

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 24, 2019

1:27 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

HOUSE BILL NO. 145

"An Act relating to crime and criminal procedure; establishing the crime of possession of motor vehicle theft tools; relating to controlled substances; relating to credit toward a sentence of imprisonment; relating to sentencing; relating to registration of sex offenders; relating to the definition of 'sex offender or child kidnapper'; relating to operating under the influence; relating to refusal to submit to a chemical test; relating to the duties of the commissioner of corrections; relating to the Alaska Criminal Justice Commission; relating to the duties of the attorney general and the Department of Law; requiring law enforcement agencies to test sexual assault examination kits; requiring notification of completion of testing; relating to reports on untested sexual assault examination kits; and relating to public disclosure of information relating to certain minors."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 145

SHORT TITLE: PROPERTY CRIME; MOTOR VEHICLE THEFT TOOLS

SPONSOR(S): JUDICIARY

04/24/19 (H) READ THE FIRST TIME - REFERRALS

04/24/19 (H) JUD, FIN
04/24/19 (H) JUD WAIVED PUBLIC HEARING NOTICE, RULE
23 UC
04/24/19 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

LIZZIE KUBITZ, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 145 on behalf of the House
Judiciary Committee, the prime sponsor.

ACTION NARRATIVE

[1:27:34 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:27 p.m. Representatives Stutes, Kopp, LeDoux, Shaw, and Claman were present at the call to order. Representatives Wool and Eastman arrived as the meeting was in progress.

HB 145-PROPERTY CRIME; MOTOR VEHICLE THEFT TOOLS

[1:28:15 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 145, "An Act relating to crime and criminal procedure; establishing the crime of possession of motor vehicle theft tools; relating to controlled substances; relating to credit toward a sentence of imprisonment; relating to sentencing; relating to registration of sex offenders; relating to the definition of 'sex offender or child kidnapper'; relating to operating under the influence; relating to refusal to submit to a chemical test; relating to the duties of the commissioner of corrections; relating to the Alaska Criminal Justice Commission; relating to the duties of the attorney general and the Department of Law; requiring law enforcement agencies to test sexual assault examination kits; requiring notification of completion of testing; relating to reports on untested sexual assault examination kits; and relating to public disclosure of information relating to certain minors."

[1:29:17 PM](#)

LIZZIE KUBITZ, Staff, Representative Matt Claman, Alaska State Legislature, conducted a sectional analysis of HB 145. She paraphrased from a prepared statement, which read as follows [original punctuation provided]:

HB 145 version U - Sectional Summary

Section 1

AS 11.41.110(a) - Murder in the second degree.

Conforming amendment. Amends AS 11.41.110(a) to reflect the changes made in Section 28.

Section 2

AS 11.41.150(a) - Murder of an unborn child.

Conforming amendment. Amends AS 11.41.150(a) to reflect the changes made in Section 28.

Section 3

AS 11.41.432(a) - Defenses.

Removes marriage as a defense if the person engages in sexual activity with their spouse when they know their spouse is incapacitated or unaware that the sexual act is being committed.

Because of the complex legal and factual issues that may arise, the defense of marriage still applies in situations where a spouse is the caretaker of their partner who is "mentally incompetent" with dementia or Alzheimer's, or is mentally ill, but still consents to the contact.

A person who is incapacitated or unaware that a sexual act is being committed is legally and factually unable to consent to sexual activity. In most other circumstances, unless specifically excluded by statute or case law, consent remains a defense to sexual assault.

Section 4

AS 11.46.130(a) - Theft in the second degree.

Conforming amendment. Amends AS 11.46.130(a) to reflect a change made in Section 11.

Section 4 also removes inflation adjustment for theft in the second degree.

Sections 5 -10

AS 11.46.140(a), -.150(a), -.220(c), -.260(b), -.270(b), -.280(d)
Removes inflation adjustment from property crime statutes.

Section 11

AS 11.46.285 - Fraudulent use of an access device or identification document.

Amends AS 11.46.285, the statute related to fraudulent use of an access device, to include theft of an identification document. This clarification addresses a gap in the statute identified in *Kankanton v. State*, 342 P.3d (Alaska Ct. App. 2015). With the amendment, the offense will include fraudulent use of both an access device and an identification document.

The amendment also restructures the offense levels to a class B felony if the theft using an access device or identification document is \$25,000 or more, a class C felony if the theft is \$75 or more and less than \$25,000, and a class A misdemeanor if the theft is less than \$75. These financial levels for Fraudulent Use of an Access Device or Identification Document are different from the financial levels for Theft in the Second Degree (AS 11.46.130: \$750 to \$25,000), Theft in the Third Degree (AS 11.46.140: \$250 to \$750), and Theft in the Fourth Degree (AS 11.46.150: less than \$250) because the impact on the victim of identity theft is more serious than the effect on a victim of theft. In addition, the requirement of proof of intent to defraud in AS 11.46.285 is a more serious culpability than intent to deprive another of property in AS 11.46.100.

The crime of fraudulent use of an access device was first enacted in 1978, however, there were no dollar amounts included in this initial version of the offense. The statute was amended in 2000, at which time the legislature specified that if the value of property or services taken was less than \$50, the offense would be a class B misdemeanor; if the value of property or services taken was \$50 or more but less than \$500, it was a class A misdemeanor; if the value of property or services taken was \$500 or more but less than \$25,000, it was a class C felony; and anything over \$25,000 would be a class B felony.

In 2005, the legislature made additional changes to crimes involving the theft of access devices in HB 131. First, the crime of theft in the second degree was amended to include the theft of an access device. At that time, the taking of an access device, regardless of whether it was used, was made a class C felony. Second, the felony level threshold for fraudulent use of an access device was reduced to \$50 or more.

According to testimony provided in committee on HB 131, these types of offenses had increased 100 percent nationwide. Some states had lowered or eliminated the value level needed for a felony level threshold for these types of offenses. When comparing the fifty-dollar threshold to other crimes in Alaska, it was noted that the crime of forgery is a felony regardless of the amount that is forged. Thus, if a person forges a check for five dollars, that conduct is a felony.

In 2014, the legislature again amended the felony threshold for fraudulent use of an access device and brought it up to \$750. This change brought the felony level threshold in line with other property offenses that were amended at the same time. Since 2014, the felony level threshold for property offenses has changed a couple of times and is currently \$750.

Section 4 also removes inflation adjustment.

Section 12

AS 11.46.295 - Prior convictions.

Amends the application of "prior convictions" under AS 11.46.295 to apply to theft in the third degree in determining the existence of prior convictions in the recidivist theft statutes.

Section 13

AS 11.46.360(a)

Removes inflation adjustment for vehicle theft in the first degree.

Section 14

AS 11.46.370 - Possession of motor vehicle theft tools.

Amends AS 11.46 by adding a new section establishing the crime of possession of motor vehicle theft tools as a class A misdemeanor. The new crime is similar to AS 11.46.315, Possession of burglary tools, which is also a class A misdemeanor.

In addition to mechanical tools used to unlock a motor vehicle, the amendment also includes an "electronic unlocking device" as a motor vehicle theft tool. "Electronic unlocking devices" are devices used to capture the electronic signals from key fobs and other electronic locking systems to unlock a motor vehicle without permission. The amendment does not include a screwdriver as a motor vehicle theft tool, just as a screwdriver is not a burglary tool in AS 11.46.315.

Sections 15-20

AS 11.46.482(a), -.484(a), -.486(a), -.530(b), -.620(d), -.730(c)

Remove inflation adjustment from property crime statutes.

Section 21

AS 11.46.980 - *Determination of value; aggregation of amounts.*

Adds a new subsection (e) to AS 11.46.980 that allows prosecutors to aggregate crimes under theft in the second degree if they occur within 180 days, the amount is more than \$750 and less than \$25,000, and the property or services are taken from one or more persons or commercial establishments.

Under current law, the prosecution aggregates the theft amounts when it can prove that the defendant or defendants committed the criminal acts "under one course of conduct." AS 11.46.980(c), *see Buckwalter v. State*, 23 P.3d 81 (Alaska Ct. App. 2001). This amendment to the statutes does not require proof of a single course of conduct and, instead, requires proof that the crimes occurred within 180 days and were from one or more persons or commercial establishments.

Section 22

AS 11.56.810(a) - *Terroristic threatening in the second degree.*

Amends the second degree terroristic threatening statute AS 11.56.810(a) to cover an individual who

knowingly threatens to commit a crime against a person or property and recklessly disregards the risk that the threats will cause the evacuation of a building, will cause serious public inconvenience, or will place the public or a substantial group of the public in fear of serious physical injury. The amended statute covers real threats of violence as well as false threats.

Terroristic threatening in the second degree is directed at threats that, if carried out, are likely to affect a substantial number of people. Threats to schools, trains, buses, airplanes, businesses, and offices are examples reflected in tragic events over the past 25-30 years. The amended statute addresses conduct that is usually different from assault in the third degree, AS 11.41.220(a)(1)(A), which addresses a person placing another person "in fear of imminent serious physical injury by means of a dangerous instrument," and AS 11.41.220(a)(2), which addresses "repeated threats to cause death or serious physical injury to another person." Both terroristic threatening in the second degree and assault in the third degree are class C felonies.

Section 23

AS 11.61.123(a) - Indecent viewing or photography.
Separates "production" from "viewing" in the crime of viewing or production of an indecent picture, making a distinction between in-person viewing and viewing of an indecent picture. Increases the age at which a person can consent to having these pictures taken of themselves from 13 years of age to 16 years of age.

Section 24

AS 11.61.123(c) - Indecent viewing or photography.
Conforming amendment. Changes the word "photography" to "production of pictures."

Section 25

AS 11.61.123(d) - Indecent viewing or photography.
Conforming amendment. Changes the word "photography" to "production of pictures."

Section 26

AS 11.61.123(f) - Indecent viewing or photography.

Classification section. Makes production of an indecent picture of a person under the age of 16 a class B felony (which will be sentenced as a sexual felony in Section 38); makes viewing an indecent picture of a person under the age of 16 a class C felony; makes production of an indecent picture of an adult a class C felony; and makes viewing of an indecent picture of an adult a class A misdemeanor.

	Child	Adult
Viewing AS 11.61.123(a) (1)	Class C Felony Registrable Sex Offense	Class A Misdemeanor
Production AS 11.61.123(a) (2)	Class B Sexual Felony Registrable Sex Offense	Class C Felony Registrable Sex Offense

Section 27

AS 11.61.123 - Indecent viewing or photography.

Adds a new subsection (g) to AS 11.61.123 to provide a defense to the crime of Indecent Viewing or Production of a Picture.

A defense requires some evidence to put the defense in issue, and then the prosecution "has the burden of disproving the existence of the defense beyond a reasonable doubt." AS 11.81.900(b)(19).

Section 28

AS 11.71.025 - Misconduct involving a controlled substance in the second degree.

Creates an additional tier of drug offense (a class A felony) for possession with intent to manufacture or deliver large quantities of schedule IA controlled substances, which include opiates and heroin, and schedule IIA controlled substances, which include methamphetamines.

The higher felony level for this controlled substance offense is directed at dealers and distributors, and not at the possession level. In Alaska, the federal government prosecutes the majority of large quantity drug dealers. The penalties in federal court for

similar quantities are greater than the penalties in this amendment. This class A felony offense would give state prosecutors an option for prosecuting large-quantity drug dealers when federal prosecutors may decline the case.

Section 29

AS 11.71.030(a) - Misconduct involving a controlled substance in the second degree.

Conforming amendment. Amends AS 11.71.030(a) to reflect the changes made in Section 28.

Section 30

AS 11.71.030(d) - Misconduct involving a controlled substance in the second degree.

Conforming amendment. Amends AS 11.71.030(d) to reflect the changes made in Section 28.

Section 31

AS 11.71.040(a) - Misconduct involving a controlled substance in the third degree.

Conforming amendment. Amends AS 11.71.040(a) to reflect the changes made in Section 28.

The bill further amends subsection (a) by establishing a basis to prosecute repeat offenders of possession of any amount of schedule IA or IIA controlled substances (such as opiates, heroin, and methamphetamine) at the class C felony level. Specifically, a person commits a felony if they possess any amount of a schedule IA or IIA drug *and* they have been previously convicted two or more times of drug possession of a schedule IA or IIA controlled substance, either as a felony or as a misdemeanor as described in the statute.

This amendment also confirms that certain possession felonies are not affected by this new provision: felony possession of heroin/opiates near a school (AS 11.71.030(a)(3)) and felony possession of date rape drugs (AS 11.71.040(a)(3)).

Section 32

AS 11.71.040(d) - Misconduct involving a controlled substance in the fourth degree.

Conforming amendment. Amends AS 11.71.040(d) to reflect the changes made in Section 28.

Section 33

AS 11.71.050 - Misconduct involving a controlled substance in the fifth degree.

Two conforming amendments. First, the bill amends AS 11.71.050 to reflect the changes made in Section 28. Second, the bill amends AS 11.71.050(a)(4) by adding the new paragraph of Section 31 above (AS 11.71.040(a)(12)) into the list of exemptions of what constitutes misdemeanor drug possession.

Section 34

AS 11.71.060 - Misconduct involving a controlled substance in the sixth degree.

Conforming amendment. Amends AS 11.71.060 to reflect the changes made in Section 28.

Section 35

AS 11.71.311(a) - Restriction on prosecution for certain persons in connection with a drug overdose.

Two conforming amendments. First, the bill amends AS 11.71.311(a) to reflect the changes made in Section 28. Second, the bill amends AS 11.71.311(a) by adding the new paragraphs of Section 28 (AS 11.71.025) and Section 34 (AS 11.71.040(a)(12)) into the list of crimes that may not be prosecuted if that person sought in good faith either medical or law enforcement aide for another person they believed to be having a drug overdose.

Section 36

AS 12.55.027 - Credit for time spent toward service of a sentence of imprisonment.

Adds a new subsection (a) to read:

"A court may only grant credit for time spent toward service of a sentence of imprisonment under this section if the court finds that the sentence, including any credit toward the sentence of imprisonment, meets the requirements of AS 12.55.005."

In *State v. Justin Schneider*, it appears that the prosecution and the court may not have understood the legislature's intent when it passed HB 15 in 2015.

During the House Judiciary Hearing on HB 15 on March 23, 2015, from approximately 1:46 p.m. to 1:53 p.m., Representative Wilson confirmed that the courts should not be required to grant jail credit for time in

treatment or on electronic monitoring credit simply because the defendant had completed treatment or had not committed any crimes while on electronic monitoring. Rep. Wilson confirmed that her intent, as the bill sponsor, was that judges should not be *required* to grant credit for electronic monitoring. Rep. Claman then discussed a proposed amendment that would change the word "shall" in AS 12.55.027(d) to "may." As Rep. Claman explained, a judge could decline to grant credit for electronic monitoring or drug treatment in some cases based on the specifics of that case and grant jail credit in many other cases—all depending on the specific circumstances. Rep. Claman then moved an amendment that changed "shall" to "may." The amendment passed without objection, and the "may" language is now incorporated in AS 12.55.027(d).

The reason to add the new subsection (a) to AS 12.55.027 is to make sure that all parties understand that the sentencing court has discretion in determining whether to grant credit for time spent toward service of a sentence. Specifically, before granting any credit, the court must consider and apply the sentencing criteria set forth in AS 12.55.005 and announced by the Alaska Supreme Court in *State v. Chaney*, 477 P.2d 441 (Alaska 1970) to the question of whether to grant credit for time spent on electronic monitoring or a treatment program.

Section 37

AS 12.55.125(d) - Sentences of imprisonment for felonies.

Amends AS 12.55.125(d) by increasing the presumptive sentencing range for first-time class B felony offenders from 0 to 2 years to 90 days to 2 years. This section also adds enhanced felony sentences for making or possessing with intent to manufacture methamphetamine in a home or lodging where children live or engaging children in the manufacture of methamphetamine.

Section 38

AS 12.55.125(i) - Sentences of imprisonment for felonies.

Amends AS 12.55.125(i), which establishes sentences for sexual felonies, to add conforming language to reflect the changes made in Sections 23-26.

Section 39

AS 12.55.135(a) - Sentences of imprisonment for misdemeanors.

Amends AS 12.55.135(a)(2) by increasing the maximum sentence for some class A misdemeanors from 30 to 90 days.

The amendment is intended to give judges greater discretion in sentencing individuals convicted of misdemeanor charges.

Section 40

AS 12.55.135(b) - Sentences of imprisonment for misdemeanors.

Amends AS 12.55.135(b)(1) by increasing the maximum sentence for some class B misdemeanors from 10 to 30 days.

The amendment is intended to give judges greater discretion in sentencing individuals convicted of misdemeanor charges.

Section 41

AS 12.55.135(n) - Sentences of imprisonment for misdemeanors.

Conforming amendment. Amends AS 12.55.135(n) to reflect the changes made in Section 28.

Section 42

AS 12.55.185(16) - Definitions.

Conforming amendment. Amends AS 12.55.185(16) to add viewing or production of an indecent picture under AS 11.61.123(f)(1) or (2) to the definition of "sexual felony."

Section 43

AS 12.63.010(d) - Registration of sex offenders and related requirements.

Conforming amendment. Amends AS 12.63.010(d) to reflect the changes made in Section 45.

Section 44

AS 12.63.010 - Registration of sex offenders and related requirements.

Clarifies that a person may petition the Department of Public Safety for removal from the registry if the

petitioner submits proof acceptable to the department that the facts underlying the conviction in another jurisdiction do not constitute a sex offense or child kidnapping in Alaska.

Currently, in at least 13 states, an indecent exposure conviction for public urination can trigger sex offender registration requirements. Of those states, two limit registration to those who committed the act in view of a minor. This amendment is intended to provide an option to petition the department to "opt-out" of registering if the conduct would not be a sex crime in Alaska.

Section 45

AS 12.63.020 - Duration of sex offender or child kidnapper duty to register.

Amends AS 12.63.020 to clarify that a person who is convicted of an offense as an adult and required to register as a sex offender or child kidnapper in another jurisdiction is also required to register as a sex offender in Alaska.

Section 46

AS 12.63.100(6) - Definitions.

Amends AS 12.63.100(6) to add a person who is convicted of an offense as an adult and required to register as a sex offender or child kidnapper in another jurisdiction to the definition of "sex offender or child kidnapper."

Section 47

AS 18.65.087(d) - Central registry of sex offenders.

Amends AS 18.65.087(d) to require the Department of Public Safety to review procedures and adopt regulations to allow individuals with sex offense convictions in another state to petition for removal from the registry because the facts underlying the out-of-state conviction do not constitute a sex offense or child kidnapping in Alaska.

Section 48

AS 18.65.087(j) - Central registry of sex offenders.

Conforming amendment. Amends AS 18.65.087 to reflect change made in Section 46.

Section 49

AS 28.35.030(o) - *Operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance.*

Amends AS 28.35.030(o) to allow the Division of Motor Vehicles to restore a driver's license if a person has had no driving-related offenses in the 10-year period before applying for the restoration of their license. A license may not be restored if the revocation was ordered in a case in which the person was also convicted of a crime where homicide, assault in the first and second degree, or assault of an unborn child was involved.

Section 50

AS 28.35.032(q) - *Refusal to submit to chemical test.*

Amends AS 28.35.032(q) to allow the Division of Motor Vehicles to restore a driver's license if a person has had no driving-related offenses in the 10-year period before applying for the restoration of their license. A license may not be restored if the revocation was ordered in a case in which the person was also convicted of a crime where homicide, assault in the first and second degree, or assault of an unborn child was involved.

Section 51

AS 33.30.011(a) - *Duties of commissioner.*

Amends AS 33.30.011(a) by changing the minimum term of imprisonment in which the Department of Corrections must conduct a risk assessment and prepare a written case plan to 90 days.

Further, it amends AS 33.30.011(a)(9) to require the Department of Corrections to coordinate with community reentry coalitions or other providers of reentry services when developing a written reentry plan for prisoners.

Finally, it creates a new subsection AS 33.30.011(a)(12), that requires regular reports on offender management plan implementation that includes the number of prisoners provided written case plans, the number of written case plans initiated within the preceding year, and the number of written case plans that were updated in the preceding year.

Section 52

AS 34.03.360(7) - *Definitions.*

Conforming amendment. Amends AS 34.03.360(7) to reflect the changes made in Section 28.

Section 53

AS 44.19.647(a) - *Annual report and recommendations.*

Amends AS 44.19.647(a) by adding a requirement that the Alaska Judicial Council include the data collected by the Department of Law as described in Section 58 in their annual report.

Section 54

AS 44.23.020(k) - *Duties; and powers; waiver of immunity.*

Amends AS 44.23.020 by adding a new subsection (k) that requires the Department of Law to develop a method to track certain information and to report about sex offense complaints and disposition of those cases.

Section 55

AS 44.23.040(b) - *Records, reports, and recommendations on uniform laws.*

Amends AS 44.23.040 by adding a new subsection (b) that requires the Department of Law to gather and report data to the Alaska Judicial Council on felony sex offenses including the number reported but not referred for prosecution, the number referred for prosecution that were not prosecuted, and the number prosecuted that resulted in a conviction of a crime other than a sex offense.

Section 56

AS 44.41.065 - *Sexual assault examination kits.*

Adds a new section AS 44.41.065 to: (1) require that within 30 days after collection of a sexual assault kit, it is sent to an accredited lab or Department of Public Safety operated laboratory facility; (2) ensure that the sexual assault kit undergoes testing within one year of the laboratory receiving the kit; and (3) within two weeks following completion of testing, reasonable effort will be made to notify the victim that testing occurred. Failure to meet this timeline will not cause a case to be dismissed and if a case is resolved prior to testing, it is no longer required.

Section 57

AS 44.41.070(a) - *Report on untested sexual assault examination kits.*

Requires the Department of Public Safety to include additional data about which kits were ineligible for testing and why.

Section 58

AS 44.41.070(b) - *Report on untested sexual assault examination kits.*

Conforming amendment. Amends AS 44.41.070(b) to reflect change made in Section 57.

Section 59

AS 44.41.070€ - *Report on untested sexual assault examination kits.*

Adds a new subsection (e) that includes the definitions of why a sexual assault kit may be ineligible for testing: it is scientifically unviable, is ineligible for CODIS (Combined DNA Index System, a national program that links crimes to DNA) or is an anonymous kit.

Section 60

AS 47.12.315(a) - *Public disclosure of information in department records relating to certain minors.*

Conforming amendment. Amends AS 47.12.315(a) to reflect the changes made in Section 28.

Section 61

Repealer Section: Removes the inflation adjustments.

Section 62

Applicability Provisions: This Act applies to offenses committed on or after the effective date.

Section 63

Uncodified Law

[2:01:26 PM](#)

REPRESENTATIVE WOOL asked whether public urination is a sex crime in Alaska.

MS. KUBITZ said it is not, though it is a sex crime in some other states. She explained that if HB 145 becomes law, an out-of-state sex offender who was convicted of crimes related to public urination would have to register in Alaska. She noted

that HB 145 would provide an opt-out should the Department of Public Safety (DPS) verify that the sex offense "does not apply to the laws in Alaska."

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REPRESENTATIVE EASTMAN noted that amendments to HB 145 are due in less than 48 hours. He asked why.

CHAIR CLAMAN answered, "That's the schedule we're on so we can move crime bills."

2:03:09 PM

REPRESENTATIVE KOPP referenced section 28, which would create the crime of misconduct involving a controlled substance in the second degree. He said he likes the idea of establishing prosecutable levels for trafficking and noted that it is something law enforcement has requested. He asked a question about state and federal prosecutors and whether HB 145 would change how they operate with each other.

CHAIR CLAMAN noted that representatives from the Department of Law (DOL), who were not able to attend this meeting, would be able to provide a more detailed answer. He said it is his understanding that the federal government tends to prosecute large possession offenses, though DOL would like the option to do it themselves should the federal government elect not to prosecute.

REPRESENTATIVE KOPP said he is glad that misconduct involving a controlled substance in the second degree would be a class A felony. He said he is also pleased that repeat drug possession offenders would be guilty of a felony.

CHAIR CLAMAN noted that it was Representative Kopp's idea to make it so.

REPRESENTATIVE KOPP said it would introduce a higher level of accountability and deal with the gray area of possession and trafficking. He remarked that prosecutors would have a tool to address the behavior associated with repeat possession offenses.

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REPRESENTATIVE EASTMAN asked if indecent exposure is currently a sex crime [in Alaska].

MS. KUBITZ said she would have to research the answer. She said she believes there are criminal penalties for indecent exposure but noted that she is unsure "where it falls."

REPRESENTATIVE KOPP said indecent exposure in the first degree, which is covered in AS 11.41.458, is when the offender exposes his/her genitals in the presence of another person with reckless disregard that the act is offensive, insulting, or frightening to the victim. He noted that the crime is a class B misdemeanor. He added that the conduct becomes indecent exposure in the second degree when the victim is under 16 years of age. He noted that indecent exposure in the second degree is a class A misdemeanor. He stated that, as a misdemeanor, indecent exposure is not a registerable offense.

REPRESENTATIVE EASTMAN asked which sections of the bill deal with "the Criminal Justice Commission."

MS. KUBITZ asked if he was referring to the Alaska Criminal Justice Commission or the Alaska Judicial Council (AJC).

REPRESENTATIVE EASTMAN clarified that he meant the Alaska Criminal Justice Commission.

MS. KUBITZ said she is only aware of sections that relate to the AJC. She noted that the Alaska Criminal Justice Commission is under AJC. She said she would have to review those sections to determine whether the Alaska Criminal Justice Commission is specifically mentioned.

[2:08:21 PM](#)

REPRESENTATIVE WOOL noted that HB 145 would impose a mandatory minimum sentence of 30 days for first-time class B felony offenses. He asked for examples of class B felonies.

CHAIR CLAMAN clarified that the presumptive sentence for class B felonies would be 90 days.

REPRESENTATIVE WOOL acknowledged the clarification. He said the bill would change the presumptive sentence range from 0 to 2 years to 90 days to 2 years.

CHAIR CLAMAN said theft in the first degree and assault in the second degree are class B felonies. He added that some sex

offenses are also of that category but are sentenced under a different framework.

REPRESENTATIVE KOPP mentioned that sexual abuse of a minor in the second degree is a class B felony. He clarified that assault in the second degree relates to situations in which a serious physical injury is caused or is attempted.

CHAIR CLAMAN noted that HB 145 would make the crime of misconduct involving a controlled substance in the third degree a class B felony. He said misconduct involving a controlled substance in the second degree is currently a class B felony, but HB 145 would change it to a class A felony.

[2:10:44 PM](#)

REPRESENTATIVE WOOL addressed section 31. He noted that HB 145 would make three instances of "simple possession" a felony. He asked whether a violation committed by someone at age 20 would be held against him/her should he/she violate again at the age of 45.

REPRESENTATIVE KOPP stated, "Those are just policy calls." He said Representative Wool's point is valid and that the committee could discuss what the time bars should look like.

CHAIR CLAMAN mentioned that, presently, HB 145 contains no time bars.

REPRESENTATIVE WOOL noted that the crime of driving under the influence (DUI) has a time bar.

REPRESENTATIVE KOPP confirmed that.

[2:12:23 PM](#)

REPRESENTATIVE WOOL addressed section 26 and the [indecent viewing] of a picture of an adult, which the bill would make a class A misdemeanor. He asked for an explanation.

REPRESENTATIVE KOPP said "indecent viewing" is defined. He said he would look it up.

REPRESENTATIVE WOOL asked about the same offense but as relates to children. He noted that HB 145 would change the age of consent from 13 years of age to 16 years of age. He asked about

innocuous situations in which parents take photos of their children when the children are not fully clothed.

REPRESENTATIVE KOPP said there is a defense for "normal caretaking or parenting activities." He said those activities are exempted.

CHAIR CLAMAN pointed to section 27. He said the exact language is "the acts occurred as part of the normal caretaker responsibilities for a child, interactions with a child, or affection for a child." He referenced a discussed hypothetical situation involving three 15-year-old high schoolers who, with parental permission, go skinny dipping in a lake and take pictures of each other. He said as long as the kids have permission, then that is "generally okay." But, he noted, somebody at edge of the lake hiding behind a tree with a long telephoto lens would not have that permission and would be treated differently.

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REPRESENTATIVE KOPP, in response to an earlier question by Representative Eastman, noted that an offense must be a felony for it to be a registerable sex crime. He remarked that indecent exposure, when combined with a sexual act such as masturbation, could qualify as a felony. He clarified that this would be treated differently from simple indecent exposure.

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REPRESENTATIVE EASTMAN addressed section 31. He asked as to the rationale for specifically ensuring date rape drugs are not affected by changes to the law.

REPRESENTATIVE KOPP said possession of date rape drugs is always a felony under any circumstance, which explains why there is a carve-out for them in the bill.

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REPRESENTATIVE LEDOUX addressed the previously-mentioned example of teenage skinny dippers. She asked what would happen if pictures of the event were posted on Facebook.

CHAIR CLAMAN said that raises complicated issues relating to modern society and the question of permission.

REPRESENTATIVE LEDOUX said that is the question she is asking. She noted that, at some point, the court might look into that question and will look back on the bill and the committee's discussion.

CHAIR CLAMAN said it is a good question. He noted that "internet viewing of an indecent picture" is already a crime under current statute. He observed that the same prosecutorial challenges faced today would be faced in the future should HB 145 become law.

REPRESENTATIVE LEDOUX said, "Let's say it's illegal ... to post something on the internet. What about all the people who see it?" She asked if SOA would prosecute every individual who views the picture via the Facebook news feed.

REPRESENTATIVE KOPP noted that the key element for the prosecution is the wording "knowingly view." He said "knowingly" means the viewer must "have some type of knowledge that the image was done without the consent of the person who is being depicted and probably was never authorized to begin with." He said the example of a mutual friend viewing a photo on Facebook would be difficult to prosecute unless it can be shown that the viewer had specific knowledge that the image was wrongfully posted and without consent. He explained that there is a sum total of circumstances necessary for an act to be a violation.

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REPRESENTATIVE WOOL noted that a viewer cannot discern whether consent for a picture was given simply through viewing it. He said it is easy to view things of unknown origin through social media, texts, and Snapchat. He spoke to the difficulty of proving intent in such a situation.

CHAIR CLAMAN commented that the topic contains a lot of gray areas. He noted that the language which would raise the age of consent from 13 to 16 was lifted from a bill offered by Governor Michael J. Dunleavy. Under the current law, he explained, a 14-year-old could consent to a person taking a picture of him/her. He said the proposed change would require a parent to give permission to post a picture.

REPRESENTATIVE LEDOUX asked if that means there could be a situation in which a 14- or 15-year-old and his/her parent could consent to posting a nude photo on Facebook.

CHAIR CLAMAN clarified that the consent relates to the creation of the picture, not the posting of the picture. He returned to the skinny-dipping example and explained that, under current law, the three 15-year-olds could all consent mutually without a parent's input to take pictures of each other. The proposed change, he said, would require parental consent for those pictures to be taken.

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REPRESENTATIVE WOOL questioned how HB 145 would affect sexting. He wondered whether a 15-year-old who sexts a picture of themselves to somebody else would be committing a crime. He added that the receiver would also be committing a crime, regardless of whether he/she wanted to view the photo or not, because the person depicted is under the age of 16. He noted that under current law, this would all be legal. He noted as well that sexting is a common practice.

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REPRESENTATIVE EASTMAN asked for a definition of "production," as the term appears often in the bill. He asked if it would include a case in which someone attaches an image to an e-mail or posts an image to a website.

CHAIR CLAMAN said the language from this part of HB 145 comes from the governor's bill. He said he believes the term is intended to cover a broader range of production, including the production of an image on a computer. He deferred to DOL for a more thorough answer to the question.

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REPRESENTATIVE LEDOUX said she is not sure she wants to make it a felony for a child to transmit a photo of themselves via text message. She said it is "weird" that it would not be a crime if the parents consented to it. She commented that a parent would have to be "pretty weird" to give consent.

CHAIR CLAMAN said that is why the question of 13 years of age versus 16 years of age is a significant policy question. He said the notion that parents have complete control over what their teenagers do is far from reality.

REPRESENTATIVE LEDOUX commented that if a child requests permission from a parent to take a naked photo of himself/herself and transmit it via Instagram, and the parent consents, then "there is something wrong there."

REPRESENTATIVE KOPP remarked that it is hard to legislate common sense. He noted that the examples provided involving teenagers would all qualify as juvenile offenses which would be handled by a juvenile court. He said the aim of juvenile court is early intervention. He acknowledged that the conduct described would be violative by the literal definition of the law. He remarked that a statute addressing the topic of 14-year-olds sexting could be useful to a teacher or school administrator who becomes aware of the conduct. He said these examples demonstrate how technology makes more sharing possible. On the topic of Representative Eastman's question about production, he noted that the posting of an image on the internet would fall under "distribution of child porn," as it would make the image accessible to millions as opposed to part of one-on-one correspondence. He said distribution is a felony.

REPRESENTATIVE WOOL referenced an incident in another state in which sexted images were spread across a high school, resulting in hundreds of students being charged.

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MS. KUBITZ, in response to an earlier query by Representative Eastman, noted that section 53 refers to the duties of the Alaska Criminal Justice Commission. She said the section would require that the commission include DOL data in its annual report to the legislature.

REPRESENTATIVE EASTMAN said that seems "a little bit duplicative." He asked for verification that the section would require DOL to generate a report but not send it so that the commission can send it instead.

MS. KUBITZ said that is her understanding. She said questions related to section 53 would be better answered by DOL because the language was pulled from a different crime bill introduced by the governor.

CHAIR CLAMAN added that "these sections" came from proposals that were introduced by Senator Shelley Hughes. He noted that DOL is not currently required to provide an annual report to the legislature, but the Alaska Criminal Justice Commission is

required to submit a report. He suggested the language reflects the reality that it is simpler to ask DOL to submit its information through the commission's already-in-existence reporting structure.

REPRESENTATIVE EASTMAN said he noticed that various sections of HB 145 come from bills submitted by the governor. He asked if the governor was consulted during the development of HB 145.

CHAIR CLAMAN said DOL was consulted about different features of the bill and that DOL's input is reflected in portions of the bill.

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CHAIR CLAMAN, after ascertaining that there were no additional questions, announced that HB 145 would be held for further review.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:32 p.m.