

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 25, 2019

5:15 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
04/24/19 (H) Heard & Held
04/24/19 (H) MINUTE(JUD)
04/24/19 (H) JUD AT 5:15 PM GRUENBERG 120
04/24/19 (H) -- MEETING CANCELED --
04/25/19 (H) JUD AT 5:15 PM GRUENBERG 120

WITNESS REGISTER

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

POSITION STATEMENT: Answered questions during the hearing on HB 145.

BETH GOLDSTEIN, Interim Public Defender
Alaska Public Defender Agency
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 145.

DON HABEGER, Community Coordinator
Juneau Reentry Coalition
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 145.

NORIA CLARK
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 145.

KATIE BOTZ
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 145.

BERT HOUGHHEALING
Big Lake, Alaska

POSITION STATEMENT: Testified in opposition to HB 145.

SALLY JOHNSON
Palmer, Alaska

POSITION STATEMENT: Testified in opposition to HB 145.

ACTION NARRATIVE

5:15:56 PM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 5:15 p.m. Representatives Eastman, LeDoux, Stutes, Kopp, Shaw, and Claman were present at the call to order. Representative Wool arrived as the meeting was in progress.

HB 145-PROPERTY CRIME; MOTOR VEHICLE THEFT TOOLS

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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."

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CHAIR CLAMAN noted that, at the previous bill hearing, the committee raised questions related to indecent pictures and parental consent. He asked about the statutory history relating to age of consent. He also asked for the Department of Law's (DOL) perspective on the matter.

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law, confirmed that the sections in HB 145 relating to indecent viewing and production of a picture are identical to sections found in SB 35, sponsored by [the Senate Rules Standing Committee on behalf of] Governor Michael J. Dunleavy. She recalled testifying that the underlying statute is "quite messy" and confusing to practitioners. She said DOL has recently discovered that the underlying statute is even messier than anticipated and that some sections appear to

conflict with each other. She noted that some sections of the statute deal with knowledge and consent - particularly the ages at which people must give consent - but there is also a definition of "private exposure" that requires "circumstances in which [one] would not expect the defendant to be seeing [one's] body." She said this raises the question of how consent can be given. She said these issues came to light in the Senate and that they are being addressed, but DOL does not currently have a resolution to rectify the potential conflicts. She said she researched the legislative history and described discussions therein related to consent. But, she noted, the definition of "private exposure" appears to override statutory language relating to consent.

CHAIR CLAMAN asked a question about age of consent. He remarked that the current age at which one may consent on one's own is 13 and that HB 145 would change it to 16. He asked for information about the issues that arise "with 13 versus 16."

MS. SCHROEDER said the law currently reads that a person under the age of 13 needs parental consent, a person between the ages of 13 and 16 needs both parental consent and his/her own consent, and a person 16 or older can consent on his/her own. She said the Senate "found that disturbing" and did not want to permit a parent to consent to the private exposure of an older child, so it removed parental consent entirely and made it so a person under the age of 16 could not consent to having a private picture taken of themselves. She noted that there has been no adjustment to the definition of "private exposure" so the conflict still exists.

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REPRESENTATIVE KOPP referenced AS 11.41.455(a), which covers the crime of unlawful exploitation of a minor. He noted that it sets "the bright line" at 18 years of age for matters related to the production of pornographic content or inducement of sex acts. He added that the provision relating to parental consent contains language about the guardian knowingly allowing the exploitation to happen when the child is under 18. He said he is trying to reconcile the language in that statute and the language in the statute relating to the indecent viewing or production of an image. He asked if it is just a matter of legislative policy.

MS. SCHROEDER said it is, to some degree. She clarified that "unlawful exploitation" relates to the lewd exhibition of the

child, which means the child is doing something lewd. She said the indecent viewing or production of a picture statute relates only to the exposure of the child, so no lewd act is depicted. Thus, she explained, it is different conduct.

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CHAIR CLAMAN noted that there are provisions in HB 145 relating to third-time drug offenses that were pulled from HB 10. He said the committee might consider an amendment installing a lookback period for prior convictions that might bump a third offense to the felony level. He asked whether DOL has a perspective on the matter.

MS. SCHROEDER said she and Deputy Attorney General Rob Henderson decided 10 years would be an appropriate lookback period for cases in which an offense would trigger a felony. She added that the lookback period for misdemeanors is 5 years.

CHAIR CLAMAN asked a question about the interplay between state and federal prosecutors regarding larger quantity drug dealing investigations.

MS. SCHROEDER said state prosecutors work closely with federal prosecutors when determining when it is appropriate for a case to be federally prosecuted. She said the decision to "kick a case up" to the federal prosecutors is made after weighing the totality of circumstances, including the quantity of the drugs, whether the offender has copious weapons and/or cash, and whether the trafficking occurred across state lines. She explained that a decision is made regarding which punishment is most appropriate and that determines who takes the case. She noted that the federal government has fewer than 15 prosecutors in Alaska and they operate on limited resources, so that is an additional factor they consider.

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REPRESENTATIVE WOOL raised the topic of sexting. He noted that sexting would not be directly targeted by the proposed statutory changes but could be affected by them.

MS. SCHROEDER clarified that DOL does not charge individuals for sharing photos if they are in a relationship or sexting under the "indecent viewing" statute. She explained that it is for situations akin to a person setting up a camera in a bathroom to capture private exposure without the victim's awareness.

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REPRESENTATIVE EASTMAN asked what statute would be used to address a situation in which a person in a relationship shares private content to people outside the relationship.

MS. SCHROEDER said various statutes could be used to address that type of conduct. She said the crime of sending an explicit image of a minor involves sending or posting a photo of the genitals, anus, or breast of someone under the age of 16 with intent to annoy or humiliate. She clarified that to post the photo on a website would be a class A misdemeanor and to send it to another person would be a class B misdemeanor. She added that harassment in the second degree includes a provision relating to the sending of images.

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CHAIR CLAMAN asked for additional information about the proposed changes to the indecent production of a picture statute as relates to the age of a victim.

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BETH GOLDSTEIN, Interim Public Defender, Alaska Public Defender Agency, said the agency has reviewed the proposed legislation, particularly the section raising the age of consent to 16, thereby doing away with the means of a 13- to 15-year-old to consent to be photographed or, as is currently written in statute, even to be viewed in person. She said it appears the proposed change would cause significant tension with other existing statutes, specifically the sexual abuse of a minor statute. She explained that, while consent at the age of 16 comports with the age of consent to engage in sex, the sexual abuse of a minor statute - AS 11.41.436(a)(1) - permits teenagers aged 13, 14, and 15 to engage in sex where the partner is at least 17 years old and as long as their age difference is no more than 4 years. She explained that her reading of the proposed legislation is that, under AS 11.41.436(a)(1), it would not be illegal for a 17-year-old to have sex with a 15-year-old, but it would be a violation of the indecent viewing statute for the 17-year-old to view the private exposure of the genitals, anus, or female breast of the 15-year-old without the consent of the 15-year-old's parent or guardian. "They can have sex," she clarified, "but they can't look at each other."

MS. GOLDSTEIN stated that the current law also requires parental consent, but the 17-year-old is not at risk because the state of Alaska (SOA) is not required to prove both the lack of the parent's consent and the 15-year-old's consent. She clarified that, as long as the 15-year-old is engaging in a consensual relationship with the 17-year-old, SOA would not be able to convict the latter under the current statute. She said this offers protection to the 17-year-old if the 15-year-old's parent does not approve of the relationship and seeks prosecution. But, she said, under the proposed legislation, the 15-year-old's consent would be irrelevant, thus resulting in the 17-year-old being guilty of a class C felony. She added that, were the two teenagers to engage in consensual sexting where the 17-year-old takes a picture of the 15-year-old's breasts with the 15-year-old's consent, the 17-year-old would be guilty of a class B felony. She noted that the 17-year-old in this hypothetical would be tried in juvenile court, however SOA would have the option to seek a waiver of the juvenile into adult court. She explained that, as a juvenile, the 17-year-old would not be subject to the sentencing statutes regarding sexual assault sexual felonies. But, she said, an 18-year-old engaging in a legal relationship with a 15-year-old would not have the benefit of juvenile court and would be subject to the presumptive terms of 5 to 15 years in prison for production of a picture and 2 to 12 years in prison for viewing a picture.

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MS. GOLDSTEIN noted that the HB 145 sectional analysis document [included in the committee packet] states that the crime of indecent viewing or production of a picture where the victim is 16 or younger would be a registerable sex offense. She pointed out that the bill does not amend the definition of "sex offense" so as to subject convicted offenders to a duty to register. She explained that the duty to register comes from AS 12.63.010. She said the definition of "sex offender" found in AS 12.63.100(6) does not include any aspect of the indecent viewing statute and HB 145 does not amend the definition to include the [*indisc.*] involving minor victims. However, she noted, there is a potential that a juvenile adjudicated of the offense in Alaska's juvenile system would nevertheless be required to register upon moving to another state, such as to attend to college. She said there are more than 30 states that require registration for juvenile offenses if an offense similar to indecent viewing or production of a picture is included within the [state's] lists of registerable offenses.

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REPRESENTATIVE LEDOUX asked for confirmation that, under current law, the hypothetical juveniles can have sex with each other, but under the proposed law, it would be a felony for the older juvenile to take a picture of the younger one.

MS. GOLDSTEIN said the age of consent would be raised to 16 so it could be a felony unless both the parent and the 15-year-old are consenting.

REPRESENTATIVE LEDOUX asked if the age of consent would be raised for sex as well as the pictures.

MS. GOLDSTEIN said it does not appear that the bill would amend the sexual abuse of a minor statute.

REPRESENTATIVE LEDOUX asked for verification that the juveniles would not have to ask permission to have sex but would have to ask permission to take pictures.

MS. GOLDSTEIN clarified that it would not just be for taking pictures, but even to view body parts.

REPRESENTATIVE LEDOUX said, "That's ridiculous."

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REPRESENTATIVE WOOL raised the topic of age of consent. He asked if a person has to be 16 years old to consent to sex unless the partner is within three years of age or is under 18.

MS. GOLDSTEIN answered yes. She explained that the sexual abuse of a minor statute specifically reads that a teenager who is 13, 14, or 15 can engage in sex where the partner is 17 or older as long as there is no more than 4 years of age difference.

REPRESENTATIVE WOOL established a hypothetical scenario in which two teenagers - ages 17 and 15 - are dating. He said the 17-year-old then turns 18. He asked if the now-18-year-old is now breaking the law.

MS. GOLDSTEIN said a relationship between an 18-year-old and a 15-year-old is fine. She said it would be a legal relationship under the sexual abuse of a minor statute as long as there is not more than four years in age difference and the older partner is 17-year-old or older.

REPRESENTATIVE WOOL asked if it is correct that they would just not be able to take a photo of the younger teen and look at it.

MS. GOLDSTEIN said they could not take a picture and, as the legislation is written, they could not look at each other. She clarified that the older one could not look at the younger one.

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CHAIR CLAMAN opened public testimony on HB 145.

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DON HABEGGER, Community Coordinator, Juneau Reentry Coalition (JREC), said the mission of JREC is to promote community safety by identifying and implementing strategies that increase reentry success for those returning to the community after release from incarceration. He said JREC recognizes that "smart justice" requires a balance of accountability to the community, laws, rules, and regulations. He added that appropriate enforcement and sanctions are part of that accountability. He said "smart justice" also includes appropriate and functioning community services and treatment options, such as behavioral health, access to affordable housing, and employment training. He explained that those services are necessary to aid successful reentry and sustained recovery. He said HB 145 seems to strike an appropriate balance by providing enforcement tools while not undoing rehabilitative gains achieved through changes in Alaska's criminal laws since 2016. He said JREC is thankful for attempts to strike that balance. He stated that JREC approves of HB 145.

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NORIA CLARK expressed her frustration that the opportunity for the public to testify on HB 145 was not well-publicized. She characterized HB 145 as "a watered-down bill." She noted that the public has replaced and will continue to replace elected officials who do not "stand up for us." She criticized Chair Claman for his role in introducing HB 145.

CHAIR CLAMAN advised Ms. Clark that she may testify on the bill but may not use this time to criticize legislators. He invited her to direct criticism to his office.

MS. CLARK said she thinks the bill is "garbage." She stressed that the First Amendment of the Constitution of the United States gives her the right to say whatever she wants. She referenced the arrest of a man earlier in the day after "hurting other people." She expressed her disapproval of Senate Bill 91 [Passed in the Twenty-Ninth Alaska State Legislature] and her doubts about HB 145. She stated that this is a terrifying time in Alaska. She stressed that testimony opportunities should be better publicized so the public can participate.

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KATIE BOTZ relayed that she has testified on a number of crime bills during the current session. She identified herself as a victim of sexual abuse and expressed displeasure that HB 145 does not include provisions relating to strangulation and sexual abuse. She added that HB 145 does not address the issues of pornography, sexual abuse of a minor, the use of dangerous instruments, the definition of "sexual contact," longer periods of incarceration for convicts, sexual contact without consent, sexual penetration without consent, exploitation of a child, sex trafficking, prior convictions both in and out of state, the employment of law enforcement officers, harassment, or possession of firearms. She said there is nothing in HB 145 that is "victim-oriented" or that supports victims of sexual abuse. She called HB 145 a good starting point.

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BERT HOUGHTALING expressed his displeasure with the timeline of the bill's introduction and the opportunity for public testimony. He called the bill flawed. He said the committee should instead take up HB 49, HB 50, HB 51, and HB 52. He said those bills would fix Alaska's crime problem. He referenced data from the Pew Research Center presented to the legislature in 2014 and called the data "flawed." He referenced a recent presentation offered to a Senate committee that he said presented "the actual numbers." He argued that recidivism had already dropped 32 percent before Senate Bill 91 was passed. He argued that recidivism has climbed because criminals are being 24 hours after arrest. He said the numbers show that crime is getting worse. He opined that HB 145 would do nothing to fix the crime problem.

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SALLY JOHNSON called HB 145 "junk" and asked the committee to consider Governor Dunleavy's crime bills. She said Senate Bill 91 resulted in increased crime rates. She stated that she does not feel safe in Palmer and that she is not the only person who feels that way. She called the Matanuska-Susitna Valley, Anchorage, and Fairbanks dangerous and noted that Alaska is currently the most dangerous state in the nation. She repeated that she wants the committee to take up the governor's bills and fix the problem.

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CHAIR CLAMAN closed public testimony. HB 145 was held for further review.

[5:52:56 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:53 p.m.