

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

February 13, 2019

1:31 p.m.

**MEMBERS PRESENT**

Senator Shelley Hughes, Chair  
Senator Lora Reinbold, Vice Chair  
Senator Peter Micciche  
Senator Jesse Kiehl

**MEMBERS ABSENT**

Senator Mike Shower

**COMMITTEE CALENDAR**

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 12

"An Act relating to crime and criminal procedure; relating to assault and sexual assault; relating to harassment; relating to credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 35

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

- HEARD AND HELD-

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**PREVIOUS COMMITTEE ACTION**

BILL: SB 12

SHORT TITLE: ASSAULT; SEX OFFENSES; SENTENCING CREDIT  
SPONSOR(s): SENATOR(s) MICCICHE

01/16/19 (S) PREFILE RELEASED 1/7/19  
01/16/19 (S) READ THE FIRST TIME - REFERRALS  
01/16/19 (S) JUD, FIN  
02/13/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 35

SHORT TITLE: CRIMES;SEX CRIMES;SENTENCING; PAROLE  
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/19 (S) READ THE FIRST TIME - REFERRALS  
01/23/19 (S) JUD, FIN  
02/13/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

EDRA MORLEDGE, Staff  
Senator Micciche  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented a sectional analysis on behalf of the sponsor of SB 12.

JOHN SKIDMORE, Deputy Attorney General;  
Director, Criminal Division  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the discussion of SB 12.

KEVIN CLARKSON  
Attorney General Designee  
Department of Law (DOL)  
Anchorage, Alaska

**POSITION STATEMENT:** Presented SB 35 on behalf of the administration.

AMANDA PRICE, Commissioner Designee  
Department of Public Safety  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the discussion of SB 35.

NANCY DAHLSTROM, Commissioner Designee  
Department of Corrections

Anchorage, Alaska

**POSITION STATEMENT:** Testified during the discussion of SB 35.

JOHN SKIDMORE, Deputy Attorney General;

Director, Criminal Division

Department of Law

Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SB 35.

## **ACTION NARRATIVE**

[1:31:53 PM](#)

**CHAIR SHELLEY HUGHES** called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Kiehl, Reinbold, Micciche, and Chair Hughes.

### **SB 12-ASSAULT; SEX OFFENSES; SENTENCING CREDIT**

[1:32:16 PM](#)

CHAIR HUGHES announced that the first order of business would be SPONSOR SUBSTITUTE FOR SENATE BILL NO. 12, "An Act relating to crime and criminal procedure; relating to assault and sexual assault; relating to harassment; relating to credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring; and providing for an effective date."

CHAIR HUGHES remarked that she scheduled SB 12 and SB 35 to be heard together since these bills attempt to close a loophole that allowed for the Justin Schneider case. This bill, SB 12, has similar provisions to SB 35, a crime bill introduced by the Governor. However, he felt it was important to have a stand-alone bill since it improves the chances that it could make its way through the legislature this year and highlights the desire to eliminate free passes for such crimes.

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SENATOR MICCICHE, as sponsor of SB 12, characterized this bill as the "Justin Schneider Loophole Elimination Act." After further research, he introduced a sponsor substitute for SB 12.

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CHAIR HUGHES clarified that the committee would be considering [work order 31-LS0263\U, referred to as] Version U, which was read across the floor.

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SENATOR MICCICHE said that he has a wife and four daughters and has been working to address the issue of domestic violence and sexual assault in Alaska for many years. He said he was appalled with the results of the Justin Schneider case just as were many Alaskans. He paraphrased from his sponsor statement, which read as follows:

Sponsor Substitute for Senate Bill 12 (SSSB 12) eliminates loopholes in Alaska law that have contributed to the inability to hold perpetrators of sexual assault adequately accountable for their actions. The bill will prove to victims that Alaskans have had enough and will stand with them to prosecute and incarcerate sexual predators while creating adequate deterrence for future violent crimes.

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SSB12 removes the "Schneider Loopholes" in Alaska's criminal code that allowed a violent sexual predator to walk free without jail time last September. The result of Justin Schneider walking free garnered national attention as Alaskans stood by in disbelief that such a free pass could occur after Justin Schneider brutally strangled a woman to the point of unconsciousness and then ejaculated on her. The plea deal decision also resulted in the unprecedented removal of a judge (Corey) for decisions made in the case.

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SSSB12 will improve our sexual assault laws in several important ways: 1) it will classify unwanted contact with semen as a sexual crime, which means perpetrators can be required to register as sex offenders for this crime, 2) it will require that strangulation to the point of unconsciousness is defined as assault in the first degree, which carries a sentence of 5 to 20 years, and 3) it would eliminate credit toward time served for electronic monitoring.

In recent years, one outrageous story after another about criminals getting a slap on the wrist has dominated our headlines. The case of Justin Schneider, however, forces us to confront just how badly our criminal justice system has been failing victims and survivors of sexual assault. SSSB12 will define how we

prosecute specific areas with loopholes in domestic violence and sexual assault. I look forward to working with my colleagues in the legislature and with Governor Dunleavy's administration to ensure the safety of all Alaskans.

It is time to stand up and say enough is enough; there will be no more free passes for violent sexual perpetrators in Alaska. I encourage support from legislators and the Alaska public to expedite passage of SSSB12, eliminating the "Schneider Loopholes" in our state's criminal code, and I respectfully request support for this important legislation.

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SENATOR MICCICHE said that he worked with the administration on the crime bills. He said that understanding the logic of the changes is very important and Mr. Skidmore can assist the committee in that regard.

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EDRA MORLEDGE, Staff, Senator Micciche, Alaska State Legislature, provided a sectional analysis of SSSB 12, which read as follows:

SSSB 12 Sectional Summary v. U

An Act relating to assault in the first degree; relating to sex offenses; and relating to credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring.

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Title Change:

Section 1: Amends AS 11.41.200(a), assault in the first degree, to add new subsection 5, which adds a person "knowingly causes another to become unconscious by means of a dangerous instrument" and defines "dangerous instrument" in accordance with the definition in AS 11.81.900:

Section 2: Amends AS 11.41.425(a), sexual assault in the third degree, to add subsection (7), "engages in masturbation and ejaculates on a person without the consent of that person."

Section 3: Amends AS 11.61.118(a) to clarify that the crime of harassment in the first degree, which includes offensive physical "contact with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces," is separate from the sex offense contained in this bill.

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Section 4: Amends 11.81.900(b)(60) to include "knowingly causing the victim to come into contact with ejaculate" to the definition of "sexual contact."

Section 5: Amends AS 12.10.010(b) to provide for a 10-year statute of limitation for the new crime described in section 2 of this bill.

Section 6: Repeals AS 12.55.027(d) stating that a court "may not grant credit against a sentence of imprisonment for time spent in a private residence or under electronic monitoring."

Section 7: Amends AS 12.55.027(e) to remove "electronic monitoring" as an option for claiming credit towards a sentence of imprisonment.

Section 8: Repeals AS 55.027(g)(3), which allowed for sentencing credit for sex crimes.

Section 9: Applicability. Section 10: Effective date clause.

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MS. MORLEDGE explained that the Department of Law raised some issues during discussions on the bill. She reviewed suggested language changes the committee might consider. The language in Section 2 is duplicative. The language in Section 3 relates to harassment in the first degree. The sponsor would like to remove the term "semen" from that section and replace it with "coming into contact with semen" as a separate sexual offense. In Section 4, the sponsor would like to change the term "ejaculate" back to "semen." She deferred to Mr. Skidmore to provide more details.

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JOHN SKIDMORE, Deputy Attorney General; Director, Criminal Division, Department of Law, reviewed proposed changes to the sponsor substitute for SB 12. He agreed that paragraph (7) of SB

12 is duplicative after the definition for sexual contact in Section 4 [AS 11.81.900(b)(60)] of the bill is changed, so it is not necessary to have a second [paragraph], that it was a different concept that had been considered. He said that it is cleaner to remove the language.

He referred to Section 3, on page 3 of SSSB 12, to proposed language in AS 11.61.118(a)(1), which read, "(1) under circumstances not proscribed in AS 11.41.425(a)(7)," however, that was language that was proposed to be added, but if it is removed the remaining language does not make sense. The word "semen" can be removed because it will be covered by "sexual contact" in Section 4. The Department of Law always advises the legislature to use terms currently found in statute. These are terms either defined by case law or that are used because practitioners typically use them. Whenever a new or different term is used, it begs the question of why that term changed, he said. He recommended that "semen" be used instead of "ejaculate" for the purpose of consistency.

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SENATOR MICCICHE remarked that it is uncomfortable to discuss these terms, which emphasizes the importance of the bill. He has held discussions with the legislative attorneys, Legislative Legal Services, Legislative Affairs Agency and with Mr. Skidmore, Deputy Attorney General; Director, Criminal Division, Department of Law, as to whether the term "semen" requires the presence of sperm, and whether the term "ejaculate" does not.

MR. SKIDMORE said that he subsequently spoke to the Department of Public Safety's [Scientific Crime Detection Laboratory] and based on his conversation with the lab, the term "semen" is the better term to use since it does not require the presence of spermatozoa and the lab can test for the substance. This term is already used in statute and introducing a different term could raise questions about the precise term.

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SENATOR KIEHL related his understanding that Mr. Skidmore indicated that changing the definition of "sexual contact" to include "semen" meant it was not necessary to add the penalty of sexual assault in the third degree. He asked for the specific reference.

MR. SKIDMORE referred to page 2, Section 2 of SSSB 12 to AS 11.41.425(a), which read as follows:

(a) An offender commits the crime of sexual assault in the third degree if the offender  
(1) engages in sexual contact with a person who the offender knows is ...

He said that the existing statutes and the framework for sexual assault and sexual abuse of a minor have three different categories of elements to create a cascading framework of conduct that is criminalized. The three areas include the conduct itself, the mental state of the victim, and whether the person has another relationship with the child.

MR. SKIDMORE elaborated on the three elements, such that the conduct first considers whether it is sexual penetration or sexual contact. Second, it considers the mental state of the victim, and whether it is without consent or if the victim is mentally incapable, incapacitated, or unaware. The third category considers whether the person who engages in the criminal conduct has another relationship, for example, if the offender is a parent, coach, or teacher of the victim.

He said that these elements create a rather complex cascading framework. However, only adding the language in paragraph (7) would ignore the rest of the existing framework. Altering the definition of sexual contact will take advantage of the framework developed over time by case law for consistency, he said.

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SENATOR KIEHL asked whether within that framework, this would vary the kind of contact being defined from the most egregious example to the least horrible one.

MR. SKIDMORE answered that sexual contact is found in two different types of crimes: sexual assault and sexual abuse of a minor. He reviewed the penalties for sexual assault with the most serious offense that encompasses contact, which is sexual assault in the second degree and is a class B felony. It ranges to sexual assault in the fourth degree, which is a class A misdemeanor. Sexual abuse of a minor that includes sexual contact is classified as sexual abuse of a minor in the second degree and is a class B felony. He would need to refer to statutes to confirm whether the penalties range to sexual abuse of a minor in the fourth degree.

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SENATOR KIEHL asked whether these cascading levels of offenses fit with the sponsor's intent.

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MS. MORLEDGE asked for further clarification if his question is whether adding the definition would accomplish the sponsor's goal.

SENATOR KIEHL related his understanding that the penalty was originally a class C felony, but under the bill the penalties fall on a spectrum.

SENATOR MICCICHE answered that he was unsure of his specific question.

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CHAIR HUGHES remarked it would be helpful if Mr. Skidmore has knowledge of how other crime bills might impact this one.

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MR. SKIDMORE answered that nothing in SB 35 or other crime bills will impact the sentencing being discussed in SB 12. He stated that the other crime bills affect non-sex crimes. In response to Senator Kiehl, he directed attention to the language on page 3, of SSSB 12, to paragraph (7), which read "engages in masturbation and ejaculates on a person without consent," which would ignore the circumstances in which a person is incapacitated or mentally incapable. He related several scenarios to illustrate that incapacitated people would not be covered by this subsection. However, by adding it to the definition of "sexual contact," all of the other scenarios discussed would be covered. Omitting it would risk missing large portions of conduct that the legislature already has determined should be criminalized. He acknowledged that the bill would increase some penalties from a class C to a class B felony. However, the legislature has already decided to define "sexual contact" as including "genitals, anus, or female breasts," which is classified as a class B felony under the law. He said that to make every penalty a class C felony would ignore the existing framework and could result in unintended consequences or create gaps in the law. He related his understanding is that SSSB 12 intends to address a gap with unjust contact that occurred without a true penalty for the offender.

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SENATOR MICCICHE expressed concern over the removal of "semen" from AS 11.61.118(a) since it was originally intended to protect

correctional and law enforcement officers from unwanted offensive contact with human fluid. He asked for further clarification whether it would be considered a sexual assault if someone flung semen at another person.

MR. SKIDMORE answered yes. He said he grappled with that but was not able to differentiate in legal terms the conduct of coming into contact with semen inside a correctional facility versus the same conduct outside the facility that could be proved in a court of law. He considered other types of substances or bodily fluids, including human or animal blood, mucus, saliva, urine, vomitus, and feces, but none of these substances are produced through sexual activity. However, semen cannot be found without some type of sexual activity, he said. He pointed out that the provision of harassment was enacted some time ago in response to conduct within the state correctional facilities, in which inmates were engaging in this behavior to harass correctional officers in facilities. However, it was never designed to address sexual conduct, he said.

MR. SKIDMORE concluded that the criminal justice system must rely on the discretion of those within the system. It is nearly impossible to try to legislate every possible hypothetical situation. Instead, the state relies on discretion, such that prosecutors would review the facts of each case. He found it highly unlikely that going forward cases would be handled in the same way as the Justin Schneider case was handled.

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SENATOR MICCICHE asked if a urine sample sent to a lab contained trace amounts of semen, whether the person would be charged with offensive physical contact rather than sexual assault.

MR. SKIDMORE said he was not an expert in that analysis, so in those instances he would consult with the lab. He indicated that prosecutors would seek to determine the core conduct and would not likely prosecute it at a higher level. He explained that every crime must have two elements, a mens rea or the mental element, and the actus rea, which is actual act. In the scenario in which an inmate would urinate and fling it on another person, the inmate would need to know the urine contained semen in order to be charged at a higher level of crime. The prosecution would need to prove the knowingly intent, which would be highly unlikely to prove, he said.

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CHAIR HUGHES read the definition of mucus, which is "a viscous slimy mixture of mucins, water, electrolytes, epithelial cells and leukocyte that is secreted by glands lining the nasal, esophageal, and the nasal esophageal, and other body cavities and serves primarily to protect and lubricate surfaces." She offered her belief that this scenario would be covered.

MR. SKIDMORE was unsure how the lab would define it, but the lab can determine if a substance is semen or something else.

CHAIR HUGHES clarified that if something is thrown and not used for a sexual act, the definition of mucus is broad enough to cover it.

SENATOR MICCICHE offered his belief that an equal protection issue would apply since a person could also be sexually assaulted by a female. He said that he consulted the lab to determine if it could detect a substance [in females] similar to semen but was advised that detectible substances are only produced by males.

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SENATOR REINBOLD expressed concern with how the current and prior crime bills mesh. For example, she wondered whether granting credit against sentences for imprisonment for time spent in a private residence or electronic monitoring was in Senate Bill 91.

MR. SKIDMORE responded that Senate Bill 91 addressed electronic monitoring and page 4, Section 6 of SSSB 12 brings it back to pre-Senate Bill 91 law.

SENATOR REINBOLD offered her belief that the public wants Senate Bill 91 repealed. She hoped that this process can be as clear and clean as possible. She expressed concern that some penalties would be reduced from felonies to misdemeanors in the bill.

MR. SKIDMORE responded that nothing else in SSSB 12 relates to Senate Bill 91. He stated that SSSB 12 addresses gaps in the law discovered in the Justin Schneider case. The bill addresses strangulation by adding another subsection to assault in the first degree, which was not previously addressed in law. Second, it would address unwanted contact with semen. Third, it would address electronic monitoring by reverting to pre-Senate Bill 91 law.

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SENATOR REINBOLD said that she preferred to be briefed so that she fully understands the changes.

SENATOR MICCICHE responded that SSSB 12 would isolate four issues that led to a violent sexual offender not serving time or being required to be on a sexual offender list. First, SSSB 12 would reclassify unwanted contact with semen as a sexual crime. Second, it would classify masturbation and ejaculating on a person as sexual assault in the third degree, which was not previously a crime. Third, the bill would classify strangulation as sexual assault in the first degree. Finally, it would eliminate electronic monitoring, which was being counted as full credit towards incarceration. In the Justin Schneider case, the offender was given full credit for time spent on electronic monitor and was never imprisoned for his heinous crime. Nothing in SSSB 12 would reduce the classification of any crime to a lower level.

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CHAIR HUGHES asked Mr. Skidmore to confirm that nothing in the bill reduces crime classifications.

MR. SKIDMORE agreed that nothing in the bill reduces penalties. Instead, the bill takes conduct that was criminalized as a class A misdemeanor under harassment in the first degree and adds it to the definition of sexual contact. He related that sexual contact is found in several statutes, including sexual assault and sexual abuse of a minor. It would increase the penalty for a class A misdemeanor to a class B or class C sex felony. In some cases, it would also retain the classification of the crime as a class A misdemeanor, but further classify it as a sexual crime. He was unsure which classification would remain a misdemeanor, but the crime would be considered sexual assault in the fourth degree. However, the primary conduct of a case, such as the Justin Schneider case, would result in sexual assault in the third degree, which is a class C felony that carries a penalty of 2-12 years as opposed to a one-year maximum penalty under harassment.

CHAIR HUGHES asked Mr. Skidmore to cite the specific reference for members.

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At-ease.

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CHAIR HUGHES reconvened the meeting.

MR. SKIDMORE referred to AS 11.41.427, sexual assault in the fourth degree, which is classified as a class A misdemeanor. He explained that this statute has five subsections. [Paragraph (1) and (2)] pertain to employees at a correctional facility or another place designated by the commissioner of the Department of Corrections (DOC) when the offender engages in sexual contact with a person that the offender knows is incarcerated. For example, this would apply to a correctional officer who engages in sexual contact with someone incarcerated by the DOC. This crime is currently classified as class A misdemeanor and is unchanged by the bill.

He explained the next [paragraph, (2)] refers to the same conduct of sexual contact by an employee who engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Health and Social Services (DHSS) and the juvenile victim is 18-19 years of age. This crime is classified as sexual assault in the fourth degree and would also apply to someone who is the legal guardian of the victim.

MR. SKIDMORE said that the third instance [paragraph (4)] relates to a peace officer having sexual contact, with reckless disregard, with a person in custody or apparent custody of the law enforcement officer, which is classified as a class A misdemeanor. The penalty would increase if sexual penetration occurred to a class C felony. The highest level would pertain to engaging in the conduct without the person's consent, which is classified as a class B felony. The penalty is increased to a class C felony if the activity involved a person who was mentally incapable, incapacitated, or unaware. This would increase the penalty in the case of Justin Schneider from 30 days to a range of a 2-12-year sentence.

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SENATOR REINBOLD related a scenario in her community involving a police officer who engaged in sexual activity with a victim in custody. She emphasized that this is a very important issue in her community. She expressed concern that the classification is a class A misdemeanor, which carries a pretty small penalty.

MR. SKIDMORE offered to review the exemptions under the statute, but the main point is that this bill will increase sentences. He said he recognizes that some people might not agree with the current statutes for sexual assault in the fourth degree, but this statute has not been changed by any criminal justice reform bill in the last several years.

CHAIR HUGHES related her understanding that the sexual crimes were excluded from some of the sentence reductions in Senate Bill 91.

MR. SKIDMORE answered that is correct.

SENATOR REINBOLD said, "but not all of them."

MR. SKIDMORE responded that this gets complicated because a few statutes that people think of as sexual in nature were not classified as sex crimes under the sentencing statutes. He explained that SB 35, which will be discussed later today intends to address that issue.

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SENATOR MICCICHE asked to address the concern he has heard that SSSB 12 reduces how some crimes are handled. He asked Mr. Skidmore to explain the effect of removing "semen" from AS 11.61.118(a), which is classified as harassment. This bill would increase the seriousness of the crime by relocating it to the sexual assault statutes, he said.

MR. SKIDMORE answered that it would increase the penalties.

[2:21:46 PM](#)

CHAIR HUGHES referred to page 2, lines 4-6, of SSSB 12 to strangulation. She asked how it would be possible to prove that a person becomes unconscious. She suggested that the act of being strangled might be even scarier for the victim. She expressed concern that if unconsciousness cannot be proven that it might not be possible to prosecute the perpetrator.

MR. SKIDMORE emphasized that assault in the second degree, which is normally how strangulation is prosecuted, has not been altered or changed. He explained that assault in the second degree indicates assault by hands or other objects that impedes or constricts breathing or circulation. He said that SSSB 12 would add the concept of causing someone to become unconscious by means of a dangerous instrument. A dangerous instrument includes choking or strangulating them with one's hands. Therefore, the lower level of conduct is already covered.

This bill would create a second tier to say if someone is causing strangulation and the person becomes unconscious, a higher penalty would apply. He agreed that this may not be easy or straightforward; however, that does not mean it cannot be

done. In fact, to cause unconsciousness takes a small amount of pressure and can happen in less than a minute. He said that he has been a prosecutor for 20 years and during that time victims have reported that they lost consciousness and they have described how the world began to close in on them. Sometimes victims describe being attacked and all of a sudden realizing that they were in a different room, but they had no knowledge of how that occurred. Prosecutors would need to assess the type of detail in a case that would allow them to prove to a jury beyond a reasonable doubt that the person lost consciousness. However, the offender could still be convicted of assault in the second degree, he said

CHAIR HUGHES related her understanding that this crime is not limited to sexual assault but could also apply to violence without sexual assault.

MR. SKIDMORE acknowledged that Section 1 of SSSB 12 does not require the crime to be of a sexual nature and is related to strangling another person to unconsciousness.

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CHAIR HUGHES asked whether Justin Schneider was charged with strangulation.

MR. SKIDMORE answered yes. He said Justin Schneider was charged with assault in the second degree and plead to that crime.

[2:26:57 PM](#)

SENATOR REINBOLD expressed concern over potential loopholes.

MR. SKIDMORE turned to the definition in AS 11.81.900(b)(14)(B), which read, "hands or other objects when used to impede normal breathing or circulation of blood by applying pressure on the throat or neck or obstructing the nose or mouth;" and said this language would make it a dangerous instrument. In further response to Senator Reinbold, he said he has not experienced any problem with the definition.

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SENATOR MICCICHE explained that people are concerned that Justin Schneider was not charged with attempted murder for the strangulation since a person who becomes unconscious is literally seconds away from death. He asked whether intent had been the issue.

MR. SKIDMORE answered that the crime of attempted murder specifically requires mens rea [mental state], the conscious objective to cause the result of killing someone. He said that the prosecution would need to prove the conscious objective, and in the Justin Schneider's case the prosecutors did not have any evidence that he was attempting to kill her. However, many instances in which a perpetrator strangles someone could result in a murder charge.

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SENATOR MICCICHE asked for further clarification on intent when someone is strangled to the point of unconsciousness and is sexually assaulted.

MR. SKIDMORE answered that mens rea would apply. He referred to page 3, lines 4-6, to paragraph (5) of SSSB 12, which specifically uses "knowingly" and not "intent," which are very different. A person knows whether the conduct being engaged in could cause someone to become unconscious, which is very different than to say the perpetrator intended to kill the victim.

[2:32:00 PM](#)

CHAIR HUGHES asked for further clarification on the classification of the crime for a perpetrator who causes someone to become unconscious.

MR. SKIDMORE answered that assault in the first degree is a class A felony.

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CHAIR HUGHES referred to page [4], lines 9-12, to the statute of limitations. She asked him to identify the crimes that have a ten-year statute of limitations. She noted that all other crimes have a five-year statute of limitations. She further asked whether this is similar to other states' statutes of limitation.

MR. SKIDMORE said he was unsure of the statute of limitations for other states. He asked for further clarification on the specific cite.

CHAIR HUGHES referred to page 4, lines 9-12, to Section 5 of SSSB 12.

MR. SKIDMORE explained that under AS 12.10.110, certain crimes do not have any statute of limitations, including murder and certain sexual assaults. He said that this provision would add

AS 11.41.425(a)(1) or (5)-(7), assault in the third degree. He related that a five-year statute of limitation would apply to most offenses and a 10-year statute of limitations would apply to other offenses. He said that another set of offenses does not have any statute of limitation.

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CHAIR HUGHES related her understanding that the more heinous crimes against a person would not have any statute of limitation, that pretty serious crimes would have a 10-year statute of limitation and less serious ones would have a 5-year statute of limitation.

[2:35:30 PM](#)

SENATOR KIEHL offered his belief that on the whole this bill is a good and important piece of legislation. He referred to the harassment approach in terms of semen. He expressed concern that some criminal situations occur, such as someone who is assaulted and comes into contact with semen. These crimes are not considered sexual in nature but disgusting criminal behavior. He agreed correctional officers should be protected from criminal behavior. He asked whether it was possible to separate out a sex crime, in which the offender should be on a sex registry, and the type of assaults that should result in criminal sanctions but are not sexual predation and are assaults.

MR. SKIDMORE answered that he comes back to the specific substance of semen that can only be created by a sexual act. He has reviewed and grappled with statutory language to create a distinction between these types of conduct; however, he has not been able to appropriately separates the two crimes and still be able to prosecute them.

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SENATOR KIEHL said that he might have drafting ideas to avoid putting perpetrators who commit assault that is not sexual in nature on the sex registry and still not have loopholes.

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SENATOR MICCICHE said he thinks the discretion of the courts would separate the crimes. He offered his belief that some criminal assaults in prisons that involve contact with semen would be sexual assaults, but other activity might be a lesser crime. He suggested that this would protect the discretion of the court since it would not require being charged at the higher level.

[2:40:08 PM](#)

CHAIR HUGHES offered her belief that the definition of mucus would fit.

[SB 12 was held in committee.]

[2:40:24 PM](#)

At-ease.

**SB 35-CRIMES;SEX CRIMES;SENTENCING; PAROLE**

[2:42:07 PM](#)

CHAIR HUGHES reconvened the meeting and announced that the final order of business would be SENATE BILL NO. 35, "An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

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KEVIN CLARKSON, Attorney General Designee, Department of Law (DOL), related that SB 35 addresses the disturbing rates of sexual assault. He said that Alaska Native females have the highest victimization rate of any gender or racial group, comprising 42 percent of sexual assault victims in Alaska. He reported sexual assault statistics, such that the median age of victims is 19 years old, the most common age is 15 years old, and most victims know their offenders. In fact, only 2.5 percent of offenders were strangers, which drops to 0.3 percent for victims under the age of 18. This means that young Alaskan women are being assaulted by men that they knew.

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COMMISSIONER DESIGNEE CLARKSON explained that SB 35 would address sexual offenses in Alaska. First, it would fill the gap such as the one in the Justin Schneider case. He said this bill is similar to SB 12, since the loopholes in the law allowed Justin Schneider to receive punishment well below what many public members believe he should have received.

He reviewed bulleted points in the document in members packets titled, "SB 35 Sex Offenses Highlights," and made comments.

- Unwanted Contact with Semen - Amends the definition of "sexual contact" to include contact with semen making unwanted contact with semen a sex offense.

COMMISSIONER DESIGNEE CLARKSON said the new law would allow the court to require sex offender treatment, sex offender registration, and would increase the penalty for the first offense from 30 days to 2-12 years.

- Strangulation Sentencing - Creates an enhanced sentencing structure for assault in the second degree thus increasing the sentencing range for strangulation from 0-2 to 1-3 years.

He said that SB 35 would eliminate credit for pretrial monitoring against the ultimate sentence. Unlike Justin Schneider, who spent so much time on electronic monitoring pre-trial that he did not serve prison time, this bill would eliminate that possibility.

COMMISSIONER DESIGNEE CLARKSON said that SB 35 would strengthen sex offense laws by increasing penalties for sexual predators who target children.

- Sexual Abuse of a Minor Sentencing - Makes sexual abuse of a minor in the third degree a sexual felony when there is a 6-year age difference, thus increasing the sentencing range from 0-2 to 2-12 years

He said the penalty is unchanged for sexual abuse of a minor if the age difference is only 4-5 years and the victim is 13,14, or 15 years old.

- Soliciting Sex from A Minor - Deletes "online" from the crime of "online enticement of a minor" making any solicitation of a minor for sex a B felony.

COMMISSIONER DESIGNEE CLARKSON said that SB 35 would make solicitation of a minor a felony in all circumstances. This bill would make it illegal to ask a child to engage in sexual conduct, regardless of the method of communication, whether it is a note, a call, an in-person conversation, or any other

means. Current law only makes it crime to solicit via a computer. This will fill in gaps, he said.

- Indecent Viewing - Makes indecent viewing or production of a picture of a child a registerable sex offense. This conduct will also be sentenced as a sexual felony. Conduct involving the production of a picture of an adult would be a registerable sex offense but sentenced as a regular class C felony.

COMMISSIONER DESIGNEE CLARKSON offered an example of indecent viewing, when a person places a camera in a place where the child is unaware the viewing is occurring and does not give consent to being photographed.

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COMMISSIONER DESIGNEE CLARKSON explained that under existing law, someone who is required to register as a sex offender outside of Alaska only must register in Alaska if the sex offense matches the sex crime in Alaska. Under the bill, if the offender is required to register in another state, the offender is required to register in Alaska.

- Out of State Sex Offender Registration - Requires anyone convicted of a registerable sex offense in another state to register in Alaska if they are present in the Alaska.

COMMISSIONER DESIGNEE CLARKSON reviewed presumptive sentencing:

- Presumptive Sex Offense Sentencing - Clarifies that any prior felony counts as a prior felony for presumptive sentencing purposes in sex cases. This means prior felonies, even when they are a non-sex felony, trigger an increased presumptive range for a sex offense.

Additional highlights included:

- Unwanted Images of Genitalia - Makes repeatedly sending unsolicited and unwanted images of genitalia to another person harassment in the second degree (B misdemeanor).

- Sex Offender Parole Eligibility - Clarifies that sex offenders who are ineligible for good time credit are also ineligible for discretionary parole.
- Marriage Defense to Sexual Assault - Repeals marriage as a defense to sexual assault except in cases where there is consent and the conduct is illegal due to the nature of the relationship but-for the marriage (probation officer/probationer, peace officer/person in custody, DJJ officer/person 18 or 19 an under the jurisdiction of the Division of Juvenile Justice).

COMMISSIONER DESIGNEE CLARKSON said that the governor's crime package would reset the stage. The state needs to better its efforts to protect Alaska's women and children from sexual assault.

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AMANDA PRICE, Commissioner Designee, Department of Public Safety, Anchorage, testified in support of SB 35. She said that this is a difficult conversation. She thanked the committee and the public for engaging in the process. She said that the culture that surrounds sexual violence in the state needs to change. She said that this sends a clear message that the state is changing the culture.

COMMISSIONER DESIGNEE PRICE said that Alaska has unacceptably high rates of sexual violence. Alaska's rates far exceed rates in other states. The crime of sexual violence does not know any boundary. Certain races are disproportionately impacted; however, no socioeconomic group, or any ethnicity is not impacted by sexual violence. This bill would strengthen public safety in Alaska by closing loopholes, but it also ensures that Alaska is not a state where registered sex offenders can escape the knowledge of their crimes by moving to Alaska.

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COMMISSIONER DESIGNEE PRICE related statistics, stating that the department receives and fields between 8-10 calls per month from individuals inquiring if they would need to register as a sex offender if they move to Alaska. She said that data is critical for members to understand. She interpreted the data to mean that registered sex offenders were actively looking for a state that they may not need to register.

COMMISSIONER DESIGNEE PRICE said the bill identifies ways victims can be hurt today and it criminalizes that conduct, for

example, unsolicited and unwanted photographs of genitalia. SB 35 gives victims a mechanism to engage with law enforcement and the state the opportunity to provide protection. She said that the statistics of crime against children show how these crimes devastate our communities. She said that this bill would enhance protections for Alaskans by giving law enforcement tools necessary to intervene, support, and improve public safety through its communities. For example, SB 35 would introduce a new crime of enticement of a minor. This responds to the reality that Alaskan children are enticed by predators in all arenas, not just online. She stated that this language will allow law enforcement to intervene before a child is hurt. The Department of Public Safety (DPS) emphatically supports SB 35. The department acknowledges the governor's commitment to respond to and prevent crimes of sexual assault and abuse, holding those offenders accountable and strongly believes that this bill will support and improve public safety.

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NANCY DAHLSTROM, Commissioner Designee, Department of Corrections, Anchorage, introduced herself as a member of the public safety team.

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SENATOR REINBOLD said that she supports this bill. She said she did not support Walt Monegan, the former DPS commissioner, during his confirmation because he indicated only one percent of rapists in Alaska are convicted, but he did not offer any solutions. She said that she asked some victims and prosecutors the reasons they did not pursue their cases. She recalled that they expressed concern that graphic photographs would be shown in the courtroom. She wanted to make sure women can press charges and be protected. She raised the issue of penalties for police officers engaging in sexual contact with persons in their custody, which was raised earlier, which is a big issue in her community. She expressed concern that cases are dropped due to a lack of integrity in the state's crime lab and referenced the scathing audit of the lab. She said she did not understand why the sexual assault/rape kits were not being processed.

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SENATOR REINBOLD expressed concern that women have no place to escape due to an insufficient number of shelters. She offered her interest in strengthening sex trafficking laws and her willingness to work with agencies, nonprofits, and the public on these issues.

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SENATOR MICCICHE asked Mr. Clarkson for clarification on underage minors not giving consent for photos. He offered his belief that underage minors cannot give consent.

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MR. SKIDMORE answered that the crime of indecent viewing sets up conditions for ages of consent. This language states that a person under the age of 16 must have parental consent but the person over the age of 13 must also consent. He explained that there is an overlap of ages 13-15, in which both the parent and child must consent. He said that parents must consent to photographs for those under the age of 13. He acknowledged that for the crime of sexual abuse of a minor, people under a certain age cannot consent.

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SENATOR MICCICHE remarked that he needs more time to discuss this because it seemed troubling.

CHAIR HUGHES agreed it seemed troubling for a parent to give consent for a 13-year-old to have that type of photography done. She said it seems as though the parent should be charged with some crime.

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SENATOR MICCICHE asked whether the out-of-state sex registry is for a new entrant or if it could be retroactive.

MR. SKIDMORE offered to provide more detail during the sectional analysis; however, it would apply to people coming forward, but it would not be retroactive.

[SB 35 was held in committee.]

CHAIR HUGHES reviewed upcoming committee announcements.

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There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:02 p.m.