

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 29, 2019

1:20 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. 49

"An Act relating to criminal law and procedure; relating to controlled substances; relating to probation; relating to sentencing; relating to reports of involuntary commitment; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date."

- MOVED CSHB 49(JUD) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 49

SHORT TITLE: CRIMES; SENTENCING; MENT. ILLNESS; EVIDENCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	JUD, FIN
03/22/19	(H)	JUD AT 1:30 PM GRUENBERG 120
03/22/19	(H)	Heard & Held
03/22/19	(H)	MINUTE(JUD)
03/25/19	(H)	JUD AT 1:00 PM GRUENBERG 120
03/25/19	(H)	Heard & Held
03/25/19	(H)	MINUTE(JUD)
03/27/19	(H)	JUD AT 1:00 PM GRUENBERG 120
03/27/19	(H)	Scheduled but Not Heard
04/27/19	(H)	JUD AT 1:00 PM GRUENBERG 120

04/27/19 (H) -- Continued from 04/26/19 --
04/29/19 (H) JUD AT 1:00 PM GRUENBERG 120
04/29/19 (H) FIN AT 1:30 PM ADAMS ROOM 519

WITNESS REGISTER

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

POSITION STATEMENT: Answered questions during the hearing on HB 49.

NANCY MEADE, General Counsel
Alaska Court System
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 49.

ACTION NARRATIVE

[1:20:51 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:20 p.m. Representatives Stutes, LeDoux, Wool, Shaw, Kopp, and Claman were present at the call to order. Representative Eastman arrived as the meeting was in progress.

HB 49-CRIMES; SENTENCING;MENT. ILLNESS;EVIDENCE

[1:21:59 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 49, "An Act relating to criminal law and procedure; relating to controlled substances; relating to probation; relating to sentencing; relating to reports of involuntary commitment; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date." [Before the committee as the working document was the proposed committee substitute (CS) for HB 49, Version 31-GH1029\M. The committee had adopted Version M as the working document during the previous committee meeting.]

CHAIR CLAMAN announced that the committee would take up amendments to HB 49. He stated for the record that Legislative Legal Services has permission to make any technical and conforming changes to the bill.

[1:22:51 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 1, labeled 31-GH1029\M.6, Radford, 4/28/19, which read:

Page 28, following line 22:

Insert a new bill section to read:

"* **Sec. 49.** AS 28.35.030(o) is amended to read:

(o) Upon request, the department shall review a driver's license revocation imposed under (n)(3) of this section and, unless the revocation was ordered in a case in which the person was also convicted of a crime under AS 11.41.100 - 11.41.210, 11.41.280, 11.41.282, or a similar law in another jurisdiction,

(1) may restore the driver's license if

(A) the license has been revoked for a period of at least 10 years;

(B) the person has not been convicted of a [DRIVING-RELATED] criminal offense in the 10 years preceding the request for restoration of [SINCE] the license [WAS REVOKED]; and

(C) the person provides proof of financial responsibility;

(2) shall restore the driver's license if

(A) the person has been granted limited license privileges under AS 28.15.201(g) and has successfully driven under that limited license for three years without having the limited license privileges revoked;

(B) the person has successfully completed a court-ordered treatment program under AS 28.35.028 or a rehabilitative treatment program under AS 28.15.201(h);

(C) the person has not been convicted of a violation of AS 28.35.030 or 28.35.032 or a similar law or ordinance of this or another jurisdiction since the license was revoked;

(D) the person is otherwise eligible to have the person's driving privileges restored as provided in AS 28.15.211; in an application under this subsection, a person whose license was revoked for a violation of AS 28.35.030(n) or 28.35.032(p) is not required to submit compliance as required under AS 28.35.030(h) or 28.35.032(l); and

(E) the person provides proof of financial responsibility."

Renumber the following bill sections accordingly.

Page 29, following line 26:

Insert a new bill section to read:

"* **Sec. 51.** AS 28.35.032(q) is amended to read:

(q) Upon request, the department shall review a driver's license revocation imposed under (p)(3) of this section and, unless the revocation was ordered in a case in which the person was also convicted of a crime under AS 11.41.100 - 11.41.210, 11.41.280, 11.41.282, or a similar law in another jurisdiction, may restore the driver's license if

(1) the license has been revoked for a period of at least 10 years;

(2) the person has not been convicted of a criminal offense in the 10 years preceding the request for restoration of [SINCE] the license [WAS REVOKED]; and

(3) the person provides proof of financial responsibility."

Renumber the following bill sections accordingly.

Page 40, line 7:

Delete "Act."

Insert "Act;"

Page 40, following line 7:

Insert new paragraphs to read:

"(36) AS 28.35.030(o), as amended by sec. 49 of this Act;

(37) AS 28.35.032(q), as amended by sec. 51 of this Act."

Page 40, line 16:

Delete "sec. 49"

Insert "sec. 50"

Page 40, line 27:

Delete "sec. 52"

Insert "sec. 54"

Page 41, line 1:

Delete "Section 62"

Insert "Section 64"

Delete "sec. 62"

Insert "sec. 64"

CHAIR CLAMAN objected for purposes of discussion.

[1:22:58 PM](#)

REPRESENTATIVE LEDOUX said Amendment 1 relates to the crime of driving under the influence (DUI). She explained that a person who commits felony DUI - which she clarified means that the person has committed DUI three times - can have his/her drivers license reinstated within 10 years. She explained that, if the person commits a driving-related offense during that 10-year period, the result is "doomsday" and the person can never have his/her license reinstated. She said Amendment 1 would make it so that a person can have his/her license reinstated 10 years after his/her last driving-related offense. She noted that the language in Amendment 1 is already in HB 145 and the Senate's version of the crime bill. She said it is unclear which bill will ultimately be "the vehicle," so she would like the language added to HB 49.

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REPRESENTATIVE EASTMAN asked for an example of the sort of person who would benefit from the adoption of Amendment 1.

REPRESENTATIVE LEDOUX established a scenario in which a person in his/her 20s is convicted of felony DUI in 2010 and then is caught driving while his/her license is revoked in 2015. She explained that person would currently be forever barred from having his/her license reinstated. She said Amendment 1 would allow the person to get his/her license back in 2025, assuming no further driving-related offenses. She noted that the reinstatement provision in Amendment 1 would only apply to drivers who did not kill or seriously maim another person during the commission of their offenses. She said the amendment would make it more difficult for drivers who have killed or seriously maimed another person to have their licenses reinstated.

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REPRESENTATIVE EASTMAN asked how Amendment 1 would deal with individuals who were charged with killing or maiming someone but pled down to a lesser, nonviolent offense.

REPRESENTATIVE LEDOUX said Amendment 1 would require a conviction. She noted that, as the law currently stands, those

individuals [who pled down] can have their licenses reinstated if they do not have a driving-related offense within 10 years.

REPRESENTATIVE EASTMAN noted that the amendment would remove the words "driving-related from the subparagraph dealing with the 10-year period. He asked about the threshold after which a driving offense becomes criminal. He asked whether reckless driving is a criminal offense, or if it falls under another category.

REPRESENTATIVE LEDOUX said she believes reckless driving is a misdemeanor but running a stop sign is not a criminal offense.

REPRESENTATIVE EASTMAN asked if someone caught driving 120 miles per hour would qualify under the language in Amendment 1, as speeding is a traffic offense rather than a criminal offense.

REPRESENTATIVE LEDOUX said that is correct but noted that somebody driving 120 miles per hour would likely be charged and convicted of reckless driving.

REPRESENTATIVE EASTMAN agreed about the charge but expressed doubt that the person would be convicted. He noted that such charges are frequently pled down. He said he can envision scenarios in which criminal conduct nets only a traffic offense.

REPRESENTATIVE LEDOUX said Representative Eastman's point would be better addressed by the Department of Law (DOL) or Representative Kopp.

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REPRESENTATIVE KOPP mentioned that he is a retired law enforcement officer. He noted that the underlying facts always influence the severity of the charge. He explained that driving 120 miles per hour on an empty stretch of road to Fairbanks would likely not result in criminal charges. He said driving 120 miles per hour through Anchorage would surely result in a reckless driving charge because of the opportunity to collide with a pedestrian or another vehicle.

REPRESENTATIVE LEDOUX addressed the following to Representative Eastman: "Under the current law, the person has not been convicted of a driving-related criminal offense. So this is actually tightening things up. Currently, they can be convicted of just a driving-related offense, so the same questions relate to that as relate to the law as it now exists."

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CHAIR CLAMAN asked if the administration has a position on Amendment 1.

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law, confirmed that the provision contained within Amendment 1 is also in Governor Dunleavy's crime package. She said the administration does not object.

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CHAIR CLAMAN removed his objection. There being no further objection, Amendment 1 was adopted.

[1:32:40 PM](#)

REPRESENTATIVE STUTES moved to adopt Amendment 2, labeled 31-GH1029\M.3, Radford, 4/28/29, which read:

Page 35, line 9, following "action;":
Insert "and"

Page 35, lines 10 - 12:
Delete all material.

Renumber the following paragraph accordingly.

Page 36, line 7:
Delete "and"

Page 36, line 9, following "offense":
Insert "; and
(5) the number of crime victims that participated in the prosecution of and court process relating to the offense in which the person was a victim"

CHAIR CLAMAN objected for purposes of discussion.

REPRESENTATIVE STUTES explained that Amendment 2 addresses a drafting error. She said it would move a DOL reporting requirement from section 54 to section 56. She explained that the requirement is for DOL to report the number of crime victims that participated in the prosecution of and court process relating to the offense in which the person was a victim.

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CHAIR CLAMAN withdrew his objection. There being no further objection, Amendment 2 was adopted.

[1:33:29 PM](#)

REPRESENTATIVE STUTES moved to adopt Amendment 3, labeled 31-GH1029\M.4, Radford, 4/28/29, which read:

Page 13, following line 14:

Insert a new bill section to read:

"* **Sec. 26.** AS 11.61.120(a) is amended to read:

(a) A person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person

(1) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(2) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(3) makes repeated telephone calls at extremely inconvenient hours;

(4) makes an anonymous or obscene telephone call, an obscene electronic communication, or a telephone call or electronic communication that threatens physical injury or sexual contact;

(5) subjects another person to offensive physical contact;

(6) except as provided in AS 11.61.116, publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act; [OR]

(7) repeatedly sends or publishes an electronic communication that insults, taunts, challenges, or intimidates a person under 18 years of age in a manner that places the person in reasonable fear of physical injury; or

(8) under circumstances not proscribed under AS 11.41.455 or AS 11.61.125, repeatedly sends to another person, publishes, or distributes electronic or printed photographs, pictures, or films that show the genitals of any person."

Renumber the following bill sections accordingly.

Page 39, following line 28:

Insert a new paragraph to read:

"(26) AS 11.61.120(a), as amended by sec.
26 of this Act;"

Renumber the following paragraphs accordingly.

Page 39, line 29:

Delete "sec. 26"

Insert "sec. 27"

Page 39, line 30:

Delete "sec. 27"

Insert "sec. 28"

Page 39, line 31:

Delete "sec. 28"

Insert "sec. 29"

Page 40, line 1:

Delete "sec. 29"

Insert "sec. 30"

Page 40, line 2:

Delete "sec. 30"

Insert "sec. 31"

Page 40, line 3:

Delete "sec. 31"

Insert "sec. 32"

Page 40, line 4:

Delete "sec. 32"

Insert "sec. 33"

Page 40, line 5:

Delete "sec. 33"

Insert "sec. 34"

Page 40, line 6:

Delete "sec. 34"

Insert "sec. 35"

Page 40, line 7:

Delete "sec. 40"
Insert "sec. 41"

Page 40, line 10:
Delete "sec. 35"
Insert "sec. 36"

Page 40, line 11:
Delete "sec. 36"
Insert "sec. 37"

Page 40, line 12:
Delete "sec. 37"
Insert "sec. 38"

Page 40, line 13:
Delete "sec. 38"
Insert "sec. 39"

Page 40, line 14:
Delete "sec. 39"
Insert "sec. 40"

Page 40, line 15:
Delete "sec. 48"
Insert "sec. 49"

Page 40, line 16:
Delete "sec. 49"
Insert "sec. 50"

Page 40, line 19:
Delete "sec. 42"
Insert "sec. 43"

Page 40, line 20:
Delete "sec. 43"
Insert "sec. 44"

Page 40, line 21:
Delete "sec. 44"
Insert "sec. 45"

Page 40, line 22:
Delete "sec. 45"
Insert "sec. 46"

Page 40, line 27:
Delete "sec. 52"
Insert "sec. 53"

Page 41, line 1:
Delete "Section 62"
Insert "Section 63"
Delete "sec. 62"
Insert "sec. 63"

[1:33:31 PM](#)

CHAIR CLAMAN objected for purposes of discussion.

REPRESENTATIVE STUTES explained that Amendment 3 addresses the conduct of repeatedly sending unsolicited and unwanted images of genitalia to another person. She said Amendment 3 would make it harassment in the second degree, a class B misdemeanor. She said this is a provision that was taken from the governor's bill related to sexual offenses.

[1:34:05 PM](#)

REPRESENTATIVE EASTMAN asked how this provision came to be part of the governor's crime package.

MS. SCHROEDER said the provision would close a potential loophole in the law. She stated that, in today's age, it has become more common for people to electronically send such photos to each other. She referenced a case in which a person repeatedly sent images of genitalia after having been told to stop. She characterized the conduct as offensive and remarked that DOL did not have the tools to address it. She said the provision contained within Amendment 3 would close that loophole.

[1:35:07 PM](#)

CHAIR CLAMAN withdrew his objection. There being no further objection, Amendment 3 was adopted.

[1:35:16 PM](#)

REPRESENTATIVE STUTES moved to adopt Amendment 4, labeled 31-GH1029\M.2, Radford, 4/28/29, which read:

Page 22, line 25, through page 23, line 1:

Delete all material.

Renumber the following bill sections accordingly.

Page 40, line 6:

Delete "Act;"

Insert "Act."

Page 40, line 7:

Delete all material.

Page 40, line 15:

Delete "sec. 48"

Insert "sec. 47"

Page 40, line 16:

Delete "sec. 49"

Insert "sec. 48"

Page 40, line 19:

Delete "sec. 42"

Insert "sec. 41"

Page 40, line 20:

Delete "sec. 43"

Insert "sec. 42"

Page 40, line 21:

Delete "sec. 44"

Insert "sec. 43"

Page 40, line 22:

Delete "sec. 45"

Insert "sec. 44"

Page 40, line 27:

Delete "sec. 52"

Insert "sec. 51"

Page 41, line 1:

Delete "Section 62"

Insert "Section 61"

Delete "sec. 62"

Insert "sec. 61"

[1:35:21 PM](#)

CHAIR CLAMAN objected for purposes of discussion.

REPRESENTATIVE STUTES explained that Amendment 4 also addresses a drafting error. She said it would remove section 40 from the bill because the bill no longer has provisions related to the viewing or production of an indecent picture.

CHAIR CLAMAN withdrew his objection. There being no further objection, Amendment 4 was adopted.

[1:35:51 PM](#)

REPRESENTATIVE STUTES moved to adopt Amendment 5, labeled 31-GH1029\M.10, Radford, 4/29/29, which read:

Page 21, following line 5:

Insert a new bill section to read:

"* Sec. 37. AS 12.55.125(i) is amended to read:

(i) A defendant convicted of

(1) sexual assault in the first degree, sexual abuse of a minor in the first degree, or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) less than 13 years of age, 25 to 35 years;

(ii) 13 years of age or older, 20 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 35 to 45 years;

(E) if the offense is a third felony conviction and the defendant is not subject to

sentencing under (F) of this paragraph or (1) of this section, 40 to 60 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (1) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(2) unlawful exploitation of a minor under AS 11.41.455(c)(2), [ONLINE] enticement of a minor under AS 11.41.452(e), or attempt, conspiracy, or solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) under 13 years of age, 20 to 30 years;

(ii) 13 years of age or older, 15 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 25 to 35 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 30 to 40 years;

(E) if the offense is a third felony conviction, the offense does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (1) of this section, 35 to 50 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (1) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, [ONLINE] enticement of a minor under AS 11.41.452(d), unlawful exploitation of a minor under AS 11.41.455(c)(1), or

distribution of child pornography under AS 11.61.125(e)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, five to 15 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, 10 to 25 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 30 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 20 to 35 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years;

(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, distribution of child pornography under AS 11.61.125(e)(1), or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, two to 12 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, eight to 15 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 12 to 20 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 15 to 25 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years."

Renumber the following bill sections accordingly.

Page 22, following line 24:

Insert a new bill section to read:

*** Sec. 41.** AS 12.55.185(10) is amended to read:

(10) "most serious felony" means

(A) arson in the first degree, sex trafficking in the first degree under AS 11.66.110(a)(2), [ONLINE] enticement of a minor under AS 11.41.452(e), or any unclassified or class A felony prescribed under AS 11.41; or

(B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified felony prescribed under AS 11.41;"

Renumber the following bill sections accordingly.

Page 22, line 31:

Delete "online"

Insert "[ONLINE]"

Page 40, line 7:

Delete "sec. 40"

Insert "sec. 42"

Page 40, line 12:

Delete "sec. 37"

Insert "sec. 38"

Page 40, line 13:

Delete "sec. 38"

Insert "sec. 39"

Page 40, line 14:

Delete "sec. 39"

Insert "sec. 40"

Page 40, line 15:

Delete "sec. 48"

Insert "sec. 50"

Page 40, line 16:

Delete "sec. 49 "

Insert "sec. 51"

Page 40, line 19:

Delete "sec. 42"

Insert "sec. 44"

Page 40, line 20:
Delete "sec. 43"
Insert "sec. 45"

Page 40, line 21:
Delete "sec. 44"
Insert "sec. 46"

Page 40, line 22:
Delete "sec. 45"
Insert "sec. 47"

Page 40, line 27:
Delete "sec. 52"
Insert "sec. 54"

Page 41, line 1:
Delete "Section 62"
Insert "Section 64"
Delete "sec. 62"
Insert "sec. 64"

[1:35:59 PM](#)

CHAIR CLAMAN objected for purposes of discussion.

REPRESENTATIVE STUTES explained that Amendment 5 also addresses a drafting error. She said the word "online" needs to be removed from the sex felonies sentencing statutes and the sexual felony statute.

CHAIR CLAMAN noted that the drafters sought to remove all instances of "online," but had missed a few.

[1:36:25 PM](#)

REPRESENTATIVE EASTMAN noted that Amendment 5 would add a new section - section 37 - to the bill. He asked if the new section would be replacing something from the original bill.

[1:36:48 PM](#)

The committee took an at-ease from 1:37 p.m. to 1:38 p.m.

[1:38:11 PM](#)

CHAIR CLAMAN pointed to section 5 of Version M, noting the crime referenced therein would go from being "online enticement of a minor" to just "enticement of a minor." He spoke to the intention of removing "online" from that provision of AS 11.41.452(d). He said the Office of the Attorney General had looked through the bill and identified three additional places where the drafters had not removed "online." He noted that Amendment 5 addresses those additional instances of the word. He asked Ms. Schroeder to further explain.

[1:39:25 PM](#)

MS. SCHROEDER explained that Version M deletes the word "online" from the crime of online enticement such that any solicitation of a minor, regardless of whether or not a computer is used, would be criminalized. She remarked that, to that end, a number of conforming adjustments need to be made to the sex offense sentencing statute, which she identified as located on page 1 of Amendment 5. She said the new section to be inserted - section 37 - would remove the word "online" from AS 12.55.125(i)(2) and AS 12.55.125(i)(3). She added that the definition of "most serious felony" includes online enticement, so the word "online" needs to be deleted there as well. She identified the location of the relevant language on page 4 of the amendment in lines 5 through 13. She said the language on page 4, lines 17 through 19 would delete "online" from the definition of sexual felony.

[1:41:18 PM](#)

REPRESENTATIVE EASTMAN asked if, by removing the word "online," the committee would be broadening the criminal offense so that it would encompass online occurrences without specifically mentioning them.

MS. SCHROEDER answered, "That is exactly correct." She clarified that the current law requires the use of a computer to facilitate the solicitation. She noted that solicitation can easily happen in person or through a note, so it does not make sense to restrict that conduct to just a computer. She explained that Amendment 5 would broaden the offense and allow for criminal penalties to address that solicitation.

REPRESENTATIVE EASTMAN asked how this type of behavior is currently addressed and would be addressed if Amendment 5 were not adopted.

MS. SCHROEDER responded that the change to the criminal offense is already included in Version M. She said it would be confusing for practitioners if Amendment 5 is not adopted because the State of Alaska (SOA) would have a crime for enticement of a minor but would not have a corresponding sentencing statute. She said the sentence for a sex offense includes the name of the statute and the penalties. She said DOL would have to litigate that and may lose. She said the cleanup amendments are necessary.

[1:43:09 PM](#)

CHAIR CLAMAN removed his objection. There being no further objection, Amendment 5 was adopted.

[1:43:21 PM](#)

REPRESENTATIVE STUTES moved to adopt Amendment 6, labeled 31-GH1029\M.5, Radford, 4/28/29, which read:

Page 1, line 5:

Delete "**relating to a pretrial risk assessment instrument;**"

Page 29, line 27, through page 31, line 19:

Delete all material.

Renumber the following bill sections accordingly.

Page 40, line 27:

Delete "sec. 52"

Insert "sec. 51"

Page 41, line 1:

Delete "Section 62"

Insert "Section 60"

Delete "sec. 62"

Insert "sec. 60"

CHAIR CLAMAN objected for purposes of discussion.

REPRESENTATIVE STUTES explained that Amendment 6 would remove sections 50 and 51, which would require the pretrial risk assessment tool to be verified by peer review.

CHAIR CLAMAN noted that there was unexpected confusion about those provisions. He noted as well that they had initially been added to HB 145 via an amendment and were subsequently included in Version M of HB 49.

[1:43:59 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, explained that the provisions would create an unwanted anomaly. She explained that the current language of the bill stipulates that the pretrial risk assessment tool must go through certain steps before it can be adopted. She said the current tool has not gone through those steps and thus, should HB 49 become law, would be incompliant with statute and not usable. She noted that there are other provisions in law that require the use of the tool to help set bail. She said the issue with Version M is that it would create a lot of gaps. She further explained the anomaly of being required by statute to use a tool that has been rendered unusable by other statutes. She said such a scenario would put the Alaska Court System in a difficult position.

[1:45:19 PM](#)

REPRESENTATIVE EASTMAN asked, "If we have a tool that has problems and is not peer reviewed, should we be using it in the first place?"

MS. MEADE said that question assumes things that she is not prepared to address. She stated, "There is a tool, it has been approved by the commissioner, and we are using it." She said she is merely addressing the potential complications that would result if Amendment 6 is not adopted and HB 49 becomes law.

REPRESENTATIVE EASTMAN asked how the Alaska Court System believes this issue should be addressed.

MS. MEADE answered that the Alaska Court System leaves those decisions to the legislature.

[1:46:16 PM](#)

CHAIR CLAMAN noted that he has spoken to Representative Shaw, who made and moved the original amendment containing these provisions. He said he suggested some fine-tuning and that the provisions be encompassed in their own independent bill. He said he would support an effort to appropriately ensure peer review is part of the process going forward.

MS. MEADE noted that the tool is currently undergoing a revalidation process by the University of Alaska - Anchorage (UAA). She said that process will determine whether the tool needs changing, and that it takes into consideration both the data used to create the tool and the data collected since its first use. She remarked that she is not sure how far along the process is but noted that revalidation and recommendations for changes would be coming in the summer.

[1:47:24 PM](#)

REPRESENTATIVE WOOL asked for more information about how the peer review would work.

CHAIR CLAMAN said the original amendment mandating peer review of the pretrial risk assessment tool was adopted to HB 145 and then became part of Version M of HB 49. He explained that Amendment 6 would remove those provisions from Version M. He noted that he was informed by representatives from the Department of Corrections that further revalidations of the tool will occur every three years. He said the goal is to ensure there are statutes mandating peer review of the process by the next revalidation in three years.

REPRESENTATIVE WOOL suggested that Amendment 6 would remove those provisions because they would be inconsistent with practicable activities.

MS. MEADE answered yes.

[1:49:06 PM](#)

REPRESENTATIVE LEDOUX asked for an explanation of peer review within the context of the revalidation. She asked who the peers of the UAA academics would be.

CHAIR CLAMAN offered a typical example of peer review involving a hypothetical doctor who submits an article about knee replacements to a journal, which in turn distributes the article to be reviewed and responded to by other academics in the same field with similar expertise. He said the provisions to be removed by Amendment 6 would have mandated that the revalidation of the pretrial risk assessment tool include feedback by academics beyond UAA.

REPRESENTATIVE LEDOUX asked for confirmation that, without these provisions or a separate individual bill containing the same provisions, there would be no process UAA's revalidation results to be sent to prosecutors and defense attorneys.

CHAIR CLAMAN said that is different from peer review.

REPRESENTATIVE LEDOUX asked, "Who are the peers?"

CHAIR CLAMAN said the peers would be other academics with a background and expertise in the field of risk assessment tools. He said the intent would be for them to look at the work done by UAA and compare it with the work done in other states. He added that UAA got the bid for doing the validation and its process is in place. He said he has talked with DOC about whether it may be able to add to that proposal and get the UAA analysis peer-reviewed before finalization. He said that was not part of the initial bid and whether DOC can mandate it is an open question.

[1:52:10 PM](#)

REPRESENTATIVE LEDOUX said peer review for doctors makes sense because there are many doctors working on the university level. She remarked that peer review in the context of a pretrial risk assessment tool should involve people who are more involved with its use than academics.

REPRESENTATIVE KOPP drew attention to section 51 on page 30 of Version M. He said the language therein describes peer review and identifies the DOC commissioner as the person who determines who is technically qualified to assess the tool. He explained that the process being disputed is defined explicitly in the language of the bill.

[1:53:47 PM](#)

REPRESENTATIVE EASTMAN asked, "How long do we expect this process of peer review to take to where [sections 50 and 51] would be helpful?"

CHAIR CLAMAN said the last he heard was that UAA predicts the revalidation process will be completed by the end of June. He stated that HB 49 would become law on July 1, after the revalidation process is completed. He restated that the goal is to bring the issue back up later and have peer review standards in place for the next assessment in three years. He noted that

DOC could conceivably do another assessment before then but that would raise questions of cost and best practices.

REPRESENTATIVE EASTMAN asked, "Do I understand then that if we adopt this amendment, there won't be peer review for as much as three years?"

CHAIR CLAMAN said he thinks Representative Eastman is confusing peer review with revalidation. He said that, right now, peer review is not possible without something for the peers to review. He said the next time to do peer review of a validation would be the next time DOC chooses to do a revalidation. He added that whether that happens next year or in three years is up to DOC.

[1:55:56 PM](#)

REPRESENTATIVE KOPP asked if it is possible to put a different effective date on that section of the bill.

CHAIR CLAMAN answered that there is a lot of interest in moving the bill forward. He compared the matter of peer review to the matter of the crime of viewing or producing an indecent picture, noting that the more the committee explored the issue, the more confusing it became. He said the committee could delay HB 49 a few days and attempt to create language to solve those issues, but that would not align with the intention to move it quickly.

REPRESENTATIVE KOPP said he understands then that it is a matter of drafting time rather than the merits of peer review.

CHAIR CLAMAN said he is a supporter of peer review but thinks the provisions are not yet ready to become law.

[1:57:01 PM](#)

REPRESENTATIVE EASTMAN proposed and moved Conceptual Amendment 1 to Amendment 6. He said the conceptual amendment would, in lieu of removing the language in section 51, add an effective date for that portion of the bill at 18 months from enactment. He said that would allow time for revalidation and peer review.

CHAIR CLAMAN objected. He said that there is more work that needs to be done to really make the provisions make sense.

REPRESENTATIVE STUTES asked for Representative Shaw's thoughts given that the provisions in question were originally part of an amendment he made.

REPRESENTATIVE SHAW stated that he has no problem with the changes. He mentioned that he believes the intent of the language can be better realized at a later time.

REPRESENTATIVE STUTES asked for confirmation that he opposes Conceptual Amendment 1 to Amendment 6.

REPRESENTATIVE SHAW answered yes.

[1:59:03 PM](#)

A roll call vote was taken. Representative Eastman voted in favor of adopting Conceptual Amendment 1 to Amendment 6. Representatives Shaw, Kopp, Stutes, LeDoux, Wool, and Claman voted against it. Therefore, Conceptual Amendment 1 to Amendment 6 was not adopted by a vote of 1-6.

[1:59:45 PM](#)

REPRESENTATIVE EASTMAN said he opposes Amendment 6. He said it is clear to him that the current pretrial risk assessment tool is broken. He remarked that he was glad to see that peer review would be added to the revalidation process. He expressed concern that those provisions would be removed without any guarantee that they will be reintroduced in a different form in the future. He said SOA would continue to use a broken tool.

[2:00:29 PM](#)

REPRESENTATIVE WOOL recalled hearing testimony from UAA representatives about the pretrial risk assessment tool. He said he does not agree the system is broken. He said the representatives presented data indicating good results. He noted that some of the data presented was inconclusive and the UAA representatives are awaiting other results. He remarked that the pretrial risk assessment tool removed the financial component from determining bail.

[2:01:23 PM](#)

CHAIR CLAMAN removed his objection to adopting Amendment 6.

REPRESENTATIVE EASTMAN objected.

A roll call vote was taken. Representatives Kopp, Stutes, LeDoux, Wool, Shaw, and Claman voted in favor of adopting Amendment 6. Representative Eastman voted against it. Therefore, Amendment 6 was adopted by a vote of 6-1.

[2:02:03 PM](#)

REPRESENTATIVE SHAW moved to adopt Amendment 7, labeled 31-GH1029\M.9, Radford, 4/28/29, which read:

Page 38, lines 29 - 30:

Delete all material and insert:

"* **Sec. 63.** AS 11.46.980(d), 11.46.982; and AS 12.55.135(1) are repealed."

CHAIR CLAMAN objected for purposes of discussion.

REPRESENTATIVE SHAW explained that Amendment 7 would repeal AS 12.55.135(1), which limits jail time for "first-, second-, and third-degree individuals" convicted of theft in the fourth degree and similar offenses to 5 days, 10 days, and 15 days, respectively. He said this repeal would subject those individuals to the maximum penalty in statute.

CHAIR CLAMAN noted that Amendment 7 would also repeal AS 11.46.980(d) and AS 11 46.982, which relate to inflation adjustments, which were portions of the bill that were removed elsewhere.

[2:03:00 PM](#)

REPRESENTATIVE KOPP commented that Amendment 7 appears to address an important oversight because the statutes to be repealed all relate to recidivism and are subject to an enhanced penalty. He said he appreciates the maker of the amendment for catching that oversight and remarked, "You can never have too many eyes go over these statutes."

[2:03:34 PM](#)

REPRESENTATIVE EASTMAN asked for DOL's opinion on Amendment 7.

MS. SCHROEDER said DOL views Amendment 7 as a cleanup amendment. She said there are parts of the bill that would not work without it.

[2:04:26 PM](#)

CHAIR CLAMAN withdrew his objection. There being no further objection, Amendment 7 was adopted.

[2:04:36 PM](#)

The committee took a brief at-ease at 2:05 p.m.

[2:05:03 PM](#)

CHAIR CLAMAN noted that DOL had communicated a concern about a drafting error relating to the possession of marijuana. He asked for confirmation that the issue has been resolved.

MS. SCHROEDER answered yes; Amendment 7 resolves the issue. She explained that the drafting error would have legalized marijuana for everyone, even those under the age of 21.

CHAIR CLAMAN said that by dealing with the issue, marijuana will be treated like alcohol.

MS. SCHROEDER said yes.

[2:05:55 PM](#)

REPRESENTATIVE WOOL asked if it is still a felony for a person over the age of 21 to possess marijuana on school grounds.

MS. SCHROEDER answered yes.

REPRESENTATIVE WOOL said that conflicts with the earlier statement that marijuana would be treated like alcohol.

MS. SCHROEDER confirmed that marijuana is treated differently in that case. She clarified that marijuana is not treated exactly like alcohol in Alaska as it is still a controlled substance. She said it is not a crime to act within the confines of AS 17.38 but it is a crime to act outside of it.

[2:07:18 PM](#)

REPRESENTATIVE LEDOUX stated that if Version M is the sum total of provisions addressing Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature], then she cannot support it. She expressed hope that the bill would be amended in another

committee and will therefore vote to move Version M out of committee.

[2:07:49 PM](#)

REPRESENTATIVE STUTES moved to report Version 31-GH1029\M of HB 49, as amended, out of committee with individual recommendations and attached fiscal notes.

REPRESENTATIVE EASTMAN objected.

A roll call vote was taken. Representatives Shaw, Kopp, Stutes, LeDoux, Wool, and Claman voted in favor of moving the bill out of committee. Representative Eastman voted against it. Therefore, CSHB 49(JUD) was reported out of the House Judiciary Standing Committee by a vote of 6-1.

[2:09:22 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:09 p.m.