intent to view** any material that visually [OR AURALLY] depicts conduct described in AS 11.41.455(a) knowing that the

**(1) production of the material involved the use of a child under 18 years of age who engaged in the conduct or a depiction of a part of an actual child under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct; or**

**(2) material appears to include a child under 18 years of age engaging in the conduct.**"

Page 4, line 4:

Delete "a new subsection"

Insert "new subsections"

Page 4, line 5:

Delete "for possession of child pornography"

Page 4, following line 11:

Insert new subsections to read:

"(f) In this section,

(1) "appears to include a child" means that the material appears to include, or conveys the impression that it includes, a person who is under 18 years of age and the material was not created using a depiction of any part of an actual child under 18 years of age, and

(A) the average individual, applying contemporary community standards, would find that the depiction, taken as a whole, appeals to the prurient interest; and

(B) a reasonable person would find that the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value;

(2) "computer" has the meaning given in AS 11.46.990.

(g) In a prosecution under (a) of this section, the prosecution is not required to prove the identity of a minor depicted or that the defendant knew the identity of a minor depicted."

Page 9, line 3:

Delete "Sections 1-15"

Insert "Sections 1-16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

The committee took an at-ease from 1:17 p.m. to 1:18 p.m.

CHAIR RAMRAS mentioned that Amendment 1 would [in part] add a new Section 5 to HB 298.

CHAIR RAMRAS made a motion to adopt Amendment 1.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

The committee took an at-ease from 1:19 p.m. to 1:21 p.m.

[1:21:29 PM](#)

JANE W. PIERSON, Staff, Representative Jay Ramras, Alaska State Legislature, explained that [Amendment 1] would amend AS 11.61.125(a) and AS 11.61.127 in order to provide for the apprehension and prosecution of distributors of computer-generated images of children engaged in sex acts. This type of industry is thriving due to the great difficulty police and

prosecutors have proving the identity of a victim and that the images are not mere fantasy. Amendment 1 would criminalize the distribution and possession of such computer-generated films and images, and would make the arrest and prosecution of a perpetrator possible even when the victim is not identifiable. In 2008, the U.S. Supreme Court upheld the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003, which [in part] criminalizes the exchange of pictures depicting children in sexually explicit poses, and any attempt to convince another person that such pictures are of real children. She said Amendment 1 would outlaw computer-generated child pornography and its distribution. In response to a question, she confirmed that [Amendment 1] constitutes new law.

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JEFFREY A. MITTMAN, Executive Director, American Civil Liberties Union of Alaska (ACLU of Alaska), said that as long as Amendment 1 is narrowly drawn such that its focus is on obscene material, a standard already established by the U.S. Supreme Court, it would be in line with constitutional limitations and address civil liberty concerns. Without such a narrow focus, however, Amendment 1 could run afoul of the First Amendment. In response to a question, he explained that the ACLU of Alaska doesn't support pornography or anything else that harms children, and is merely concerned that proposed laws be appropriately drafted so that they protect children but don't limit First Amendment rights. He acknowledged that this can be a challenging area of the law.

REPRESENTATIVE HOLMES, in response to a comment, observed that Amendment 1 doesn't use the term, "obscene material", but does require of the material that when taken as a whole and applying contemporary community standards, a reasonable person would find that it appeals to prurient interests and lacks serious literary, artistic, political, or scientific value.

MR. MITTMAN said that is very close to the aforementioned standard established by the U.S. Supreme Court, and surmised that as a result, Amendment 1 is narrowly focused on obscene material, which the courts have ruled doesn't receive First Amendment protection.

REPRESENTATIVE GATTO questioned how the purported age of a computer-generated character engaging in sex could be determined.

MR. MITTMAN offered his belief that by having the proposed language focus on obscene material, as described under the aforementioned standard, it's not necessary to make such a determination.

CHAIR RAMRAS offered his understanding that Mr. Mittman is not opposed to Amendment 1.

MR. MITTMAN, in response to a question, said it appears that Amendment 1 does not have any constitutional infirmities.

MS. PIERSON, in response to questions, explained that most other states have a statutory definition of the term, "obscene", and that she has not yet researched whether other states have statutorily addressed computer-generated child pornography, but imagines that some states have.

[1:33:24 PM](#)

SUE STANCLIFF, Special Assistant, Office of the Commissioner, Department of Public Safety (DPS), in response to a question, indicated that law enforcement is finding that [computer-generated] child pornography is a problem.

[1:34:09 PM](#)

RON TIDLER, Detective Sergeant, Cyber Crimes Unit, Anchorage Police Department (APD), Municipality of Anchorage (MOA); Commander, Alaska Region, Internet Crimes Against Children (ICAC) Task Force, added that almost 95 percent of law enforcement's searches are uncovering large collections of computer-generated child pornography. The images are graphic and very clear that a small child is being sexually assaulted by adult males. When interviewed, perpetrators say that such images fuel their fantasies about sexually abusing children.

REPRESENTATIVE HOLMES questioned whether law enforcement would view Amendment 1 as a great tool, and whether viewing computer-generated child pornography serves as a substitute or whether it serves as a gateway.

MS. STANCLIFF indicated that she would research those issues further, and remarked that the DPS would always choose to pursue the cases involving real children first.

CHAIR RAMRAS indicated that he favors Amendment 1 regardless of whether the behavior it addresses serves as a substitute or as a gateway.

REPRESENTATIVE GRUENBERG asked how many cases passage of Amendment 1 would result in, and whether its passage would require the DPS to revise its fiscal note.

MS. STANCLIFF indicated that because of limited resources to pursue such cases, she doesn't believe that passage of Amendment 1 would result in the DPS having to revise its fiscal note, which currently only addresses the bill's sex offender registration provisions. In response to other questions, she reiterated that the DPS's first priority is to pursue cases involving real children, adding that the DPS is currently already overwhelmed by the number of such cases.

REPRESENTATIVE GRUENBERG removed his objection.

CHAIR RAMRAS, noting that there were no further objections, announced that Amendment 1 was adopted.

[1:41:13 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, labeled 26-GH2859\A.8, Luckhaupt, 1/26/10, which read:

Page 2, line 30, through page 3, line 1:  
Delete all material.

Reletter the following subsections accordingly.

Page 8, following line 31:  
Insert a new bill section to read:

"\* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE STATEMENT CONCERNING CULPABLE MENTAL STATE. In AS 11.56.840(a), as repealed and reenacted by sec. 3 of this Act, the only culpable mental state required to be proven by the prosecution is the "knowing" requirement in paragraph (2) of that subsection. No other culpable mental state needs to be proven for the other elements of that offense."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"  
Insert "Sections 1 - 15 and 17"

CHAIR RAMRAS objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that Amendment 2 would clarify - via deleting Section 3's proposed as AS 11.56.840(b) and adding a portion of its language to a new legislative intent section in uncodified law - that a mens rea of knowing is the only mental state required for the entirety of Section 3's proposed AS 11.56.840(a), which pertains to the crime of failure to register as a sex offender or child kidnapper in the second degree. He offered his understanding that the approach taken by Amendment 2's proposed changes conforms with standard legislative drafting practices.

[1:45:26 PM](#)

GERALD LUCKHAUPT, Attorney, Legislative Legal Counsel, Legislative Legal and Research Services, Legislative Affairs Agency (LAA), speaking as the drafter, concurred, and assured members that Amendment 2 wouldn't change anything substantive about Section 3.

CHAIR RAMRAS removed his objection, ascertained that there were no further objections, and announced that Amendment 2 was adopted.

CHAIR RAMRAS referred to and then withdrew Amendment 3, labeled 26-GH2859\A.9, Luckhaupt, 1/27/10, which read:

Page 1, line 1:  
Delete "**harassment**,"  
Delete the second occurrence of ","

Page 3, lines 13 - 19:  
Delete all material.

Renumber the following bill sections accordingly.

Page 9, line 3:  
Delete "Sections 1 - 15"  
Insert "Sections 1 - 14"

Page 9, line 5:  
Delete "Section 16"  
Insert "Section 15"

[1:47:25 PM](#)

CHAIR RAMRAS referred to Amendment 4, labeled 26-GH2859\A.15, Luckhaupt, 1/27/10, which read:

Page 3, lines 14 - 19:

Delete all material and insert:

"(a) A person commits the crime of harassment in the first degree if

(1) the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces; or

(2) under circumstances not proscribed under AS 11.41.434 - 11.41.440, the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact by the person touching another person's genitals, anus, or female breast, either directly or through clothing."

MS. PIERSON explained that Amendment 4 would amend Section 4's proposed changes to AS 11.61.118(a) - the crime of harassment in the first degree - such that it wouldn't apply to sexual abuse of a minor crimes. Amendment 4 addresses the fact that a lack of consent is not an element of sexual abuse of a minor crimes, and would ensure that a charge of sexual abuse of a minor could not be plead down to a charge of harassment.

REPRESENTATIVE GRUENBERG [although no motion had been made nor an objection stated] relayed that he would remove his objection to the adoption of Amendment 4.

CHAIR RAMRAS [although no motion had been made] objected for the purpose of discussion.

REPRESENTATIVE GATTO [made a motion to amend] Amendment 4, to add the word, "buttocks" to proposed AS 11.61.118(a)(2) after the word "anus".

CHAIR RAMRAS objected to the amendment to Amendment 4.

REPRESENTATIVE HOLMES offered her understanding that offensive physical contact of a person's buttocks is already covered under AS 11.61.120 - the crime of harassment in the second degree.

REPRESENTATIVE GATTO withdrew the amendment to Amendment 4.

CHAIR RAMRAS removed his objection, and announced that Amendment 4 was adopted.

[1:51:15 PM](#)

CHAIR RAMRAS referred to Amendment 5, labeled 26-GH2859\A.13, Luckhaupt, 1/27/10, which read:

Page 3, line 19, following "clothing":

Insert "and the other person is 16 years of age or older"

REPRESENTATIVE GRUENBERG [although no motion had yet been made] objected for the purpose of discussion.

CHAIR RAMRAS made a motion to adopt Amendment 5.

MS. PIERSON explained that Amendment 5 was submitted by the Department of Law (DOL) and is intended to cure the same problem that Amendment 4 addressed.

The committee took an at-ease from 1:52 p.m. to 1:54 p.m.

CHAIR RAMRAS noted that Amendment 4 and Amendment 5 are similar in intent but differ in construct.

REPRESENTATIVE GRUENBERG removed his objection.

CHAIR RAMRAS withdrew Amendment 5.

[1:56:01 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 6, labeled 26-GH2859\A.11, Luckhaupt, 1/27/10, which read:

Page 6, lines 30 - 31:

Delete all material and insert:

"(E) specified in AS 11.41.434 - 11.41.438 or 11.41.452 - 11.41.458 and the defendant was 10 or more years older than the victim;"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG offered his understanding that the proposed amendment labeled 26-GH2859\A.14, Luckhaupt, 1/27/10, [which later became known as Amendment 7] is proposing a similar

change to the same provision of the bill as Amendment 6;  
[Amendment 7] read:

Page 6, lines 30 - 31:

Delete all material and insert:

**"(E) specified in AS 11.41.434 - 11.41.458  
or AS 11.61.128 and the defendant was 10 or more years  
older than the victim;"**

MS. PIERSON explained that both [Amendment 6 and Amendment 7] propose to rewrite Section 14's proposed AS 12.55.155(c)(18)(E) - a new aggravating factor that could be applied for the crime of sexual abuse of a minor in the second degree under AS 11.41.436(a)(2) when the defendant is 18 years of age or older - such that instead the aggravating factor could be applied if the defendant is 10 or more years older than the victim. Under both amendments, the proposed new aggravating factor could be applied for any crime specified in AS 11.41.434 - AS 11.41.438 or AS 11.41.452 - AS 11.41.458, all of which are crimes involving victims who are minors, but the difference is that under [Amendment 7], the proposed new aggravating factor could also be applied for the crimes specified in AS 11.41.440 - sexual abuse of a minor in the fourth degree; AS 11.41.450 - incest; and AS 11.41.128 - electronic distribution of indecent material to minors. [Amendment 7] is therefore more inclusive than [Amendment 6].

REPRESENTATIVE GRUENBERG said he prefers [Amendment 7] because it's a little broader, surmising that the same policy applies to the aforementioned additional crimes, and suggested that Amendment 6 be withdrawn in favor of [Amendment 7].

REPRESENTATIVE HOLMES removed her objection to the motion to adopt Amendment 6.

CHAIR RAMRAS withdrew Amendment 6.

[1:59:01 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 7 [text provided previously].

REPRESENTATIVE GRUENBERG objected for the purpose of discussion, adding that he supports Amendment 7.

CHAIR RAMRAS said he also supports Amendment 7.

REPRESENTATIVE GATTO questioned why the proposed new aggravating factor is being changed such that it would no longer specify that the defendant be 18 years of age or older.

MR. LUCKHAUPT offered his understanding that the DOL's goal with Amendment 7 is to provide for an aggravating factor at sentencing in cases where there is a substantial age difference between the minor victim and the defendant, and surmised that the proposed new aggravating factor need not specify that the defendant be 18 years of age or older, because it would only apply to someone subject to sentencing as an adult, who, for the most part, would be someone over the age of 16. So via either Amendment 6 or Amendment 7, the specification that the defendant be 18 years of age or older is being removed as not being a significant distinction for purposes of applying the proposed new aggravating factor at sentencing.

REPRESENTATIVE GATTO, in response to comments and a question, indicated that he would prefer that Amendment 7 be altered such that the proposed new aggravating factor would specify that it could be applied when either the defendant is 18 years of age or older, or when the defendant is 10 or more years older than the minor victim.

REPRESENTATIVE HERRON surmised that altering Section 14 as Amendment 7 proposes would result in the proposed new aggravating factor possibly being applied to more defendants.

MR. LUCKHAUPT acknowledged that both Amendment 6 and Amendment 7 provide that the proposed new aggravating factor could apply to more crimes than currently listed in Section 14's proposed AS 12.55.155(c)(18)(E). He opined that retaining the provision that the defendant be 18 years of age or older doesn't really tie in anymore with the requirement that the defendant be 10 years or more older than his/her minor victim, again pointing out that someone who isn't being sentenced as an adult wouldn't be subject to the proposed new aggravating factor anyway. He surmised that the DOL, in offering Amendment 7, feels that all sexual abuse of a minor crimes should provide the opportunity for an aggravating factor at sentencing when there is a substantial age difference between the perpetrator and the victim.

CHAIR RAMRAS expressed a preference for the broader amendment - Amendment 7.

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REPRESENTATIVE GATTO expressed concern that without specifying that the proposed new aggravating factor could be applied when either the defendant is 18 years of age or older, or when the defendant is 10 or more years older than the minor victim, an adult who is sexually abusing a minor but who is only 9 years older than his/her victim would not be subject to the proposed new aggravator.

MR. LUCKHAUPT explained that there are going to be some cases for which the proposed new aggravating factor just isn't going to be available, because the elements of some of the offenses referenced in Amendment 7 don't currently require that the perpetrator be 18 years of age or older, or that the perpetrator be 10 or more years older than the minor victim. Regardless, it's still meaningful to have the proposed new aggravating factor focus on perpetrators who are substantially older than their victims.

REPRESENTATIVE GATTO indicated that he would not be offering an amendment to Amendment 7 such that the proposed new aggravating factor would specify that it could be applied when either the defendant is 18 years of age or older, or when the defendant is 10 or more years older than the minor victim.

REPRESENTATIVE GRUENBERG noted that another way to address Representative Gatto's concern would be to replace "10", as used in Amendment 7, with a lower number. He indicated, though, that he would not be offering an amendment to that effect.

CHAIR RAMRAS mentioned that he would be amenable to letting such an amendment be offered later should any member come to feel that that language should be modified.

REPRESENTATIVE GRUENBERG removed his objection to the motion to adopt Amendment 7.

CHAIR RAMRAS announced that Amendment 7 was adopted.

[2:14:26 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 8, labeled 26-GH2859\A.6, Luckhaupt, 1/26/10, which read:

Page 7, lines 1 - 31:

Delete all material and insert:

"\* **Sec. 15.** AS 12.63.020(b) is amended to read:

(b) The department shall adopt, by regulation, procedures to notify a sex offender or child kidnapper who, on the registration form under AS 12.63.010, lists a conviction for a sex offense or child kidnapping that is a violation of a former law of this state or a law of another jurisdiction, of the duration of the offender's or kidnapper's duty under (a) of this section for that sex offense or child kidnapping. As a part of the regulations, the department shall

(1) require the offender or kidnapper to supply proof acceptable to the department of unconditional discharge and the date it occurred; and

(2) if the registration requirement of the offender or kidnapper arises from AS 12.63.100(5)(B), require the offender or kidnapper to register for the period of time that is required by the state or jurisdiction from which the conviction and duty to register arises.

\* Sec. 16. AS 12.63.100(5) is amended to read:

(5) "sex offender or child kidnapper" means a person

(A) convicted of a sex offense or child kidnapping in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999; or

(B) required to register as a sex offender or child kidnapper in another state or jurisdiction for a crime that is not a sex offense or child kidnapping as defined in this section but for which the person is required to register as a sex offender or child kidnapper in another state or jurisdiction;"

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 14"

Page 9, following line 4:

Insert a new subsection to read:

"(b) Sections 15 and 16 of this Act relating to registration of sex offenders and child kidnappers whose duty to register arises from conviction in another state or jurisdiction for a crime that is not defined as a sex offense under AS 12.63.100(6) or a child kidnapping under AS 12.63.100(2) shall register,

report, and file as required under AS 12.63.010 if their duty to register in the other state or jurisdiction has not expired on the effective date of this Act regardless of whether the conviction for the crime in the other state or jurisdiction occurred before, on, or after the effective date of this Act."

Reletter the following subsection accordingly.

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

[2:15:00 PM](#)

CHAIR RAMRAS then referred to the proposed amendment labeled 26-GH2859\A.4, Luckhaupt, 1/26/10, which he characterized as similar to Amendment 8, and which read:

Page 7, lines 1 - 31:

Delete all material and insert:

"\* **Sec. 15.** AS 12.63.020(b) is amended to read:

(b) The department shall adopt, by regulation, procedures to notify a sex offender or child kidnapper who, on the registration form under AS 12.63.010, lists a conviction for a sex offense or child kidnapping that is a violation of a former law of this state or a law of another jurisdiction, of the duration of the offender's or kidnapper's duty under (a) of this section for that sex offense or child kidnapping. As a part of the regulations, the department shall

(1) require the offender or kidnapper to supply proof acceptable to the department of unconditional discharge and the date it occurred; and  
(2) if the registration requirement of the offender or kidnapper arises from AS 12.63.100(5)(B), require the offender or kidnapper to register for the period of time that is required by the state or jurisdiction from which the conviction and duty to register arises.

\* **Sec. 16.** AS 12.63.100(5) is amended to read:

(5) "sex offender or child kidnapper" means a person

(A) convicted of a sex offense or child kidnapping in this state or another jurisdiction regardless of whether the conviction occurred before, after, or on January 1, 1999; or

(B) required to register as a sex offender or child kidnapper in another state or jurisdiction for a crime that is not a sex offense or child kidnapping as defined in this section but for which the person is required to register as a sex offender or child kidnapper in another state or jurisdiction;"

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

REPRESENTATIVE HOLMES explained that if Amendment 8 were adopted, she would not be offering the proposed amendment labeled 26-GH2859\A.4, Luckhaupt, 1/26/10.

CHAIR RAMRAS offered his understanding that Amendment 8 is intended to address a problem wherein a person who has to register in another state as a sex offender or child kidnapper could move to Alaska and not be required to register in Alaska, because the laws of that other state are not similar enough to Alaska law.

MR. LUCKHAUPT explained that under Amendment 8, if a person is required to register in another state as a sex offender or child kidnapper, then that would trigger the requirement that he/she also register in Alaska and register for the same amount of time as required by the other state. This should alleviate any problem that could arise by attempting to define behavior that does not currently constitute a sex offense or child kidnapping offense under Alaska law as a sex offense, as is currently being proposed via existing Section 15 of HB 298. Basically, Amendment 8 gives comity to other states' laws, and this is necessary because federal law mandates that Alaska register sex offenders from other states, regardless that other states define sex offenders and child kidnappers differently than Alaska does. In response to a question, he reiterated that under Amendment 8,

the person from another state would have to register in Alaska for the same amount of time required by that other state.

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RICHARD SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), expressed concern that under Amendment 8, the DPS would need to conduct a tremendous amount of research in order to determine how long each offender who moves to Alaska must be registered for in the state he/she moves from. For example, in Minnesota, an assessment is done on each offender to determine how long he/she must register - anywhere from one year to life. Researching this type of information, therefore, would be burdensome. The DOL, via the language currently in Section 15, was attempting to avoid that necessity, and, therefore, would prefer that HB 298 maintain the approach currently taken in Section 15, that of continuing to use Alaska's existing two-tier system regarding registration length - either 15 years or life - and then determining which tier applies for a particular offender. In response to a question, he indicated that under [both current law and existing Section 15 of HB 298], the time an offender spends registered in another state would be deducted from the total amount of time he/she must be registered in Alaska.

MR. MITTMAN explained that in Doe v. State, 189 P.3d 999 (Alaska 2008), the Alaska Supreme Court ruled that people convicted of sex offenses in Alaska before the enactment of the sex offender registry statutes in 1994 could not be required to register because it would violate the ex post facto clause of [both the Alaska State Constitution and the U.S. Constitution]. The ACLU of Alaska's concern is that a similar constitutional problem would exist if an offender moving to Alaska from another state were required to register in Alaska but his/her conviction in the other state occurred prior to 1994.

MR. LUCKHAUPT said that that's definitely an issue. Referring to Mr. Svobodny's comments, Mr. Luckhaupt posited that the DOL's concerns could be addressed by adding language that says Alaska's two-tier system would apply unless the offender supplies evidence of the registration period in the other state; under such additional language, the department would not have the burden of conducting the aforementioned additional research. Mr. Luckhaupt then acknowledged that the issue Mr. Mittman raised might still need to be addressed by the court.

[2:28:32 PM](#)

REPRESENTATIVE GRUENBERG indicated that he shares Mr. Mittman's concern. Representative Gruenberg then noted that Amendment 8 contains an applicability provision, whereas the proposed amendment labeled 26-GH2859\A.4, Luckhaupt, 1/26/10, does not. That provision appears to contain the same constitutional problem, he remarked, in that it states that the bill's proposed registration provisions would apply regardless of whether the underlying conviction occurred before, on, or after the effective date of the bill. Under the ex post facto clause of the constitutions, a law punishing certain behavior cannot apply to behavior conducted prior to the enactment of that law, prior to the criminalization of that behavior, nor can an increase in the punishment for certain behavior apply to behavior conducted prior to the increase. He ventured his belief that this problem could be cured by altering the language of Amendment 8 that says, "regardless of whether the conviction for the crime in the other state or jurisdiction occurred before, on, or after the effective date of this Act". Representative Gruenberg asked Mr. Luckhaupt to suggest alternative language that would ensure constitutionality.

MR. LUCKHAUPT said he feels Amendment 8's applicability provision is defensible as currently written, because it pertains only to offenders who are already required to register. In Doe, in contrast, the State had been attempting to expand the registration statutes to apply retroactively to more crimes and more people that weren't already subject to the registration requirements.

REPRESENTATIVE GRUENBERG indicated that he would not be seeking to amend the aforementioned language in Amendment 8 [at this time].

REPRESENTATIVE GATTO noted that in Missouri, public urination is considered a sex offense, and questioned whether, under the proposed new language, a person convicted of that crime in Missouri would have to register in Alaska upon moving here.

MR. LUCKHAUPT indicated that that would be the case.

CHAIR RAMRAS relayed that Amendment 8 would be set aside [with the motion of whether to adopt it left pending].

REPRESENTATIVE GRUENBERG indicated a continuing concern that the proposed registration requirements could result in a violation of the ex post facto clause.

CHAIR RAMRAS relayed that the proposed amendment labeled 26-GH2859\A.4, Luckhaupt, 1/26/10, [text provided previously] would also be set aside.

CHAIR RAMRAS then noted that a proposed amendment labeled 26-GH2859\A.16, Luckhaupt, 1/27/10, also addresses the same issues as Amendment 8 and the proposed amendment labeled 26-GH2859\A.4, Luckhaupt, 1/26/10, and would therefore be set aside as well; the proposed amendment labeled 26-GH2859\A.16, Luckhaupt, 1/27/10, read:

Page 6, following line 31:

Insert a new bill section to read:

"\* **Sec. 15.** AS 12.63.020 is amended by adding a new subsection to read:

(c) A person required to register under AS 12.63.010 for a conviction in another jurisdiction that is not similar to an offense in this state must register for a period described in

(1) (a)(2) of this section if the person has been convicted of only one sex offense or only one child kidnapping;

(2) (a)(1) of this section if the person has been convicted of two or more sex offenses, two or more child kidnappings, or one sex offense and one child kidnapping."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

[2:36:16 PM](#)

CHAIR RAMRAS made a motion to Adopt Amendment 9, labeled 26-GH2859\A.12, Luckhaupt, 1/27/10, which read:

Page 8, line 24:

Delete "any"

Insert "an"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG objected.

CHAIR RAMRAS mentioned that Amendment 9 is being offered at the request of the DOL, but he does not agree with the DOL [regarding Amendment 9's proposed change to Section 16].

REPRESENTATIVE GRUENBERG observed that several other forthcoming amendments also [propose to alter Section 16].

CHAIR RAMRAS questioned whether adoption of Amendment 9 could result in convictions being overturned on the grounds that defendants' constitutional rights were violated.

[2:37:32 PM](#)

MR. SVOBODNY explained that in terms of examining child pornography evidence, the term, "any expert" could refer to anyone claiming to be an expert on child pornography, whereas the term, "an expert" is more likely to refer to someone who is actually qualified to view the child pornography. In response to a question, he indicated that early on in the case, before it goes to trial, the courts would not be determining who qualifies as an expert; instead, the defense merely notifies [the DOL] of who it would be bringing in, as an expert, to inspect the evidence.

CHAIR RAMRAS asked whether the term, "an expert" would be construed to mean that only one expert could inspect the evidence.

MR. SVOBODNY said that's not the intent of Amendment 9, which is just meant to cleanup a possible ambiguity.

REPRESENTATIVE GRUENBERG offered his belief that most courts would interpret the term, "an expert" to mean only one expert. He expressed disfavor with Amendment 9.

REPRESENTATIVE GATTO questioned whether changing "any expert" to just "experts" would address the DOL's concern.

MR. SVOBODNY indicated that it would.

REPRESENTATIVE GRUENBERG offered his understanding that according to the legislative drafting manual, the use of the singular, rather than the plural, is [preferred]. He opined

that the term, "any expert" is clearer than the term, "an expert", and again expressed disfavor with Amendment 9.

CHAIR RAMRAS posited that a conceptual amendment could be developed that would address everyone's concerns.

CHAIR RAMRAS then withdrew Amendment 9.

REPRESENTATIVE GRUENBERG expressed a preference for using the term, "any experts".

[2:41:54 PM](#)

REPRESENTATIVE GATTO made a motion to adopt Conceptual Amendment 10, to change on page 8, line 24, the term, "any expert" to the term, "experts".

REPRESENTATIVE GRUENBERG objected; [made a motion to] amend Conceptual Amendment 10 such that the term, "experts" would become the term, "any experts"; and then withdrew his objection.

REPRESENTATIVE GATTO indicated that he was amenable to the amendment to Conceptual Amendment 10.

CHAIR RAMRAS announced that Conceptual Amendment 10, as amended, was adopted.

[Note to the reader: Conceptual Amendment 10, as amended, altered language that was later deleted by the adoption of a subsequent amendment - that being Amendment 12, as amended.]

[2:43:17 PM](#)

CHAIR RAMRAS made a motion to adopt Amendment 11, labeled 26-GH2859\A.17, Luckhaupt, 1/28/10, which read:

Page 8, lines 3 - 31:

Delete all material and insert:

"DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Custody of and Restriction on Availability of Certain Material or Property. Except as otherwise provided in this subsection, any material that is proscribed by AS 11.41.455(a) or that is defined as "child pornography" under 18 U.S.C. 2256 shall remain in the care, custody, and control of a law enforcement

agency, the prosecution, or the court. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that may be proscribed under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, provided the prosecution makes the property or material reasonably available to the defendant. Property or material shall be deemed to be made reasonably available to the defendant if the prosecution provides, at a prosecution facility, ample opportunity for inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial."

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

CHAIR RAMRAS then indicated a preference for a different amendment.

CHAIR RAMRAS therefore withdrew Amendment 11.

[2:44:29 PM](#)

EPRESENTATIVE HOLMES made a motion to adopt Amendment 12, labeled 26-GH2859\A.3, Luckhaupt, 1/26/10, which read:

Page 8, lines 3 - 31:

Delete all material and insert:

"DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material or Property. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that may be illegal or prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, provided the prosecution makes the property or material reasonably available to the defendant. Property or material shall be deemed to be made reasonably available to the defendant if the prosecution provides, at a prosecution facility, ample opportunity for inspection, viewing, and examination of the property

or material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial."

CHAIR RAMRAS objected for the purpose of discussion.

MR. LUCKHAUPT explained that Amendment 12 mirrors the federal law that outlines the conditions under which child pornography materials can be accessed by the defense. He mentioned that in one case implicating that federal law, the court ruled in favor of the defense when it was determined that the prosecution did not comply with the conditions of the law.

REPRESENTATIVE GRUENBERG noted that language in Amendment 12 lists three classes of people who could have access to the child pornography materials - "the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial" - and questioned whether someone he referred to as "a lay witness" shouldn't also have access to the child pornography material.

MR. LUCKHAUPT pointed out that that would violate federal law, and that if any such person were truly essential for a fair defense, the provision would be overridden anyway, and thus no additional class of people need be added to the list of those who could access the child pornography material. In response to comments, he also pointed out that Amendment 12 [and existing Section 16 of HB 298] address the period of time before a case goes to trial, and said he cannot envision any such "lay witness" needing access to child pornography materials that early on in the case.

CHAIR RAMRAS said he supports Amendment 12 but would oppose any amendment to Amendment 12 that would add another class of people to the list of those who could access the child pornography materials.

REPRESENTATIVE GRUENBERG questioned whether, if the provision could get struck down in a situation where a "lay witness" were truly essential for the defense in that phase of the case, there should be language added to preclude any associated constitutional challenge.

MR. LUCKHAUPT offered his belief that a constitutional challenge would be unavoidable at that point anyway because of the supremacy clause.

CHAIR RAMRAS removed his objection to Amendment 12.

MR. SVOBODNY referred to the language of Amendment 12 that says in part, "Property or material shall be deemed to be made reasonably available to the defendant if the prosecution provides, at a prosecution facility, ample opportunity for inspection, viewing, and examination of the property or material by ...", and asked the committee to consider including the term "law enforcement facility" as another location at which to view the child pornography materials. He explained that such evidence is generally kept at law enforcement facilities, rather than at prosecution facilities.

[2:52:33 PM](#)

CHAIR RAMRAS made a motion to amend Amendment 12 such that its language which currently reads, "at a prosecution facility," would be changed to read, "at a prosecution or law enforcement facility,". There being no objection, Amendment 12 was amended,

CHAIR RAMRAS, observing that there were no further objections, announced that Amendment 12, as amended, was adopted.

REPRESENTATIVE GRUENBERG said he was withdrawing Amendment 13, which read [original punctuation provided]:

Page 8, lines 1 through 31:  
Strike section 16.

[2:54:56 PM](#)

EPRESENTATIVE GATTO made a motion to adopt Amendment 14, labeled 26-GH2859\A.21, Luckhaupt, 2/1/10, which read:

Page 1, line 2, following "**minor;**":  
Insert "**relating to sex offenders and child kidnappers;**"

Page 5, following line 6:  
Insert a new bill section to read:  
" \* **Sec. 11.** AS 12.55.015(a) is amended to read:  
(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination  
(1) impose a

[(A)] fine when authorized by law and as provided in AS 12.55.035; [OR

(B) REPEALED]

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged;

**(13) for a defendant convicted of an offense requiring the defendant to register under**

AS 12.63, order the defendant to post a sign in the yard of the defendant's residence or on the defendant's door, if the defendant resides in a multifamily residential complex, stating that the resident is a sex offender or child kidnapper."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17".

REPRESENTATIVE HOLMES objected.

REPRESENTATIVE GATTO offered that Amendment 14 would discourage sex offenders in other states from moving to Alaska, and would encourage sex offenders in Alaska to move out of state, and would do so by giving the court the authority, should it so choose, to order sex offenders to post a sign at their residence stating that they are sex offenders. He indicated that he's heard complaints from people that they'd had no idea they were living near a sex offender, and surmised that Amendment 14 would address such situations.

CHAIR RAMRAS expressed concern with Amendment 14. He relayed his understanding that when sex offenders are unable to find a stable living situation, they are more prone to reoffend. Furthermore, such a court order could endanger the lives of those who have already served their time for their crime.

REPRESENTATIVE GATTO argued that such a court order would be discretionary rather than mandatory, and so perhaps it would only be ordered for repeat sex offenders.

CHAIR RAMRAS pointed out that such discretion could create a problem in and of itself because different standards could be applied by different courts. He added, "I'm not certain that I want to give that discretion to a judge."

REPRESENTATIVE DAHLSTROM, acknowledging that point, nonetheless expressed favor with Amendment 14, citing a desire to focus on the needs of victims rather than on the needs of perpetrators.

REPRESENTATIVE HOLMES pointed out that others may be living with the offender and such signage could prove detrimental to them, and thus she is not comfortable voting in favor of Amendment 14 at this time.

CHAIR RAMRAS concurred that signage influences the behavior of others.

REPRESENTATIVE LYNN indicated a preference for leaving the responsibility of researching the sex offender registry up to the neighbors themselves.

CHAIR RAMRAS offered an example in concurrence with Representative Holmes's point.

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REPRESENTATIVE GATTO, citing an investigative-type television program he'd recently seen, offered his belief that droves of sex offenders are still seeking victims, still seeking to reoffend, and opined, therefore, that sex offenders should be driven out of the state.

CHAIR RAMRAS questioned whether Amendment 14 could be amended such that it could only be applied to those who have been convicted of a sex offense and were subject to an aggravating factor at sentencing.

REPRESENTATIVE GATTO, in response to other questions, surmised that providing for some discretion would still be warranted, particularly with regard to the issues of compliance and enforcement.

MR. LUCKHAUPT indicated that such a provision could be limited to "aggravated sex offenses," for example, those that require lifetime registration. He mentioned that statutory steps have already been taken to encourage people to access the sex offender registry instead of relying on signs in sex offenders' front yards, for example.

CHAIR RAMRAS suggested that more work be done on Amendment 14.

[3:05:47 PM](#)

REPRESENTATIVE GATTO said he'd intended for Amendment 14 to be drafted such that its proposed court order could only apply to those convicted of sexual abuse of a minor crimes.

MR. LUCKHAUPT indicated that he'd instead drafted it such that it would apply to all those convicted of any sex offense.

CHAIR RAMRAS relayed that HB 298, as amended, would be held over [with the motions to adopt Amendment 14 and Amendment 8 left pending].

REPRESENTATIVE GRUENBERG, on the issue of Amendment 14, noted that he's heard of situations in which the perpetrator lives in his/her vehicle, and therefore questioned whether Amendment 14's proposed court order could result in a sex offender being required to post a sign on his/her vehicle.

REPRESENTATIVE GATTO said no.

REPRESENTATIVE DAHLSTROM offered her understanding that such a vehicle would be impounded by law enforcement, thus rendering the issue moot.

REPRESENTATIVE GRUENBERG pointed out, however, that Amendment 14's proposed court order could apply to "ex" offenders as well.

[HB 298, as amended, was held over with the motions to adopt Amendment 14 and Amendment 8 left pending.]

[3:08:22 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:08 p.m.