ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
January 25, 2010
1:32 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 222
"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 AND HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 98(FIN) AM
"An Act relating to minor consuming and repeat minor consuming; relating to penalties for violations of limitations on possessing, sending, shipping, transporting, or bringing alcoholic beverages to, soliciting or receiving orders for delivery of alcoholic beverages to, and the manufacture, sale, offer for sale, barter, traffic, or possession of alcoholic beverages in, a local option area; and providing for an effective date."
HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 222
SHORT TITLE: SEX OFFENSES; OFFENDER REGIS.; SENTENCING
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/19/10	(S)	READ THE FIRST TIME - REFERRALS
01/19/10	(S)	JUD, FIN
01/25/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 98
SHORT TITLE: ALCOHOL: MINOR CONSUMING/LOCAL OPTION
SPONSOR(s): REPRESENTATIVE(s) RAMRAS

01/28/09	(H)	READ THE FIRST TIME - REFERRALS
01/28/09	(H)	JUD, FIN
02/02/09	(H)	JUD AT 1:00 PM CAPITOL 120
02/02/09	(H)	Moved Out of Committee
02/02/09	(H)	MINUTE(JUD)
02/04/09	(H)	JUD RPT 6DP
02/04/09	(H)	DP: LYNN, GRUENBERG, COGHILL, HOLMES, GATTO, RAMRAS
02/17/09	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
02/17/09	(H)	Heard & Held
02/17/09	(H)	MINUTE(FIN)
03/26/09	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
03/26/09	(H)	<Bill Hearing Postponed>
04/02/09	(H)	FIN AT 1:30 PM HOUSE FINANCE 519
04/02/09	(H)	Moved CSHB 98(FIN) Out of Committee
04/02/09	(H)	MINUTE(FIN)
04/03/09	(H)	FIN RPT CS(FIN) NT 3DP 3NR 1AM
04/03/09	(H)	DP: KELLY, FOSTER, HAWKER
04/03/09	(H)	NR: CRAWFORD, SALMON, THOMAS
04/03/09	(H)	AM: GARA
04/13/09	(H)	TRANSMITTED TO (S)
04/13/09	(H)	VERSION: CSHB 98(FIN) AM
04/14/09	(S)	READ THE FIRST TIME - REFERRALS
04/14/09	(S)	CRA, JUD
04/16/09	(S)	CRA AT 3:30 PM BELTZ 211
04/16/09	(S)	Moved CSHB 98(FIN) AM Out of Committee
04/16/09	(S)	MINUTE(CRA)
04/17/09	(S)	CRA RPT 1DP 2NR
04/17/09	(S)	DP: MENARD
04/17/09	(S)	NR: OLSON, FRENCH
04/17/09	(S)	FIN REFERRAL ADDED
01/25/10	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JANE PIERSON, Staff
to Representative Jay Ramras
Alaska State Legislature
Juneau, AK

POSITION STATEMENT: Introduced HB 98 on behalf of the sponsor.

DANIEL SULLIVAN, Attorney General
Alaska Department of Law
Anchorage, AK
POSITION STATEMENT: Introduced SB 222.

JOSEPH MASTERS, Commissioner
Alaska Department of Public Safety
Anchorage, AK
POSITION STATEMENT: Provided statistics related to SB 222.

RICHARD SVOBODNY, Deputy Attorney General
Criminal Division
Alaska Department of Law
POSITION STATEMENT: Presented the sectional analysis for SB 222.

MICHAEL STARK, Member
Board of Parole
Juneau, AK
POSITION STATEMENT: Explained the request for changes to Sections 1 and 2 of SB 222.

QUINLAN STEINER, Public Defender
Public Defender Agency
Alaska Department of Administration
Anchorage, AK
POSITION STATEMENT: Commented on aspects of SB 222.

DEREK DEGRAAF, Sergeant
Technical Crimes Unit
Alaska Bureau of Investigation
Alaska State Troopers
Alaska Department of Public Safety
Anchorage, AK
POSITION STATEMENT: Provided supporting testimony for SB 222.

ACTION NARRATIVE

1:32:47 PM

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Senators Egan, Coghill, McGuire, Wielechowski and French were present at the call to order.

HB 98-ALCOHOL: MINOR CONSUMING/LOCAL OPTION

1:33:28 PM
CHAIR FRENCH announced the consideration of HB 98. [CSHB 98(FIN) AM was before the committee.]

JANE PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, said HB 98 removes awkward and confusing language in the minor consuming law that resulted when the statute was last amended [in 2008]. HB 98 references both the suspended imposition of sentence under AS 04.16.050(b)(1) and the judgment of conviction under AS 04.16.050(b)(2). Therefore, no matter how a person is convicted of minor consuming, he or she can be charged with repeat minor consuming. The bill was amended in House Finance at the request of the Department of Law to fix an issue related to bootlegging. The new language will bring bootlegging penalties in line with felony DUI penalties as originally intended.

1:36:42 PM
CHAIR FRENCH asked for an explanation of the applicability section on page 4.

MS. PIERSON explained that it refers to the changes the bill makes to previous convictions under AS 04.16.200(h).

CHAIR FRENCH summarized that the language operates prospectively and retrospectively and eliminates the possibility of misreading the number of times a person has been convicted. Without the applicability section someone could argue that they were convicted under AS 04.16.200(h) and so they only go to jail for 240 days if they'd been previously convicted two times. However, the reality is that they would go to jail for 240 days if they'd been previously convicted once.

MS. PIERSON agreed.

1:39:49 PM
CHAIR FRENCH asked if the new language in Section 1 was added as clarification.

MS. PIERSON said yes.

CHAIR FRENCH asked what problem Section 2 addresses.

MS. PIERSON explained that the new language reflects that a person may be granted a suspended imposition of sentence under AS 04.16.050(b)(1) and never placed on probation.

CHAIR FRENCH asked if that's been a problem in court with repeat minor in possession offenders.

MS. PIERSON said yes.

CHAIR FRENCH noted that Section 3 also eliminates the problematic "placed on probation" language.

MS. PIERSON agreed.

CHAIR FRENCH, finding no further questions and no public testimony, closed public testimony and held HB 98 in committee.

SB 222-SEX OFFENSES; OFFENDER REGIS.; SENTENCING

1:42:55 PM
CHAIR FRENCH announced the consideration of SB 222.

DANIEL SULLIVAN, Attorney General, Alaska Department of Law, thanked the committee for expeditiously hearing SB 222 and for the spirit of cooperation that the members have displayed. He reported that sexual assault and domestic violence has been the number one focus in the criminal division since he was appointed to the office last June. Over the course of the last several months DOL has worked on initiatives with the Governor and the Department of Public Safety to provide a foundation for a sustained, comprehensive approach to addressing this epidemic in Alaska. SB 222 is part of that approach.

1:50:25 PM
ATTORNEY GENERAL SULLIVAN highlighted 5 key elements in SB 222.

1. It would prohibit suspended imposition of sentences for people convicted of human trafficking and possession or distribution of child pornography.
2. It would make it against the law not only to possess child pornography but also to access it on a computer with the intention of viewing it. A recent ruling by the Alaska Court of Appeals held that current law does not prohibit viewing child pornography on a computer.
3. The courts could prohibit sex offenders from using a computer or communicating with children under age 16.

4. It provides enhanced sentencing with regard to providing aggravating factors when the defendant had knowledge that the victim was impaired due to having consumed drugs or alcohol.
5. A person who was required to register as a sex offender in another state would be required to register as a sex offender in Alaska if they were to move to this state.

He emphasized that the ideas in this and similar bills come from DOL's front-line prosecutors like Mr. Svobodny who look for loopholes in the law and for areas where the law can be strengthened to better protect Alaskans and bring criminals to justice. These are very committed and outstanding public servants, he said.

ATTORNEY GENERAL SULLIVAN concluded that SB 222 is part of a broad, comprehensive, and sustained strategy. It is the continuation of a very positive collaboration with this committee to decrease the epidemic of sexual assault and domestic violence in this state, to keep Alaskans safe, and to bring criminals to justice.

1:56:06 PM
CHAIR FRENCH thanked Attorney General Sullivan and recognized Commissioner Masters.

JOSEPH MASTERS, Commissioner, Department of Public Safety, said he would highlight the numbers related to the sexual assault and domestic violence epidemic in Alaska.

- Alaska is number 1 in the nation for victimization of women and children and it has been for many years.
- Women in Alaska are 2.5 times more likely to be raped than women in any other state.
    - Women in Anchorage are 2.8 times more likely to be raped.
    - Women in Fairbanks are nearly 5 times more likely to be raped.
    - Alaska Native women in this state have even higher rates of victimization.
- Children in Alaska are 6 times more likely to be sexually abused according to national statistics.

COMMISSIONER SCHMIDT said he uses national statistics because there are no state statistics of victimization. We're working on that, he said. SB 222 focuses on offender accountability and

gives state troopers additional tools to target offenders and hold them accountable for their actions.

1:59:48 PM
CHAIR FRENCH said he's aware that DPS has been working to get a victimization survey done and he too is interested in that. I hope we get that funded this year because there's always a gap between what's reported to the police and what's actually happening, he said.

SENATOR MCGUIRE added that if there is a single topic that legislators would like the attorney general to address, it's this one. It's a relief that the administration is focused on this complex and sensitive issue. Thank you, she said.

RICHARD SVOBODNY, Deputy Attorney General, Criminal Division, Department of Law, reported that he's been in contact with a number of state experts in procedures used in criminal prosecutions and many have said that Alaska laws on sexual assault and domestic violence are the best they've seen in the country. However, that doesn't mean that they couldn't use some "tweaks," he said.

Sections 1 and 2 of the bill propose to remove reference to discretionary parole from AS 11.56.759(a) and (c). He asked if Mr. Stark could join him to explain the problems that this 2007 statutory change has been causing the State Board of Parole.

2:05:49 PM
MICHAEL STARK, Member, State Board of Parole, said he has served on the board for nine years. Previously he worked in the attorney general's office for 27 years, 22 years as lead council to DOC and 15 years as council to the parole board. Currently he is serving on the board as a member, not an attorney.

MR. STARK explained that probation is when the court sentences somebody and suspends part of the sentence. For example, if somebody is given a six-year sentence with two years suspended, they will serve four years after which they are released and on probation for up to ten years for non-sex offenses and up to 25 years for sex offenses. That person is under supervision during probation and could be returned to custody to serve the two year suspended portion of their sentence if they are out of compliance with their probation conditions.

MR. STARK continued to explain that there are two kinds of parole - mandatory and discretionary. With a few exceptions,

offenders serving more than a two year sentence receive mandatory parole after serving two-thirds of their sentence. They serve the last third on the street as a mandatory parolee. If, at sentencing, the court had suspended part of his or her sentence, he or she would be on the street as a mandatory parolee also on probation. Parole typically, but not always, expires before probation. Discretionary parole, on the other hand, comes about as a result of a discretionary decision by the parole board, and not as a matter of law. Discretionary parolees are less common and typically do far better out on the street.

MR. STARK said that when the criminal statute AS 11.56.759 was adopted it was intended to deal with the long period of probation supervision, particularly for sex offenders. The statute created a new misdemeanor offense, with up to one year in jail, for probationers and parolees who violate their probation or parole. The fairly serious unintended consequence is that attorneys are telling their clients not to talk to their probation and parole officers and not to say anything when they go before the parole board because they could potentially be prosecuted. Because of the Fifth Amendment we don't know what these people are doing and the result is increased risk to the public, he said.

2:12:02 PM
SENATOR WIELECHOWSKI asked what the consequences are if a parolee is non-compliant.

MR. STARK replied the parolee could be returned to custody.

SENATOR WIELECHOWSKI asked what the parole board could do if someone exercised their Fifth Amendment right in response to a question from the parole board.

MR. STARK replied it has the authority to revoke good time without going through the court, but that might not always be the best solution. Because of the potential for being charged with a new crime, attorneys are advising their clients not to talk. The result is that sex offenders no longer communicate with the parole board the way they did at one time.

SENATOR WIELECHOWSKI asked if he's missing something because it sounds as though the parole board could just revoke if someone isn't cooperating.

MR. STARK replied that's always an option, but it's expensive and in the long term may not best serve the public if the person really doesn't present a risk.

2:16:06 PM
CHAIR FRENCH summarized that the proposed change is to address Fifth Amendment issues that arise due to the fact that parolees could be charged with new crimes as a result of violating the conditions of their probation or parole. He asked how striking "parole" fixes the problem.

MR. STARK replied it won't totally cure the problem because people could still be prosecuted on the probation level, but it will help quite a bit. This addresses the problem the board often sees.

CHAIR FRENCH asked if the board is trying to preserve some sense of flexibility in dealing with parolees.

MR. STARK said yes and to serve their primary duty which is to protect the public while working with the offender to rehabilitate him or herself.

CHAIR FRENCH summarized that because many violations go straight to the parole board, and because violating a condition of parole has become a substantive crime in its own right, public defenders are advising their clients not to cooperate with their parole officers.

MR. STARK replied that's been happening since July 1, 2007 when the law changed.

2:19:12 PM
SENATOR EGAN asked if someone who appears before the parole board is always represented by council.

MR. STARK replied they can waive that right, but more often than not they are represented.

CHAIR FRENCH asked Mr. Steiner his view on Sections 1 and 2.

2:19:52 PM
QUINLAN STEINER, Public Defender, Public Defender Agency, Department of Administration, Anchorage, said he agrees that striking the language would, in some situations, remove the potential for someone to make a Fifth Amendment claim.

CHAIR FRENCH asked if he's aware that public defenders have been advising parolees not to answer questions for fear of future prosecution.

MR. STEINER replied, "I'm aware that after discussions with clients some of our attorneys will, in fact, advise their clients that they have Fifth Amendment claims with respect to certain questions."

SENATOR WIELECHOWSKI asked, if this law were changed, if parolees would still potentially be incarcerated for admitting to crimes in discussions with their parole or probation officers.

MR. STEINER replied there is that potential. He continued:

> If you were to admit a specific conduct that could be charged under this statute, then you would have a Fifth Amendment claim. Broadly speaking, admitting criminal conduct could potentially subject you to a criminal charge. But this just deals with the particular statute of committing a violation of your parole or probation.

MR. STARK said he absolutely supports prosecuting someone who admits to committing a crime. This is about someone that stops talking altogether because of the potential of being charged for admitting to non-criminal behavior like violating curfew or taking a drink. It's the innocent, non-criminal behavior that they are no longer communicating that is key to being able to supervise them on the street, he said.

2:23:16 PM
SENATOR WIELECHOWSKI pointed out that it's a crime if someone violates curfew or has contact with children when they aren't supposed to.

MR. STARK clarified that it's a violation of parole and the person could be returned to prison, but it's not a crime in and of itself.

SENATOR WIELECHOWSKI asked if he's saying that under this law, once a person makes that admission it's a crime for which they could potentially be prosecuted.

MR. STARK restated that it potentially subjects the person to prosecution under this statute and the proposal is to remove parole so it doesn't cover that kind of behavior for parolees.

SENATOR WIELECHOWSKI asked if making this change removes the potential for criminal violation, but the person could still have their parole or probation revoked.

MR. STARK said yes, and it would increase the ability to monitor these people when they're on the street.

CHAIR FRENCH remarked that when someone violates probation they go back to jail for a probation violation and now it's a subsequent stand-alone crime.

MR. SVOBODNY explained that in 2006 penalties were substantially increased for sex offenses including the ability to put someone on probation up to 25 years. What was envisioned is what happens if someone receives a 50-year sentence for a sex offense; 10 years are suspended and the person is put on probation for 25 years. The person either flat times the sentence or gets out on probation and gets revoked so he or she has served the total 50-year sentence yet they still have 25 years probation that didn't go away under the 2006 change in law. The question is what sanction keeps the person in sex offender treatment.

CHAIR FRENCH observed that this is aimed at the folks that have no more suspended time hanging over their heads.

MR. SVOBODNY agreed.

CHAIR FRENCH added that most parolees have suspended time in addition to their parole time. A flat 6-year sentence for a sex crime is rare; a 10 year sentence with 4 years suspended is more likely.

MR. SVOBODNY agreed.

CHAIR FRENCH found no further questions on Sections 1 and 2.

2:26:18 PM
DEREK DEGRAAF, Sergeant, Technical Crimes Unit, Alaska Bureau of Investigation, Alaska State Troopers, Department of Public Safety, said the unit he supervises is part of the Alaska Internet Crimes against Children Task Force. This unit also processes most of the evidence seized statewide from electronic devices like computers, cell phones, and digital cameras.

CHAIR FRENCH asked Mr. Svobodny to tell the committee what the relevant bill sections do and Sergeant DeGraaf can explain how it will work on the ground.

MR. SVOBODNY directed attention to page 3, line 20, Sections 5, 6, and 7. Recently the Alaska Court of Appeals decided Worden v. State where a person was convicted of having child pornography in their computer cache memory. The question was did the person only view child pornography on their computer or did they do something to store it. According to the court, "cache memory" did not indicate that the person had exercised some type of dominion or control over the child pornography. This brought to light that the Alaska statute for possession of child pornography on a computer requires more than simple viewing; it requires exercising some type of dominion or control.

The proposed changes track federal law where it is illegal to possess child pornography and to view child pornography on a computer. The bill also allows for an affirmative defense if a person unintentionally downloads child pornography, less than three times.

2:29:50 PM
SENATOR WIELECHOWSKI asked if opening child pornography in an email would constitute knowingly possessing.

MR. SVOBODNY replied that would be neither. Furthermore, Section 7 provides an affirmative defense if the child pornography is destroyed.

SENATOR WIELECHOWSKI reviewed Section 7 and observed that you lose that protection if the email with child pornography is opened more than three times.

MR. SVOBODNY restated that this is modeled on federal law. He is not aware that there is anything magic about the number three, but at some point it's no longer an accident.

2:31:37 PM
SENATOR WIELECHOWSKI said he understands the intent, but he wants to make sure that innocent people are protected if they get viruses on their computers that contain pornography. He asked if this bill contains adequate protections for that circumstance.

MR. SVOBODNY suggested that Sergeant DeGraaf provide his perspective, but in this state a complete forensic analysis is done before anyone is prosecuted.

2:32:54 PM
SERGEANT DEGRAAF reported that in law enforcement the most common scenario is that someone purposefully downloaded peer-to-peer file sharing software like LimeWire. This is the number one way that child pornography is shared throughout the world. Law enforcement can download the child pornography from these individuals, which gives probable cause for an interview and potentially to seize their computers. An example of the other scenario is when a student tells a school councilor that their mom's boyfriend has been showing them horrible photos and movies on the computer. Law enforcement can then interview the child and visit the home to develop probable cause.

SERGEANT DEGRAAF related that his unit investigates cases of child pornography that involve file sharing pictures or movies that are sexually explicit and involve prepubescent children. As a forensic computer examiner it is fairly easy to figure out whether someone was purposefully searching, logging into websites, or paying for online memberships to download child pornography, he said.

The loophole that currently exists allows someone to view child pornography through their browser so long as they don't purposefully save the images to their hard drive. We've had to walk away from some of those cases here in Alaska, he said. Whether those individuals are more or less dangerous than those who save the images is not for me to say, he said, but studies show that 20-80 percent of people that collect these images or movies will offend or already have offended on a child. This bill gives the law more teeth.

2:37:56 PM
SENATOR MCGUIRE asked if the law that allows the seizure of hard drives in these cases needs to be expanded.

SERGEANT DEGRAAF replied they have had no problem seizing computers; the technology they use is the very best that's available.

SENATOR COGHILL asked if the issue with caching is that when someone views an image it is loaded onto their computer without their purposefully saving it.

SERGEANT DEGRAAF said that's correct.

SENATOR COGHILL recalled that a cybercrime presentation several years ago highlighted that resources to investigate Internet crimes in Alaska were inadequate. He asked if the situation has improved.

SERGEANT DEGRAAF said that House legislation several years ago provided funding for a cybercrime investigator and a technician. The positions were filled and as a result the cybercrime unit has been able to double the cases it pursues. Certainly they could do more with increased resources, but the Flint Waters training and technology that's been implemented has been very successful.

2:41:42 PM
SENATOR COGHILL described the Flint Waters demonstration as the most sobering that he's seen in his tenure in the Legislature.

CHAIR FRENCH reviewed page 3, line 22, and asked how confident they can be that the courts will interpret "accesses" as intended.

SERGEANT DEGRAAF replied this is the best language so far; it's also the language that the federal government adopted.

CHAIR FRENCH asked if in his area of expertise "accesses" means looked at on a computer.

SERGEANT DEGRAAF said yes.

2:44:38 PM
SENATOR WIELECHOWSKI asked about replacing "accesses with "views."

MR. SVOBODNY pointed out that the Ninth Circuit Court of Appeals likes the word accesses in this case.

SERGEANT DEGRAAF restated that this language models federal language and although it could change in the future, it's the best right now.

CHAIR FRENCH mused that you must prove "knowing" and it may be easier to prove that someone accessed the site than that they viewed it.

SERGEANT DEGRAAF related that both Microsoft and Apple operating systems use "access date" in their file attributes. Access doesn't necessarily mean viewed; it means it was pulled into a program to be viewed, manipulated, sent or emailed.

CHAIR FRENCH said the committee may insert "or viewed."

SENATOR WIELECHOWSKI added that people who regularly stand around and watch as someone else accesses child pornography aren't prosecutable under this bill.

SERGEANT DEGRAAF said the two words "knowingly accesses" together is the strongest language that's available right now.

2:48:51 PM
SENATOR COGHILL asked if "access" covers something running in the background without your knowledge, or if someone could access your computer while you're online.

SERGEANT DEGRAAF acknowledged that is a possibility, but the occurrence is rare. A thorough forensic examination would uncover what was going on.

2:51:11 PM
MR. SVOBODNY suggested the committee review Sections 8-10 starting on page 4, line 12. Subsequent to the Flint Waters demonstration the Legislature made it a crime to send child pornography to a child over the Internet.

CHAIR FRENCH called a point of order; Section 8 does not refer to child pornography.

MR. SVOBODNY agreed. The Legislature made it a crime to send adult pornography to children by computer, but they forgot about distribution of pornography to children using any other means. This bill would clarify that it is illegal to distribute pornography to a child by any means.

CHAIR FRENCH asked if that isn't covered by contributing to the delinquency of a minor.

MR. SVOBODNY replied it might be, but this is substantially more dangerous conduct than contributing to the delinquency of a minor.

CHAIR FRENCH observed that this statute [AS 11.61.128(a)] is aimed at the real world more than cyber world. It's grooming children for sex offenses by showing them pornography.

MR. SVOBODNY surmised that it happens more in Sergeant DeGraaf's world.

2:54:16 PM
SENATOR WIELECHOWSKI noted that page 3, line 15, specifically references "a person, being 18 years of age or older" and asked if Alaska law addresses a 17-year-old sending a lewd depiction to another 17-year-old.

MR. SVOBODNY said he'd look at that issue again, but he recalls that DOL prevailed in the past when it argued that juveniles who were offenders were covered under the sexual abuse of a minor statutes.

CHAIR FRENCH asked if it's true that it's never been a crime in Alaska to groom a child by showing them pornography.

MR. SVOBODNY said he believes that's correct.

CHAIR FRENCH asked if the level of offense is a class C felony.

MR. SVOBODNY agreed it is a class C felony; page 8, line 1, makes a change in criminal Rule 16. The proposed language matches federal law and further restricts the distribution of child pornography by disallowing any duplication of the prohibited material. This does not mean the defense is denied access to or use of the material. His concern is that in providing discovery to the defense attorney that the DVD or CD might wind up being viewed by many other people. That might or might not have happened with child pornography, but other types of disturbing pictures have been widely distributed. "When we're dealing with child pornography, we want to control distribution as much as possible," he said.

2:59:06 PM
CHAIR FRENCH asked Mr. Steiner his view on this point.

MR. STEINER said the public defender agency doesn't disclose those types of images and they don't provide copies to clients. On occasion they need to be viewed by a client or a defense expert and generally there are agreements with the state to transfer that material to an expert. He agreed with Mr. Svobodny that the PDA tends not take possession of the material unless

there is a case-specific reason. He pointed out that an issue that might come up is the expense related to the discovery limitation. In cases covered by AS 41.04.55 the PDA has to fly experts and their equipment to wherever the state wants them to work, which can be relatively expensive. Also, these experts tend to be from out of state.

CHAIR FRENCH thanked Sergeant DeGraaf for his work and help. He held SB 222 in committee.

3:00:55 PM
There being no further business to come before the committee, Chair French adjourned the Senate Judiciary Standing Committee hearing at 3:00 p.m.