

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 11, 2019

1:38 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chuck Kopp
Representative Louise Stutes
Representative Adam Wool
Representative Laddie Shaw
Representative David Eastman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONSIDERATION OF GOVERNOR'S APPOINTEE: NANCY DAHLSTROM~
DEPARTMENT OF CORRECTIONS

HOUSE BILL NO. 52

"An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 52

SHORT TITLE: CRIMES;SEX CRIMES;SENTENCING; PAROLE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	JUD, FIN

03/11/19

(H)

JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

NANCY DAHLSTROM, Commissioner-Designee
Department of Corrections
Juneau, Alaska

POSITION STATEMENT: Testified as Governor Dunleavy's appointee to Commissioner of the Department of Corrections.

AMANDA PRICE, Commissioner-Designee
Department of Public Safety
Juneau, Alaska

POSITION STATEMENT: Introduced HB 52 on behalf of Governor Dunleavy and answered committee questions.

KACI SCHROEDER, Assistant Attorney General
Legal Services Section
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of HB 52 and answered committee questions.

LAURA BROOKS, Deputy Director
Division of Health & Rehab Services
Department of Corrections
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 52.

KATHRYN MONFREDA, Director
Division of Statewide Services
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 52.

ACTION NARRATIVE

[1:38:00 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:38 p.m. Representatives Eastman, Wool, Stutes, Shaw, Kopp, and Claman were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

**Consideration of Governor's Appointee: Nancy Dahlstrom,
Department of Corrections**

[1:38:36 PM](#)

CHAIR CLAMAN announced that the first order of business would be a confirmation hearing for the governor's appointee to the Department of Corrections, Nancy Dahlstrom. He opened public testimony on Commissioner Dahlstrom's appointment.

[1:39:01 PM](#)

NANCY DAHLSTROM, Commissioner-Designee, Department of Corrections, provided biographical information about herself. She mentioned she has worked in both the private and public sectors including eight years in the Alaska House of Representatives. She said Governor Michael J. Dunleavy asked her to serve as Commissioner of the Department of Corrections (DOC). She called it an honor to accept his offer. She acknowledged she does not have a corrections background. She said Governor Dunleavy's administration is not "doing business as usual." She pointed to her professional skillset and said it will help make her successful in this position.

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COMMISSIONER DAHLSTROM addressed three goals for DOC: To ensure the safety of all employees and inmates, to provide successful reentry programs for inmates, and to recruit and retain qualified employees.

[1:41:01 PM](#)

COMMISSIONER DAHLSTROM detailed changes she has made during her brief time in charge of DOC. She said several policies were suspended or amended to prioritize inmate and employee safety as well as to honor and recognize victims' rights.

COMMISSIONER DAHLSTROM announced her commitment to helping incarcerated individuals reintegrate into society. She said people make mistakes and DOC programs can help them become proud, law-abiding citizens. She said a new team member has been hired to focus primarily on reentry services.

COMMISSIONER DAHLSTROM said DOC employs 1,900 people. She said she created a dedicated group to generate ideas and proposals to address challenges in hiring and retention.

COMMISSIONER DAHLSTROM thanked the committee and said she looked forward to answering its questions.

[1:42:40 PM](#)

REPRESENTATIVE STUTES said it is her understanding that DOC anticipates sending prisoners out of state. She asked how that will be cost-saving. She mentioned reading about another state that incurred major costs after sending its prisoners out of state.

COMMISSIONER DAHLSTROM confirmed that Governor Dunleavy's proposed fiscal year (FY) 2020 budget contains a line item for sending 500 inmates out of state as a cost-saving measure. She said she could not speak to the actual dollar amount as her administrative services director (ASD) had handled that. She said she is open to new information and learning new things. She said she would read any information provided to her.

REPRESENTATIVE STUTES said she would forward the things she had read to Commissioner Dahlstrom.

[1:44:06 PM](#)

CHAIR CLAMAN said DOC turned down the federal Second Chance [Act] (SCA) Grant. He asked how many other states have applied for that grant since its inception.

COMMISSIONER DAHLSTROM answered "I don't know."

CHAIR CLAMAN asked how long the strategic planning portion of the grant was to last.

COMMISSIONER DAHLSTROM said the grant was for one year.

[1:44:46 PM](#)

CHAIR CLAMAN asked which part of the grant was for one year.

COMMISSIONER DAHLSTROM said the million dollars dispersed through the grant would be for one year. She said nearly half of that money was for hiring new personnel. She said the state would have to reapply for the grant at the end of the year.

without guarantee it would receive it again. She said she felt it was not sustainable to hire new employees who would have to be let go or absorbed into state government.

[1:45:16 PM](#)

CHAIR CLAMAN said the committee may conduct further investigation on the topic. He said his research suggested there was a \$100,000 strategic planning grant and Alaska was one of five states to receive it. He said the million-dollar grant was over three years, involved very little hiring, and was more directed toward reentry services. He suggested Commissioner Dahlstrom did not know many details about this grant.

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COMMISSIONER DAHLSTROM clarified that there are two different SCA grants. She said [DOC] accepted the \$100,000 grant, which was matched with \$100,000 from the State of Alaska (SOA). She said \$10,000 was used before her appointment to send two people to Washington, D.C. and back. She said DOC is determining the best way to use the remaining funds. She reiterated her understanding that the million-dollar grant required the extra staff.

[1:46:33 PM](#)

CHAIR CLAMAN asked her to confirm that her understanding was the [million-dollar] grant was only for one year, and that his sources informing him the grant was for three years did not match her understanding.

COMMISSIONER DAHLSTROM answered correct.

[1:46:49 PM](#)

CHAIR CLAMAN stated that he is still very concerned about the decision to turn down the million-dollar grant. He said that money would have been directed toward the reentry services for which she had advocated. He restated that Alaska was one of only five states to receive the planning grant. He added that Alaska was one of only three states to receive the other grant. He asked if Commissioner Dahlstrom was aware of the competitive nature of the application process.

COMMISSIONER DAHLSTROM said she was not involved in the application process.

CHAIR CLAMAN asked if the decision to turn the grant down was made by her or others in the administration.

COMMISSIONER DAHLSTROM said she fully made the decision to turn down the grant based on the hiring requirement.

CHAIR CLAMAN restated his dissatisfaction with the decision.

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REPRESENTATIVE WOOL asked Commissioner Dahlstrom about her thoughts regarding the efficacy of private prisons.

COMMISSIONER DAHLSTROM asked whether Representative Wool was referring to sending prisoners out of state or bringing people in to run Alaska's prisons.

REPRESENTATIVE WOOL clarified he meant private corporations coming to Alaska to run prisons.

COMMISSIONER DAHLSTROM answered "I have not had one discussion with anyone about that."

REPRESENTATIVE WOOL reframed his question. He asked Commissioner Dahlstrom for her opinion on private prisons and whether they are "something that is worth looking into."

COMMISSIONER DAHLSTROM answered she is "open to facts and looking and learning." She opined DOC can do a very good job running its own facilities.

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REPRESENTATIVE STUTES asked for confirmation that SOA had previously sent prisoners out of state only to bring them all back. She said she found it curious the idea of sending prisoners out of state was being contemplated.

COMMISSIONER DAHLSTROM confirmed that SOA had sent out and brought back prisoners. She said both times were legislative decisions.

REPRESENTATIVE STUTES asked for confirmation that it would require a legislative decision to send prisoners out of state.

COMMISSIONER DAHLSTROM answered no. She said she may have misspoken. She said sending 500 prisoners out of state is a line item in Governor Dunleavy's proposed budget, however the DOC commissioner has always had the authority to [send out prisoners].

[1:50:20 PM](#)

REPRESENTATIVE STUTES asked if Commissioner Dahlstrom is in favor of sending prisoners out of state.

COMMISSIONER DAHLSTROM said she would follow through with the budget given to her. She said if she is directed to send prisoners out of state, she will.

REPRESENTATIVE STUTES noted that Commissioner Dahlstrom had previously answered the decision to send out prisoners is at the commissioner's discretion. She asked Commissioner Dahlstrom if she personally was in favor of sending inmates out of state.

COMMISSIONER DAHLSTROM answered "I'm here representing the governor's views on his budget."

REPRESENTATIVE STUTES restated her question. She asked if Commissioner Dahlstrom, aside from her role as an employee of the governor, is in favor of sending prisoners out of state.

COMMISSIONER DAHLSTROM said she had not contemplated it until it was brought before her in the budget.

[1:51:33 PM](#)

REPRESENTATIVE KOPP thanked Commissioner Dahlstrom for taking on the job and expressed confidence in her abilities. He asked for her view on the effectiveness of faith-based programs in the prison system.

COMMISSIONER DAHLSTROM said she has seen successes from the programs. She said she has talked with inmates, inmates' families, correctional officers, and program facilitators. She said she believes the programs to be very effective.

[1:52:28 PM](#)

REPRESENTATIVE KOPP asked if she had seen any data supporting the idea that participants in faith-based programs recidivate at lower rates versus other programs.

COMMISSIONER DAHLSTROM said she would need to get back to the committee with that information.

[1:52:52 PM](#)

REPRESENTATIVE KOPP noted that the data he has seen show that the programs are "remarkably effective." He shared anecdotal evidence supporting this. He asked if she is committed to continuing programs like the Transitional Living Center (TLC) Program.

COMMISSIONER DAHLSTROM answered yes. She said the TLC program is active at Anchorage Correctional Complex. She added that the women's version of TLC is active at Hiland Mountain Correctional Center. She said she would like to see these programs expanded, in addition to other programs focused on substance abuse and work.

[1:53:37 PM](#)

REPRESENTATIVE EASTMAN mentioned changes in the faith-based programs that he believes put the program's gains at risk. He said he would follow up with her on that topic. He asked if she is concerned about drugs in prison and how she plans to deal with them.

COMMISSIONER DAHLSTROM said she and her team share Representative Eastman's concerns about drugs in prisons. She said she has zero tolerance for any officers or employees who might be enabling drug-related behavior. She said it is a priority to ensure contraband does not enter DOC facilities. She stated she is committed to decreasing the problem.

[1:55:06 PM](#)

CHAIR CLAMAN asked why she decided to disband DOC's internal affairs investigative unit. He said he believes this made Alaska one of the few, if not the only, states without one. He asked how she saw this decision impacting her commitment to reducing drugs in prisons.

COMMISSIONER DAHLSTROM said she disbanded the unit because Alaska State Troopers have statutory authority to investigate "all those types of situations." She pointed to a repetitiveness of services, explaining that the unit could only turn its findings over to Human Resources or the state troopers,

the latter of which would have to open its own investigation. She said the decision was made to remove duplication.

[1:56:10 PM](#)

CHAIR CLAMAN remarked that other states have found that investigations by state police were less effective at reducing drugs in prisons compared to investigations conducted by internal affairs units.

COMMISSIONER DAHLSTROM said she would like to read that study before commenting.

[1:56:36 PM](#)

REPRESENTATIVE WOOL said prisoners had been previously sent out of state and now it is in the budget to do it again. He asked if either of those cases involved sending prisoners out of state to private prisons, or if the prisoners had been or are to be sent to state prisons.

COMMISSIONER DAHLSTROM said she does not know.

[1:57:10 PM](#)

REPRESENTATIVE WOOL said there is a line item in the governor's budget with a dollar amount to send away 500 prisoners. He said this implies someone asked another institution for the cost. He asked if the queried institution was private or a public.

COMMISSIONER DAHLSTROM said that is incorrect. She said, after the proposed budget was released, one employee in her department made one phone call to an out-of-state institution to see if it had beds available. She said if the committee wanted more information, it would have to ask the Corrections ASD in the Office of Management & Budget (OMB).

[1:57:51 PM](#)

REPRESENTATIVE WOOL said the numbers must exist because otherwise the cost would not be in the budget. He added that the administration must know the cost because otherwise it would not know if moving inmates out of Alaska would save money. He asked for confirmation that the person who made the inquiry to get those numbers does not work for DOC.

COMMISSIONER DAHLSTROM answered that each department has an ASD assigned to it and DOC's works directly for OMB. She deferred to the ASD regarding financial questions on this topic.

1:58:29 PM

REPRESENTATIVE WOOL asked if she knew which institution the ASD called.

COMMISSIONER DAHLSTROM said the ASD was not the employee who made the call. She clarified that one of her employees called an institution after the budget was released to determine if and where it had beds available.

REPRESENTATIVE WOOL asked who the employee called.

COMMISSIONER DAHLSTROM answered it was an institution in Colorado.

REPRESENTATIVE WOOL asked if the institution in Colorado was private or public.

COMMISSIONER DAHLSTROM answered "I believe it's a private."

1:59:11 PM

CHAIR CLAMAN asked how many prisons in Alaska she has visited since becoming commissioner.

COMMISSIONER DAHLSTROM said she believed six, including Mat-Su Pretrial, Anchorage Correctional Complex, and Hiland Mountain Correctional Center. She said she looks forward to visiting rural facilities including Spring Creek Correctional Center.

CHAIR CLAMAN asked if she has visited Wildwood Correctional Complex, which is slated for partial shutdown.

COMMISSIONER DAHLSTROM answered no, though she hopes to visit soon.

1:59:55 PM

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on Commissioner Dahlstrom's appointment.

2:00:39 PM

REPRESENTATIVE EASTMAN asked Chair Claman if a representative from DOC would be present later to address a fiscal note in the committee packet.

CHAIR CLAMAN confirmed there would be someone from DOC present to discuss the fiscal note for HB 52.

REPRESENTATIVE EASTMAN thanked Commissioner Dahlstrom for accepting the appointment and answering the committee's questions.

[2:01:30 PM](#)

REPRESENTATIVE WOOL also thanked her. He said he does not like the profit-driven nature of private prisons and how their incentives are to reduce expenses and fill beds. He said the concept of private prisons concerns him. He shared his hope that SOA would not pursue prison privatization either within or outside Alaska.

[2:02:28 PM](#)

REPRESENTATIVE KOPP also thanked her. He spoke to the gravity of her job. He shared concerns with the thought of separating Alaskan inmates from their families. He added that Corrections Corporation of Alaska has been doing contract work in Alaska for decades. He said Alaska's relationship with private prisons is not a recent thing. He said the unifying question is, "What's the right thing to do by our people."

[2:04:09 PM](#)

REPRESENTATIVE LEDOUX said she looks forward to working with Commissioner Dahlstrom.

[2:04:21 PM](#)

CHAIR CLAMAN referenced former Alaska Senate President Pete Kelly's observation that the DOC commissioner position should be the subject of constitutional change because DOC's long-term goals are too often affected by the volatility that comes with changes in administrations. Chair Claman said, although he does not necessarily support amending the constitution, he agreed with the assertion that the DOC commissioner job comes with unique challenges. He noted that department-wide culture shifts do not happen overnight. He referenced the long-term process of

housing, releasing, and reintegrating inmates into their communities.

CHAIR CLAMAN said the "hard questions" today do not diminish his confidence in Commissioner Dahlstrom's ability to take on the job. He expressed appreciation for the efforts of DOC staff to respond to his "myriad data questions."

[2:06:45 PM](#)

REPRESENTATIVE LEDOUX stated that the Judiciary Committee has reviewed the qualifications of the Governor's appointee and recommends the name Nancy Dahlstrom, Commissioner, Department of Corrections, be forwarded to a joint session for consideration. She said this does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purpose of confirmation.

COMMISSIONER DAHLSTROM'S name was forwarded to the joint session.

HB 52-CRIMES;SEX CRIMES;SENTENCING; PAROLE

[2:07:24 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 52 "An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

[2:08:05 PM](#)

AMANDA PRICE, Commissioner-Designee, Department of Public Safety (DPS), introduced HB 52 on behalf of Governor Dunleavy. She said HB 52 proposes amendments to current law that address "the absurdly and continuously high rates" of sexual assault and sexual abuse of minors in Alaska. She said the rape rate in Alaska is 249 percent higher than the national average. She said Alaska's rates of sexual assault and sexual abuse of a

minor have consistently been higher than the national average. She said she is optimistic and pleased to present a bill that would provide law enforcement with "an improved toolkit" to respond to and prevent sexual abuse and sexual abuse of a minor, as well as to protect some of Alaska's most vulnerable people.

COMMISSIONER PRICE said HB 52 would correct loopholes in sexual assault law that have drawn considerable public attention and criticism in the wake of the Justin Schneider case. She added that HB 52 would also create protections for vulnerable Alaskans. She said one such protection would establish sexual activity with an incapacitated, incapable, or unaware person as sexual assault regardless of the status of marriage between the victim and offender.

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COMMISSIONER PRICE said HB 52 would establish an expectation that "any individual who has been convicted of a registerable sex offense in another state will also be required to register in the state of Alaska." She said the Division of Statewide Services, which manages the sex offender registry, receives approximately 10 to 12 phone calls per month from individuals who are required to register as a sex offender in another state inquiring about the status of their requirement to register in Alaska. She reiterated that 10 to 12 convicted sex offenders [per month] contact SOA to ascertain if they must register in Alaska. She said these individuals, from the perspective of the Division of Statewide Services, view the fact that they do not have to register as a sex offender as a benefit of moving to Alaska, the state with the highest rape rate in the nation.

[2:10:50 PM](#)

CHAIR CLAMAN asked whether the 10 to 12 monthly callers are generally being told they do or do not have to register.

COMMISSIONER PRICE said it is her understanding that the callers are told they would not have to register because the current law does not require it. She explained the current law requires there to be a direct correlation to the law they broke in the other state.

[2:11:42 PM](#)

COMMISSIONER PRICE said she believes the topic of sexual assault "crosses all of the boundaries in terms of all of us identifying

with common goals." She restated that the rates of sexual assault and sexual violence in Alaska are "astronomically high." She expressed her pleasure in supporting HB 52.

[2:12:26 PM](#)

REPRESENTATIVE LEDOUX asked Commissioner Price to define "direct correlation" pertaining to language in the current sex offender registration law.

COMMISSIONER PRICE said she would have to defer to the Department of Law (DOL).

[2:12:50 PM](#)

REPRESENTATIVE EASTMAN said the language of HB 52 references Williams v. State. He asked if she could speak to that reference.

[2:13:16 PM](#)

COMMISSIONER PRICE said she would have to defer to the Department of Law (DOL).

[2:13:54 PM](#)

KACI SCHROEDER, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law, began the sectional analysis of HB 52. She explained she was skipping section one, the intent section, and would refer back to it later.

MS. SCHROEDER addressed sections 2 and 3, which she said refer to removing marriage as a defense to sexual assault when the victim is mentally incapable, incapacitated, or unaware that the sexual act is being committed. She said it leaves marriage as a defense only in those circumstances where there is consent and the very nature of the relationship is what is criminalized. For example, she said, a probation officer is forbidden by law from having sex with a probationer unless [the two] are married.

[2:15:04 PM](#)

MS. SCHROEDER addressed sections 4 through 6, which she explained relate to online enticement of a minor. She said HB 52 would remove the "online" requirement. She said the statute currently requires the use of a computer. She said DOL does not

believe the method of enticement should matter and that any enticement of a minor should be criminalized. She referenced the Dateline NBC series "To Catch a Predator" with Chris Hansen and said this part of HB 52 refers to the sort of scenarios featured in that program.

MS. SCHROEDER addressed section 8, which she said refers to repeatedly sending images of genitalia to another person.

[2:15:49 PM](#)

CHAIR CLAMAN asked about section 7.

MS. SCHROEDER said section 7 is related to section 13. She noted the administration intends to remove section 7. She said she would explain when she reaches section 13.

[2:16:12 PM](#)

MS. SCHROEDER returned to section 8. She said, in this day and age, people are often communicating over electronic means and some people apparently find it funny or annoying to send images of genitalia to other people. She said a classic example would be someone sending an image, the recipient saying he/she does not want to see it, and the sender proceeding to send images in a harassing type of nature. She said HB 52 would criminalize this act and make it a Class B Misdemeanor.

[2:16:50 PM](#)

MS. SCHROEDER addressed sections 9 through 12, which she said refer to indecent viewing or production of a picture. She said the most common example is someone who sets up a camera in a locker room or bathroom and captures private exposure without the victim's knowledge or consent. She said the underlying statute is confusing to read so HB 52 would help clarify the language, though she noted the language could be made clearer still. She said HB 52 would break up the conduct of viewing the picture from the conduct of producing the picture, which she explained are two different things punished differently.

[2:18:12 PM](#)

REPRESENTATIVE LEDOUX established a hypothetical wherein an individual takes a picture of a person in a locker room without the person's knowledge, but the picture is not of the person's private parts but rather of his or her leg. She restated that

this took place in a locker room and nobody knew about it except the picture taker. She asked if that is okay. She opined, "It certainly doesn't seem like it would be okay."

MS. SCHROEDER agreed it is probably not okay, but there is no criminal offense that addresses it.

REPRESENTATIVE LEDOUX asked, "Shouldn't there be?"

MS. SCHROEDER said that would be a policy question for the legislature.

[2:19:08 PM](#)

REPRESENTATIVE EASTMAN referenced language in section 9 that reads "viewing in the state." He asked, now that a distinction has been made between viewing and taking, what about pornography produced in a locker room that is sent out of state. He asked if HB 52 would make that okay.

MS. SCHROEDER said this statute does not address distribution. She said there are other misdemeanor offenses that refer to distributing photos with the intention to embarrass. She distinguished between pornography and the private exposure of an individual. She said pornography - especially child pornography - would be a whole other class of offense.

[2:20:09 PM](#)

REPRESENTATIVE EASTMAN asked for clarification. He said his understanding of the language is that the production of photos of nude persons would not be proscribed by law as long as the images are not shown to someone in Alaska, even if the images are shown to people outside the state.

MS. SCHROEDER said as long as the images are produced in state, if they are shared - even with someone outside Alaska - the act of sharing is occurring inside the state and there are misdemeanors to address that conduct.

CHAIR CLAMAN noted that there is a jurisdictional issue for events happening outside the state. He said SOA cannot prosecute someone in California for what happens in California.

[2:21:03 PM](#)

REPRESENTATIVE EASTMAN said the language in section 9 appears to limit the criminality of creating images to the viewing of the pictures within Alaska. He asked if he is misreading the language.

MS. SCHROEDER said the statute could be clearer. She said any conduct that occurs in-state can be prosecuted even if the images end up crossing state lines. She echoed Chair Claman's statement that SOA cannot prosecute conduct occurring out of state.

[2:22:21 PM](#)

REPRESENTATIVE EASTMAN said that was not the point of his question.

CHAIR CLAMAN clarified Representative Eastman's question by drawing attention to subsection 1, which relates to the viewing, and subsection 2, which relates to the production. He suggested that if an individual were to create an image in Alaska that is viewed out of state, SOA would not be able to prosecute them under subsection 1 but would be able to prosecute them under subsection 2.

MS. SCHROEDER answered that is correct.

[2:23:00 PM](#)

REPRESENTATIVE LEDOUX said it looks like [subsection] 2 only refers to people under a certain age.

MS. SCHROEDER said that refers to who has to give consent. She said if the person is under 13, the parent must give consent and without that consent, criminal penalties could apply. She said if the person is 13 through 16, both the parent and the child must give consent and without that, criminal penalties could apply. She said if the person is over 16, only that person has to give consent.

[2:23:59 PM](#)

REPRESENTATIVE LEDOUX asked where to find that information in the language of the bill.

MS. SCHROEDER pointed to page 5, lines 9 through 12. She walked through the language.

REPRESENTATIVE LEDOUX said the language is confusing.

MS. SCHROEDER said she agrees.

[2:25:07 PM](#)

CHAIR CLAMAN noted that section 12 distinguishes between misdemeanor conduct and felony conduct with regard to the age of person shown in a picture.

MS. SCHROEDER pointed to page 5, line 28. She said where it reads "under 16 years of age" should read "under 18 years of age" because it would still be a felony if the person were 17 years old. She said she hoped the committee would help clarify that. She added that DOL is open to suggestions for further clarifying statutory language.

MS. SCHROEDER referred the committee to a chart provided in the committee packet. The chart displayed the tiered approach to prosecuting these crimes depending on who the offender is and who the victim is. She said, based on the chart, if the viewing or production is involving a child, it would be a Class C sexual felony and a registerable sex offense. She said if the production is of an adult, it would be a regular Class C felony punishable by 0 to 2 years imprisonment, but also a registerable sex offense. She said if the viewing is of an adult, it would be a Class A misdemeanor with a presumptive sentence range of 0-30 days, one year maximum.

[2:27:12 PM](#)

MS. SCHROEDER addressed section 13 on page 6, which she said would make it "sexual contact" for an individual to knowingly cause a victim to come into contact with semen. She said the change relates to the Justin Schneider case. She noted that several different bills have been introduced to address loopholes from the Schneider case. She said the bills "that are moving" have all taken this particular approach to broadening the definition of "sexual contact." She said the change would allow for prosecution of sexual assault in the second degree, sexual assault in the third degree, sexual abuse of a minor in the second degree, and sexual abuse of a minor in the third degree, as well as the respective misdemeanors for each offense.

[2:28:06 PM](#)

CHAIR CLAMAN asked Ms. Schroeder to clarify the relationship between sections 7 and 13.

MS. SCHROEDER noted that section 7 would delete the word "semen" from the statutory language defining harassment in the first degree. She said this refers to a situation in which an individual with an intent to harass or annoy causes a victim to come into contact with semen. Initially, she explained, this language had been inserted into the bill to protect from a lenity argument. She said that, upon further review, DOL determined "the mental states in the situations targeted by both statutes are different enough" that they do not cover the same conduct. She said DOL believes it would survive a lenity challenge. She added that leaving "semen" in the language for harassment in the first degree is appropriate for certain situations. She said an example would be a prisoner throwing semen on a corrections officer, which she explained is the exact sort of conduct that harassment in the first degree was created to address.

[2:29:12 PM](#)

CHAIR CLAMAN asked for confirmation that DOL wants section 7 removed.

MS. SCHROEDER answered yes.

CHAIR CLAMAN mused that protecting corrections officers was the original intention of harassment in the first degree and to remove "semen" from AS 11.61.118(a) would make it impossible to prosecute some of those situations.

MS. SCHROEDER answered correct. She noted that harassment requires a mental state of intent to harass or annoy. She said sexual assault requires "without consent" which itself requires some use of force. She said the contexts of harassment and sexual assault are completely different which is why DOL believes they can survive together.

[2:30:02 PM](#)

MS. SCHROEDER addressed section 14, which she said would enhance the penalty for assault in the second degree, the charge most often used to prosecute strangulation. She said this change is also a response to the Schneider case. She noted that multiple bills take different approaches. She said HB 52 is not necessarily the preferred approach, "just an approach."

[2:30:36 PM](#)

CHAIR CLAMAN pointed to section 14, subsection d, paragraph 5. He said the reference to AS 11.41.210 indicates assault in the second degree rather than sexual assault in the second degree. He asked why that is.

MS. SCHROEDER answered that the reference to assault in the second degree covers situations involving strangulation. She said if a victim is strangled, the charge of assault in the second degree would create an enhanced penalty.

[2:31:15 PM](#)

CHAIR CLAMAN said other bills address the strangulation issue with an aggravating factor rather than an enhanced sentence.

MS. SCHROEDER answered "correct." She said other bills approach the issue "with an aggravator" or by increasing the penalties for all classes of assault when a dangerous instrument is used.

[2:31:40 PM](#)

CHAIR CLAMAN asked if DOL is taking a position regarding the different approaches.

MS. SCHROEDER answered, "Anything is better than nothing." She said all the approaches are good and some could survive simultaneously, which is to say they do not directly conflict with each other.

[2:31:58 PM](#)

REPRESENTATIVE EASTMAN recalled touring a prison with a friend. While on the prison tour, he said, an inmate threw semen on his friend. He asked if the bill's current language would make the inmate's actions a criminal act that would require the inmate to register as a sex offender.

MS. SCHROEDER answered yes, however DOL wants that section removed. She explained this would allow DOL more options to address the harassing type of nature of certain conduct.

CHAIR CLAMAN clarified that harassment is not a registerable sex offense.

MS. SCHROEDER affirmed the clarification.

[2:33:04 PM](#)

MS. SCHROEDER addressed section 15 and pointed to the substantive portion on page 9. She said the section refers to sexual abuse of a minor in the third degree. She said this involves situations in which the defendant is 17 years of age or older and the victim is 13, 14, or 15 years-old. She said this situation is currently a regular Class C felony and a registerable sex offense with a presumptive sentence range of 0 to 2 years.

MS. SCHROEDER said HB 52 would introduce a change for situations in which the defendant and victim are at least six years apart. She said these situations would be made sexual felonies with an enhanced sentencing range of 2 to 12 years. She said this change attempts to take into account "close-in-age situations" that, while still criminal, are sentenced at a lower offense. She noted a six-year age difference feels "a little more predatory," which is why DOL wants it made into a sexual felony.

[2:34:17 PM](#)

REPRESENTATIVE EASTMAN asked how DOL settled on a six-year range.

MS. SCHROEDER said it would be a new age range in law. She said DOL selected it but it open to discussing an alternate range.

[2:34:46 PM](#)

REPRESENTATIVE WOOL asked Ms. Schroeder to repeat the ages regarding sexual abuse of a minor in the third degree.

MS. SCHROEDER said the defendant needs to be 17 years of age or older and the victim is 13, 14, or 15. She noted that this involves sexual contact and not penetration. She said DOL pulled its cases regarding close-in-age situations and found it does not charge very many of them. She said when DOL does charge these situations, "there is usually something else going on," such as plying the victim with alcohol.

[2:35:23 PM](#)

REPRESENTATIVE WOOL established a scenario in which two high school students, aged 17 and 15, share sexual contact. He asked if the 17-year-old would be committing a crime.

MS. SCHROEDER clarified that sexual abuse of a minor requires at least four years of age difference.

CHAIR CLAMAN said that this is different from the six-year difference mentioned in the bill.

REPRESENTATIVE WOOL said he understood. He noted that the situation in his hypothetical would not qualify.

[2:36:14 PM](#)

CHAIR CLAMAN asked, with respect to these changes and earlier mention of the public reaction to the Schneider Case, if any cases involving the prosecution of third-degree sexual abuse of a minor have caused public outrage.

MS. SCHROEDER answered she is not aware of any cases. She opined that most public awareness of sexual abuse of a minor in the third degree occurred during the special session on Senate Bill 54 [passed in the Thirtieth Alaska State Legislature].

[2:36:56 PM](#)

MS. SCHROEDER addressed section 15. She said HB 52 would make indecent viewing or production of a picture of a minor a registerable sex offense and a sexual felony, so language has been added to conform to that.

[2:37:18 PM](#)

MS. SCHROEDER addressed section 16, the substantive portion of which she said is on page 11 beginning at line 30. She said this ties in with language in section 1 that establishes an intent to overturn Williams v. State. She said Williams v. State established the following: "When counting prior felonies for determining the presumptive sentence range for a sexual felony, a non-sex felony cannot be counted if the defendant was unconditionally discharged more than ten years before the current felony."

MS. SCHROEDER said there is a 10-year lookback period for non-sex felonies, so if an individual commits a burglary then goes 12 years before committing another burglary, DOL cannot count

that first burglary when determining a presumptive sentence range. However, she said, for sex offenses, DOL had always counted all felonies no matter how old, so a 12-year-old burglary would be counted toward the presumptive sentence range of a new sex felony. She explained that the Williams decision disallowed this. She said Williams v. State was issued in March 2018, so from that point forward sex offenders will receive lower sentences depending on when their prior felonies occurred. She explained section 16 would make all prior felonies, no matter how old, count toward determining the presumptive sentence range for a sexual felony.

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CHAIR CLAMAN said he read Williams v. State. He said the Alaska Court of Appeals made specific reference to the Alaska State Legislature passing a law that indicated that unclassified and Class A felonies would always be considered priors for any offense.

MS. SCHROEDER said that is correct.

CHAIR CLAMAN said the court mentioned that the legislature did not do the same for Class B and C felonies. So, he said, someone who was [convicted for] a burglary 20 years ago would not have that conviction held against him or her for a burglary conviction today. He asked for confirmation that, should HB 52 become law, this individual's 20-year-old burglary conviction would be considered a prior for a new sex offense and would not be considered a prior for a new burglary.

MS. SCHROEDER asked if the hypothetical individual was committing a sex offense and burglary together.

[2:40:52 PM](#)

CHAIR CLAMAN clarified his hypothetical to avoid confusion. He established that there are two different individuals with 20-year-old burglary convictions. Person A commits another burglary. Person B commits a sex offense. He said that, under current law, neither could be charged as second-time felon. He asked, should HB 52 become law, Person A would still be charged as a first-time felon while Person B would now be charged as a second-time felon.

MS. SCHROEDER answered that is correct.

CHAIR CLAMAN asked if the 20-year-old offense were instead a sex offense, would it count as a prior conviction for purposes of a sex offense today.

MS. SCHROEDER answered that is correct.

CHAIR CLAMAN asked if it would also count as a prior for a burglary today.

MS. SCHROEDER answered, "I believe so, but let me check on that."

[2:42:06 PM](#)

CHAIR CLAMAN asked if there is evidence suggesting that people who commit burglaries more than 10 years ago are somehow more likely to commit sex offenses today than those with no prior sex offense history.

MS. SCHROEDER said she has no evidence or data before her. She pointed to an increasing pattern of behavior. She said that, before Williams v. State, the theory was that some criminal history is of such a nature that it should count. She said that could be based on the prior offense or the current offense. She said, "The age of the prior felony goes to the weight, and not necessarily about whether or not it should or should not be counted as far as a presumptive term."

[2:43:24 PM](#)

CHAIR CLAMAN said that, statistically speaking, sex offenders are actually far less likely to recidivate than those who commit property crimes and other crimes. He said this raises an interesting question regarding whether an individual who is convicted of a first sex offense should be imprisoned longer than another individual convicted of a first sex offense simply because the first individual committed a burglary 20 years prior. He differentiated between the patterns established by a 2-year gap in felony convictions and a 20-year gap.

MS. SCHROEDER noted that low sex offender recidivism rates reflect what is currently in Alaska law, which is to say longer prison sentences and the successful containment model implemented by DOC. She said sex offender recidivism rates need to be viewed in the context from which those numbers are derived.

[2:44:46 PM](#)

REPRESENTATIVE LEDOUX asked if the reason we don't see recidivism from sex offenders is because they are incarcerated for so long that they do not get charged again.

MS. SCHROEDER said she mentioned the containment model as well. She said she is not pointing to a cause and effect relationship, just noting that an assessment of sex offender recidivism rates require context regarding the system as a whole. She said she does not have any answers on the matter.

[2:45:16 PM](#)

REPRESENTATIVE WOOL asked if there is a population of people who have committed felonies and then, ten years later, are commit sex offenses. He asked how this population compares to the population of sex offenders without prior convictions.

MS. SCHROEDER said she does not have any statistics on that topic. She said sometimes individuals convicted of sex offenses have zero prior convictions. She said sometimes individuals convicted of a sex crime have exhibited escalating criminal behavior. She said DOL does not keep a lot of statistics but does observe patterns of behavior.

[2:46:05 PM](#)

REPRESENTATIVE EASTMAN asked Ms. Schroeder to briefly explain the containment model. He also asked if there are minimum or maximum age limits for inclusion on the state sex offender registry.

MS. SCHROEDER said the state sex offender registry does not include juveniles. She deferred to DOC for additional details about the registry and to DPS for details about the containment model.

[2:47:14 PM](#)

LAURA BROOKS, Deputy Director, Division of Health & Rehab Services, Department of Corrections, said the containment model is an evidence-based program in which specially trained probation officers monitor sex offenders. She said the offenders on probation and parole are placed on a follow-up schedule whereby they get polygraphed. She noted the containment model is a critical tool for monitoring the offender

population. She said DOC can monitor deviant thoughts before an offender re-enters his/her assault cycle. She said DOC combats this by tightening curfews, increasing the frequency of home visits, increasing the frequency of reports to the parole office, and other measures designed to prevent re-offense.

[2:48:38 PM](#)

MS. SCHROEDER addressed sections 17 and 18. She said the changes in those sections are conforming changes because HB 52 would make certain offenses felonies.

MS. SCHROEDER addressed sections 19 and 20, which she said refer to the sex offender registry. She said these sections would require anyone who is required to register as a sex offender out of state to also register in Alaska if he/she is physically present in the state. She said section 1 has an intent section related to sections 19 and 20. She said this requirement would be a matter of comity and would not be punitive. She explained that Alaska has a very transient population with people often entering and leaving the state. She said SOA does not want to see Alaska become a safe haven for those who are required to register out of state. She said if those individuals are going to be in Alaska, SOA wants to be informed and wants those individuals to register.

[2:49:41 PM](#)

REPRESENTATIVE EASTMAN established a scenario in which an individual who is one day shy of turning 18 engages in sexual assault in the third degree with a victim who is more than 6 years younger. He asked if the offending individual would be required to register as a sex offender.

MS. SCHROEDER said that, in this scenario, the offender would be adjudicated as a juvenile and thus would not be required to register.

[2:50:47 PM](#)

CHAIR CLAMAN said it is his understanding there are a number of states that have made public urination a registerable sex offense. He said this raises an issue because Alaska's geography sometimes makes it difficult to avoid having to urinate outdoors. He pondered the possibility of forcing someone from out of state to register in Alaska for conduct that would not seem so terrible to Alaskans. He asked if Ms.

Schroeder has seen anything about public urination as a registerable sex offense in other states. He asked how that would be treated in Alaska.

[2:52:16 PM](#)

MS. SCHROEDER referenced a report from Legislative Research Services on the topic. She noted that it is not always the act of urination that is criminalized, rather the exposure of the genitals to commit the act of urination.

CHAIR CLAMAN quipped, "Sometimes it's hard to go to the bathroom without exposing some genitals."

MS. SCHROEDER said she understands. She said she would want to see what another state's statute actually criminalizes and how that may or may not compare to Alaska statute. She said the list of criminalized offenses that she had seen would, depending on the circumstances, also be registerable sex offenses in Alaska.

CHAIR CLAMAN asked if there are other offenses that might not be registerable in Alaska.

MS. SCHROEDER answered yes, depending on the circumstances and how they are criminalized in the other jurisdiction.

[2:53:05 PM](#)

REPRESENTATIVE EASTMAN said he was surprised to learn that, in some other states, there are people as young as six- or seven-years-old who are required to register as sex offenders. He noted that Alaska does not require people that young to register. He asked if HB 52 would require those individuals to register should they come to Alaska.

MS. SCHROEDER said the individual would have to be convicted of a registerable sex offense. She said the definition of "conviction" in Alaska specifically excludes those adjudicated as juveniles. She said juveniles adjudicated out of state would likewise not be required to register.

[2:53:57 PM](#)

CHAIR CLAMAN noted that Ms. Price discussed the notion of Alaska being a "safe haven." He asked if there are a lot of people

coming to Alaska from out of state who are registering as sex offenders.

MS. SCHROEDER deferred to Kathryn Monfreda from DPS.

[2:54:20 PM](#)

KATHRYN MONFREDA, Director, Division of Statewide Services, Department of Public Safety, said the answer is approximately 3 to 4 new sex offender registrants from out of state each month.

CHAIR CLAMAN asked approximately how many sex offenders are currently registered in Alaska and how many out of those are from out of state?

MS. MONFREDA said there are approximately 3,600 sex offenders registered in Alaska. She said she would have to get back to the committee with the number of those with out-of-state convictions.

CHAIR CLAMAN asked if the number of out-of-state convictions is significant, for example more than 10 percent.

MS. MONFREDA answered she does not know at the moment. She agreed to get that information to the committee.

[2:55:58 PM](#)

MS. SCHROEDER addressed section 21, which she said would amend the discretionary parole statute. She said the language in lines 27 through 31 on page 15 prohibits discretionary parole for serious sex offenses. She said the language is already in statute and section 21 would simply shift it to a different subsection for clean-up purposes.

CHAIR CLAMAN said that is more of a technical change.

MR. SCHROEDER said she wanted to ensure the committee understands that HB 52 would not change eligibility.

[2:57:00 PM](#)

MS. SCHROEDER continued with section 21 and pointed to lines 1 through 4 on page 16, which she identified as clarifying language pertaining to "good time." She said an individual who is not eligible for a good time deduction from his/her sentence would also not be eligible for discretionary parole. She said

those not eligible for a good time deduction are repeat sex offenders. She said it does not make sense to allow discretionary parole for repeat sex offenders who have been disallowed good time deductions.

[2:57:44 PM](#)

REPRESENTATIVE EASTMAN asked if it is clear in HB 52 that an inmate who does not earn good time deductions on account of poor behavior would not be placed in the category of "not being eligible for good time."

MS. SCHROEDER asked if he meant "not eligible for discretionary parole."

REPRESENTATIVE EASTMAN clarified that HB 52 would create consequences for those who are not eligible for good time deductions. He said he wanted to ensure the category of people who are not eligible for those deductions would not include individuals who did not earn deductions on account of poor behavior.

MS. SCHROEDER answered that Representative Eastman was referring to a separate situation. She pointed to line 3 on page 16 which includes a reference to AS 33.20.010(a)(3) which identifies repeat sex offenders as ineligible for good time deductions. She said they would therefore be ineligible for discretionary parole.

[2:58:55 PM](#)

REPRESENTATIVE EASTMAN asked if Ms. Schroeder could go over section 1.

MS. SCHROEDER said section 1 includes intent language that relates to Williams v. State and the legislation's intent to overturn it. She said the intent language is included because it would be useful for future litigation. She said other parts of section 1's intent language relate to the registration of out-of-state sex offenders and the intent to overturn the Alaska Supreme Court's 2018 decision in State of Alaska, Department of Public Safety v John Doe, which determined that an out-of-state sex offender need not register in Alaska if the state does not have an offense that is similar to that for which he/she was convicted. She said the intent section clarifies that the change is not meant to be punitive, rather it is a matter of comity and protection of the public.

3:00:16 PM

CHAIR CLAMAN thanked Ms. Schroeder for her presentation. HB 52 was held for further review.

3:00:55 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:01 p.m.