

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 15, 2019

1:33 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Mike Shower  
Senator Jesse Kiehl

**COMMITTEE CALENDAR**

SENATE BILL NO. 41

"An Act relating to the number of superior court judges in the third judicial district; and providing for an effective date."

MOVED SB 41 OUT OF COMMITTEE

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

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."

SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 41

SHORT TITLE: NUMBER OF SUPERIOR COURT JUDGES

SPONSOR(s): RULES BY REQUEST

01/30/19	(S)	READ THE FIRST TIME - REFERRALS
01/30/19	(S)	JUD, FIN
02/11/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/11/19	(S)	Heard & Held
02/11/19	(S)	MINUTE(JUD)
02/15/19	(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)
02/13/19	(S)	Heard & Held
02/13/19	(S)	MINUTE(JUD)
02/15/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

NANCY MEADE, General Counsel  
Administrative Offices  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions on SB 41 on behalf of the Alaska Court System.

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

**POSITION STATEMENT:** Testified and answered questions during the hearing on SB 35.

KATHRYN MONFREDA, Chief  
Criminal Records & Identification Bureau

Department of Public Safety  
Anchorage, Alaska

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

#### **ACTION NARRATIVE**

[1:33:50 PM](#)

**CHAIR SHELLEY HUGHES** called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Reinbold and Chair Hughes. Senator Micciche arrived as the meeting was in progress.

#### **SB 41-NUMBER OF SUPERIOR COURT JUDGES**

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**CHAIR HUGHES** announced that the first order of business would be SENATE BILL NO. 41, "An Act relating to the number of superior court judges in the third judicial district; and providing for an effective date."

[1:35:25 PM](#)

**SENATOR REINBOLD** said she liked the bill.

[1:35:36 PM](#)

**CHAIR HUGHES** said she had questions regarding video conferencing.

[1:36:00 PM](#)

**NANCY MEADE**, General Counsel, Administrative Offices, Alaska Court System, Anchorage, stated she previously spoke about judges traveling to other locations to cover proceedings because the judges assigned to those locations did not have the jurisdiction for felonies. For example, a superior court judge from Kenai will travel to Homer to cover cases that are in a superior court judge's jurisdiction but beyond the jurisdiction of the local court. She said the ASC has tried to address this staffing in other ways. One way was to encourage video conferencing between the Kenai and Homer courthouse to reduce travel. A question arose how that relates to the videoconferencing being proposed in some of the criminal bills.

She clarified that a judge's appearance at a proceeding by videoconference or "two-way contemporaneous television" is up to the judge. The judge can determine whether he/she needs to see the witnesses in person. Those decisions are based on the types

of things such as the number of other cases, the gravity of a case, or whether it is a criminal matter. The judge has the option to appear by video for proceedings. This is different from defendants in criminal cases who need to be, may be, or shall be present in the courtroom for certain proceedings. She said that the videoconferencing she is speaking to has nothing to with those types of proceedings. In fact, court rules apply and address when defendants must be present or do not need to be present.

[1:38:29 PM](#)

CHAIR HUGHES said since superior court judges can hear felony cases and district court judges cannot, that having superior court judges at these locations should reduce the need for some travel where videoconferencing is not appropriate.

MS. MEADE answered that is correct and it will be more efficient and give flexibility in how to cover cases in outlying places such as Valdez, Glennallen, Cordova, Homer, Seward, and Kenai. The more video conferencing the less travel, which includes criminal defendants who need to be transported, she said.

CHAIR HUGHES queried whether felony cases might be more apt to require the judge to be in person.

MS. MEADE responded that that was generally true, but it might depend on whether the hearing was a short, routine scheduling type of hearing in a felony case. She acknowledged that judges generally try to be present for the more important cases.

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MS. MEADE said this bill would authorize the court to fill two district court seats that are currently vacant, or soon will be, with superior court judges since they can handle all cases. She explained that district court judges have limited jurisdiction and can only handle misdemeanors. They cannot handle felonies, probate cases, including guardianships and mental cases, child-in-need-of-aid, or family law cases, such as child custody disputes and divorces. This would expand the breadth of cases the two judges in those two districts can cover. This will reduce travel for the Kenai judges traveling to cover the felony or other cases in Homer. It will prevent the Palmer judges from the necessity to travel to Valdez. Further, when judges travel, it means they cannot handle their day-to-day caseload or calendar in their own districts.

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SENATOR MICCICHE joined the meeting.

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CHAIR HUGHES said that for this enhanced service, the fiscal note is a modest \$63,000.

[1:43:00 PM](#)

CHAIR HUGHES stated that public testimony was previously closed on 2/11/19 for SB 41.

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CHAIR HUGHES moved to report SB 41, work order 31-LS038\A, from committee with individual recommendations and attached fiscal note(s). There being no objection, SB 41 was reported from the Senate Judiciary Standing Committee.

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At-ease.

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

[1:50:19 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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JOHN SKIDMORE, Deputy Attorney General; Director, Criminal Division, Department of Law began reviewing the sectional analysis of SB 35. He turned to Section 1, which read as follows:

Section 1: Legislative Intent and Findings Expresses intent to overturn Williams v. State, 418 P.3d 870 (Alaska App. 2018) in regards to counting prior felonies when sentencing a person for a sexual felony and State, Department of Public Safety v. Doe, 425 P.

3d 115 (Alaska 2018) in regards to out-of-state sex offenders registering as a sex offender when they are present in Alaska.

He said that SB 35 would address sex crimes and sentencing associated with those crimes and Section 1 covers two different cases that the bill will address. The legislative intent is to overturn *Williams v. State*, a 2018 case related to presumptive sentencing for sex felonies. He briefly explained presumptive sentencing, such that if a person commits a felony offense, the sentencing is based on two factors. The first factor is the level of the offense itself, and whether it is classified a class A, B, or C felony and the second is the person's prior criminal history for other felonies, he said. Felonies for non-sex felonies must be in a certain timeframe; however, no time period exists to exclude sex felonies and all sex related felonies are counted.

MR. SKIDMORE said that sex felonies are considered slightly differently than other felonies and to determine the right felony range for sex felonies, an analysis is done to determine whether the prior felony was a sex felony or if it was a non-sex felony. The type of prior conviction will impact the sentencing range available to the court for this particular offense. Under *Williams v. State*, the court indicated the statutes were very clear about prior sex felonies. However, the court interpreted the statutes for prior non-sex felonies to mean that non-sex felonies are only counted if the felony falls within a 10-year range.

He stated that the original intent of the legislature was not to have a time limitation. He recapped that *Williams v. State* said that the old rule applies to non-sex felonies and SB 35 would change it so that time would not be applied. He referred to the legislative findings and intent, page 2, subsection (a), which read, " ... and the legislature does not now intend by enacting this Act, to impose any limitation on which previous convictions may be considered when imposing a sentence under AS 12.55.125(i)."

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MR. SKIDMORE referred to intent language on page 2, subsection (b), " ... to overturn the decision in *Williams v. State*, 418 P.3d 870 7 (Alaska App. 2018) to the extent that it held that, when imposing a sentence under 8 AS 12.55.125(i), prior felony convictions should not be considered if 10 or more years has elapsed between the date of the defendant's unconditional

discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony."

MR. SKIDMORE referred to page 2, to subsection (c), which read, "It is the intent of the legislature that all prior felony convictions be considered when imposing a sentence under AS 12.55.125(i) regardless of the age of those convictions." He said it makes it abundantly clear that it is the intent of the legislature to consider that all prior felony convictions be considered when imposing a sentence regardless of the age of the conviction.

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MR. SKIDMORE explained that the second part of the intent language relates to the sex offender registration laws. Currently, an offender is not required to register as a sex offender for an offense committed in another state unless the offense is similar to a felony sex offense in Alaska law. He said that offenders who come to Alaska are required to register as sex offenders in their home jurisdiction but are not required to register in Alaska for all sex crime. He cited [John Doe v. State of Alaska], which related to two instances that were interpreted as similar. However, the court did not find a similarity, and the persons were not required to register as sex offenders. The legislative intent [under subsection (d)(1)] identifies the purpose as a means to protect the public, which is the state's primary interest, by providing public information in a more accessible way to the public, he said.

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MR. SKIDMORE related that the intent language [in subsection (d)(2)] acknowledges the state's transient population means that sex offenders required to register in the state where they were convicted may relocate to Alaska for various reasons. He identified the transient population includes seasonal workers in the oil, fishing, or tourism industries, as well as other industries. He offered his belief that the state must be meticulous and broader in terms of its current laws. He said that [paragraph] 3, indicates that the narrow interpretation in [John Doe v. State of Alaska] hinders the state's ability to protect the public from sex offenders who come to this state since Alaska's registry does not require them to register. Finally, the intent language on page 2, subsection (e) relates to reciprocity, which states that a convicted offender who is registered in another state must register in Alaska.

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SENATOR MICCICHE asked for clarification on the reason why adopting reciprocity for sex registry is not sufficient and if the department has considered this approach.

MR. SKIDMORE answered that he has not considered reciprocity with all states, but he noted that the logistical problems of requiring offenders from all states must appear on Alaska's registry. Currently, Alaska wants to capture the information on sex offenders from other states who temporarily reside in Alaska in its sex offender registry. He reviewed the process, that the other state would inform the person leaving its jurisdiction to register in Alaska. He recalled that the Department of Public Safety (DPS) previously indicated that it receives inquiries from approximately 8-10 people a month if they would be required to register in Alaska. He offered to comment more on reciprocity if he could review proposed language.

[2:00:53 PM](#)

SENATOR MICCICHE offered his belief the state would need to track the sex offenders who are on other states' registries for compliance. He said that the more effective goal would be to have a national registry, or a gap will occur.

MR. SKIDMORE agreed a national registry would simplify matters. Currently, when an offender comes to Alaska from another state, the sex offender is required to contact Alaska's registry. However, the state does not actively monitor all other 49 states' registries to determine which offenders are coming to Alaska. Instead, Alaska relies on other states to inform the DPS that the offender is moving to Alaska. This will ensure that the person takes the appropriate action, he said. If offenders fail to register, Alaska can take the appropriate enforcement action, he advised.

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SENATOR MICCICHE related his understanding that sex offender registrants are required to do many things to meet compliance. He offered his belief that the state would still have the same proportion of non-compliance.

MR. SKIDMORE asked whether the question is that some people will not follow through with the requirements and he agreed some will not do so. The state attempts to track this through the notice it receives from the other jurisdiction that someone is coming to Alaska. He acknowledged that some people will slip in and when they are discovered the state prosecutes them, he said.

[2:03:14 PM](#)

SENATOR REINBOLD echoed the same concern. She wondered if some offenders simply get on a plane to Alaska and pose a threat to Alaskans.

MR. SKIDMORE deferred to the Department of Public Safety (DPS) to answer. He reiterated the reporting requirement. However, he said he cannot guarantee everyone adheres to the requirement to register as a sex offender in Alaska.

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SENATOR REINBOLD was unsure how this applies to foreigners coming in from other countries.

MR. SKIDMORE said he was unsure if other countries have sex offender registries.

SENATOR REINBOLD related that Germany is having difficulties. She expressed concern that some people from other countries come to Alaska to work in the commercial fishing industry.

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CHAIR HUGHES recalled a discussion that if SB 35 were to pass that this provision would not be retroactive and asked for further clarification.

MR. SKIDMORE explained the constitutional term, ex post facto, which means that the state cannot create a law to apply to activity that occurred prior to passage of the law and prosecute for it. He said he would have to more carefully review how this law would apply to people who moved to Alaska and still remain in Alaska.

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CHAIR HUGHES asked whether he would research how SB 35 will affect those individuals who moved to Alaska and remained in Alaska and if they can be included.

MR. SKIDMORE said that ex post facto analysis is not easy to perform, but he offered to try to do so. In response to Senator Reinbold, he said the difference between the two concepts is that one could say that the state wants someone to register, but the question is what enforcement mechanism will be used if the person does not do so. The registration itself is to provide for public safety and is not related to punishment. If someone were to fail to register, the person would be committing a crime and

would be subject to prosecution. He clarified that the distinction is the difference between stating an obligation and identifying the consequences if the person does not meet the obligation. He reiterated that the consequences cannot be applied retroactively.

SENATOR REINBOLD suggested the Constitution of the State of Alaska states that public safety is the most important thing. She expressed concern about public safety and the importance to enforce the sex offender registry.

CHAIR HUGHES acknowledged that Mr. Skidmore will review it and try to find a solution.

[2:09:05 PM](#)

SENATOR MICCICHE echoed that Mr. Skidmore understands the concern. He offered his belief that the long-term objective should be to institute a national sex offender registry.

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CHAIR HUGHES asked whether Mr. Skidmore would review Section 20 of the SB 35.

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MR. SKIDMORE referred to pages 13-15 of SB 35 and to Section 20 of the sectional analysis, which read as follows:

Section 20: Adds indecent viewing or production of a picture of a person under the age of 16 or indecent production of a picture of an adult to the list of registerable sex offenses. Also adds requirement to register as a sex offender in Alaska if required to register under the laws of another state.

He explained that Section 20 defines a sex offense under AS 12.63.100(6)(C)(xv). He referred to page 14, line 30 through page 15 line 1, which would add language in [sub-subparagraph (xv), as follows, "**(xv) AS 11.61.123 if the offender is subject to punishment under AS 11.61.123(f)(1);**" and to page 15, lines 11-12, which read: "**(E) an offense in which the person is required to register as a sex offender under the laws of another jurisdiction;**". He added that this is the provision that would require someone to register in Alaska if the offender is registered in another jurisdiction.

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CHAIR HUGHES said that in 2007, the Congress passed the Adam Walsh Child Protection and Safety Act, which required all U.S. jurisdictions to update their sex offender registry laws to conform to it. She recalled that the law required tiers, including a high-risk tier in which the offender would need to register for life and must report quarterly, whereas a tier 1 offender, the lowest level offender, would only be required to register for 15 years and report once a year. She asked how a tiered system would work in Alaska. She expressed concern that someone in another jurisdiction, who is required to be registered for life, could slip in and only be required to register for 15 years in Alaska.

MR. SKIDMORE reported that Alaska does have a tiered system of registry, including lifetime registry requirements. He acknowledged that the administration has been discussing how to differentiate between lifetime registry and 15-year registry requirements. He anticipated that this distinction would likely be established by regulation.

CHAIR HUGHES asked Mr. Skidmore to report back to the committee with any future updates on this issue since the committee wants the highest level of public protection. She further asked if a system is in place for states to communicate when sex offenders relocate to Alaska.

MR. SKIDMORE deferred to Ms. Monfreda.

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KATHRYN MONFREDA, Chief, Criminal Records & Identification Bureau, Department of Public Safety (DPS), stated that manages the Sex Offender Registry in Alaska. Most states have a law that requires them to notify another state when an offender is relocating to that state. She said two mechanisms to communicate exist, either via message to the National Crime Information Center (NCIC), or via communication established by the federal Sex Offender Registration and Notification Act (SORNA). She explained that information and photographs can also be added.

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CHAIR HUGHES asked for further clarification on the follow-up the DPS uses.

MS. MONFREDA said if the SORNA portal is used it provides the date the person is expected to arrive. The state tracks the information and releases names of anyone who fails to comply to

the Alaska State Troopers and U.S. Marshals to locate and enforce.

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CHAIR HUGHES asked whether Alaska has a law requiring sex offenders leaving Alaska to report prior to their departure.

MS. MONFREDA said that AS 12.63 requires an offender to notify the state when they move to another location in Alaska or if they move out of state.

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SENATOR REINBOLD asked whether offenders who are on vacation or who work temporary jobs in Alaska must register on the sex offender registry.

MS. MONFREDA said the law is silent for tourists. The department has a form to allow offenders to inform the state when and where they will be traveling. However, if the offender is traveling via a cruise ship, which is often in and out of ports on the same day, the ship has often sailed prior to notification being received.

SENATOR REINBOLD offered her belief that this might be a significant loophole.

MS. MONFREDA responded that people working in Alaska, including fishermen or North Slope workers are required to register in Alaska. In further response to Senator Reinbold, she said that the law requires sex offenders must register if they are going to live, work, or go to school in Alaska, but it is silent on travel.

SENATOR REINBOLD said Alaska has several million visitors traveling to Alaska. She asked whether the department has any recommendations and if the law applies to international travelers.

MS. MONFREDA answered that the statute would need to be changed to specifically give instructions to sex offenders who are tourists. In terms of international sex offenders, the department has made some inquiries on out of country registries; however, Alaska has had difficulty in obtaining documentation to evaluate an offender's requirement to register.

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CHAIR HUGHES asked whether other states have requirements for visitors who are sex offenders to register in their states.

MS. MONFREDA answered yes, that some do, but each state's requirement is slightly different. She pointed out that a national law exists, and Alaska has been working towards compliance, which includes tiering. She said that some states comply partially, including Alaska.

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SENATOR REINBOLD asked her to provide any model legislation related to visitors who are sex offenders because Alaska has between 1-2 million visitors each year who vacation in the state. She emphasized that Alaska ranks number 1 for sexual abuse in the nation. She asked whether Ms. Monfreda could identify how many sex offenders were nonresidents.

MS. MONFREDA answered that she did not have an exact count, but her staff indicates that the state has approximately 15 new registrants each per month and 5 of the 15 were sex offenders who offended in states outside of Alaska.

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SENATOR MICCICHE asked if a person who is on Iowa's sex offender registry but subsequently moves to Alaska, whether the offender must continue to report to Iowa.

MS. MONFREDA said it is dependent on the state. In Alaska once an offender leaves Alaska, the offender is removed from Alaska's sex offender registry.

SENATOR MICCICHE remarked that if a person chose carefully, the person could fall off registries, unless continuous reporting occurs.

MS. MONFREDA answered yes, that it would be possible for some people to do so by moving from state to state.

CHAIR HUGHES asked whether it is possible to retain the information on a sex offender who leaves Alaska and place the offender in dormant status on the list.

MS. MONFREDA answered that Alaska does not destroy the sex offender's record and it would retain the information.

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SENATOR MICCICHE asked the administration to comment on a possible amendment that would require a person to stay on the registry after the person leaves the state in order for the state to lead the way on reporting.

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MR. SKIDMORE welcomed specific language and offered to consult with the other departments before he could give a definitive position on it. He said he understood the concern and conceptually that it makes sense.

SENATOR REINBOLD said that she supports the concept. She said one reason she thinks that keeping sex offenders on a registry is very important is because people visit Alaska, leave for a while, and then return to Alaska. She remarked that if Governor Dunleavy wants to make Alaska safe, that that state must take the lead and do things differently.

CHAIR HUGHES said that these matters are important. She said that Alaskans are eager to have these things resolved, but the committee needs to take the time to get it right.

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MR. SKIDMORE turned to Section 2-3 of the sectional analysis, which read as follows:

Sections 2-3: Eliminates marriage as a defense to sexual assault in all cases except when both parties consent and it is the nature of the relationship that is criminalized (i.e. probation officer/probationer, peace officer/person in custody, Division of Juvenile Justice Officer/person 18 or 19 and under the jurisdiction of the Division of Juvenile Justice).

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MR. SKIDMORE stated that Section 2 references a provision of the sexual assault statutes in [AS 11.41.410- 11.41.427], that it is not a defense if the victim was the legal spouse of the defendant. Section 3 would establish that it will still remain a defense if both parties consent [under AS 41.425 (a)(2)-(5)]. For example, if one person is a probation officer and the other person is on probation, under current law the parties could not engage in sexual activity. However, it is a legal defense if the parties are married, so it would be acceptable.

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CHAIR HUGHES related her understanding that under current law marriage can be used as a defense. She asked for further clarification on how this would apply to a correctional officer who supervises a person, but the parties later marry. She wanted to clarify the misconception that marriage is a defense if a sexual assault occurs.

MR. SKIDMORE answered that marriage is not a defense if the victim does not consent and a sexual assault occurs. He related a scenario in which two adults are married, with one person serving as a probation officer and the other is a probationer. If the probation officer were charged with sexual assault and the probationer did not consent and was sexually assaulted, the probation officer could be charged under another provision in law that indicates sexual penetration or sexual contact without consent is a criminal offense. Marriage would not be a defense under those criminal provisions, he said.

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MR. SKIDMORE referred to page 3 to Sections 4-6 of the sectional analysis, which read as follows:

Sections 4-6: Removes the word "online" from the crime of "online enticement" criminalizing any enticement of a minor regardless of whether the enticement occurs "online."

MR. SKIDMORE said these provisions relate to online enticement enacted to address crimes in which an individual was trying to entice a young person to engage in sexual activity. This statute was designed to ensure that conduct was criminalized. However, these provisions seem to be restricted only to online enticement and this broadens it to all other circumstances, he said.

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MR. SKIDMORE referred to Section 7 of the sectional analysis, which read as follows:

Section 7: Removes the word "semen" from the crime of harassment in the first degree to conform with change made in Section 13.

MR. SKIDMORE said that this provision references back to the Justin Schneider case that the committee previously held extensive discussions on during its hearings on SB 12.

MR. SKIDMORE turned to Section 8 of the sectional analysis, which read as follows:

Section 8: Adds repeatedly sending unwanted images of genitalia to the crime of harassment in the second degree.

MR. SKIDMORE said Section 8 is found on page 4 of SB 35. Some individuals think courtship involves sending inappropriate images, he said. He said that the first time someone sends these images is not criminalized. However, if the person receiving the images indicates he/she is not interested in receiving them, but the person continues to send the images, it would be considered harassment and enforcement action could be taken.

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CHAIR HUGHES asked whether the victim must specifically indicate not to send the images before this law could be applied.

MR. SKIDMORE read a portion of proposed Sec.8. AS 11.61.120, which read as follows:

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

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

MR. SKIDMORE explained that that the prosecutor must prove sending the images is done with the intent to harass or annoy and proving intent would be difficult. However, if the person requested the person to not to send any other images, it would allow prosecutors to indicate the offender was told not to send more images, but the person continued to do so. He acknowledged that he could not guarantee the person would be prosecuted, but it would get the prosecutor closer to proving an intent to annoy or harass the victim.

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SENATOR REINBOLD related her understanding that about 25 percent of kids send inappropriate pictures to one another. She described some activity that occurs when photos have been shared while dating, but when the relationship ends one of the parties forwards the images to other friends. She asked for further

clarification on how that activity would be addressed. She noted that this is a significant problem in high schools and some middle schools in her district.

MR. SKIDMORE explained that this language reads, "with intent to harass or annoy another person," and he reread paragraph (8). He said that this language is designed to deal with the circumstance in which one person is receiving images and the person sending them intends to harass or annoy a person. He said he is very familiar with the concept she is describing, but he was unsure whether this provision would address this issue.

CHAIR HUGHES asked whether a provision in law exists that would address the conduct described.

MR. SKIDMORE answered that it depends on individual circumstances of the case. He indicated he could not specifically provide an answer today.

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SENATOR REINBOLD suggested potential language changes to add "embarrass" and indicated the crime should apply the first time the activity occurs, and it should not require that a person indicate not to send the images. She offered her belief that this language needs to be stricter to curb this activity.

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SENATOR MICCICHE asked whether Section 8, 11.61.120 (a)(6) would specifically address that issue. The language read as follows:

(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]

MR. SKIDMORE agreed that [paragraph] (6) would apply, however, it also depends on the specific facts of the case. In some instances, the images would fall under the crime of child pornography, but the prosecutor would need to evaluate the images. He reiterated that it would depend on the specific facts of the case. He offered to review applicable statutes to determine if the conduct is addressed. He reiterated that [paragraph] (6) seems to address a number of situations previously described.

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SENATOR REINBOLD related a scenario in which teens between the ages 13-17 were in a relationship, take photos, and forward them [to each other], but the photos are subsequently forwarded to other people. She asked whether the law would address that conduct.

[2:39:18 PM](#)

SENATOR MICCICHE referred to AS 11.61.116(a), which would specifically apply to that conduct.

MR. SKIDMORE directed attention to AS 11.61.116(a), "Sending an explicit image of a minor, which read:

(a) A person commits the offense of sending an explicit image of a minor if the person, with intent to annoy or humiliate another person, distributes an electronic photograph or video that depicts the genitals, anus, or female breast of that other person taken when that person was a minor under 16 years of age.

MR. SKIDMORE said the statute goes on to describe some other definitions and the level of the offense. He agreed that this statute does appear to address the conduct.

[2:40:36 PM](#)

SENATOR REINBOLD asked for further clarification whether this statute referred to an adult sending the explicit image or if it applied to a minor who is sending images to another minor. She further asked what role school administrators have to address this conduct. She reiterated that this is a common practice from middle school to high school students. She asked whether administrators or other friends who become aware of this conduct would have a responsibility to report it.

MR. SKIDMORE answered that this does not differentiate between an image being sent to an adult or a minor. The crime becomes a crime when an image "of a minor" is sent. He said he was unsure of any obligation to report.

[2:41:34 PM](#)

SENATOR REINBOLD asked what crime the person can be charged for this conduct and whether it would be a misdemeanor.

MR. SKIDMORE answered that the penalty is a class B or class A misdemeanor.

[2:42:01 PM](#)

SENATOR MICCICHE referred to existing statutory language that covers sending an explicit image of a minor:

(1) a class B misdemeanor if the person distributes the image to another person;

(2) a class A misdemeanor if the person distributes the image to an Internet website that is accessible to the public.

MR. SKIDMORE answered that is correct.

SENATOR REINBOLD asked whether schools have a duty to report.

[2:42:40 PM](#)

SENATOR MICCICHE recalled that he was engaged in the enabling legislation in 2011 when this type of activity was becoming prevalent. He offered his belief that a class A misdemeanor is not nearly strict enough for information distributed on an Internet website. He said he thinks this type of activity is reportable since nearly anything related to materials distributed in schools is reportable. However, he suggested it may need further research.

CHAIR HUGHES offered to consult with the Department of Education and Early Development (DEED).

[2:43:31 PM](#)

SENATOR MICCICHE stated that the statute would apply to someone who is age 16 and under, which would be classified as a class A or class B misdemeanor, depending on how the images are distributed.

He said that under [paragraph (7), harassment in the first degree would apply to someone who, " ... sends or publishes an electronic communication that insults, taunts, challenges, or intimidates a person under 18 ... " He stated that paragraph (6) in Section 8 would appear to cover anyone. He asked which penalty is more serious for harassment and if class A or B misdemeanors were adequate classifications.

MR. SKIDMORE said that harassment in the second degree is classified as a class B misdemeanor. He related that in [AS 11.61.116] would be either a class A or class B misdemeanor.

[2:44:30 PM](#)

MR. SKIDMORE said that Sections 9-12 all relate to the same crime. First, these provisions revise the statutes for clarity. Second, these sections review the penalties for conduct that is defined as a sex crime but is not treated as such in current statute, and it identifies the necessary conforming changes.

MR. SKIDMORE turned to the chart in members' packets, titled "Indecent Viewing or Production." He said that "viewing" is different than "production." The conduct in these provisions relate to viewing or producing a photo of the private exposure of genitals, anus, or a female breast. It is the "viewing" or "production" of that private exposure that is under consideration. He said that the crime is broken out further depending on whether the victim is a child or an adult.

MR. SKIDMORE paraphrased Sections 9-12 of the sectional analysis, which read:

Section 9: Separates production from viewing in the crime of indecent viewing or production of a picture.

Section 10: Conforming amendment. Changes the word "photography" to "production of pictures."

Section 11: Conforming amendment. Changes the word "photography" to "production of pictures."

Section 12: Classification section. Makes viewing or production of a picture of a person under the age of 16 a class C felony (which will be sentenced as a sexual felony, see sec. 15). Production of a picture of an adult is also a class C felony. Viewing of a picture of an adult is a class A misdemeanor.

[2:46:49 PM](#)

MR. SKIDMORE related that Section 12 gets to the heart of what the bill intends to accomplish, which is increased sentencing. Under current law when the victim is a child, the crime is punishable as a class C felony offense, but not as a sex offense. If victim is an adult the crime is punishable as a class A misdemeanor, but not as a sex offense.

He explained that the proposed language in Section 12 [AS 11.61.123(f)] would increase penalties for "viewing" a child for this crime to a class C sex felony. Crimes against children are subject to greater sentencing and additional requirements for sex offender registration and treatment.

He said that "production" of a picture would also be a class C sexual felony when the victim is a child, and again be subject to the same type of increased penalties.

MR. SKIDMORE said that shifting to an adult, the "viewing" of explicit pictures remains a class A misdemeanor, but "production" of the explicit picture of an adult would be elevated to a class C felony. This crime is not categorized as a sexual felony with a much higher classification range since the concept is to try to provide greater punishment for the protection of children and still have significant punishment. It would also require offenders to register as sex offenders, even if the "production" of a picture is of an adult. However, greater sentencing would not be associated with it, he said. He related that this provision relates to the taking of the picture. He noted that what happens to the picture and other penalties that apply has been previously discussed.

[2:48:53 PM](#)

CHAIR HUGHES offered her belief that if someone produces an explicit image or video of a child in a sexual way, that it seems more serious than indecent viewing of a child. She suggested that forcing a child to do different types of things seems like a more serious offense.

MR. SKIDMORE said that "production" cases are situations in which a person has installed a small camera in a bathroom or a locker room capturing someone using the facilities, including using the toilet, taking a shower, or changing clothes. These provisions would not capture someone engaged in sexual activity. The sexual activity would fall under child pornography, which carries a much higher penalty than this conduct. He recapped that it provides a more tiered approach beginning with exposure, but not engaging in sexual activity.

[2:50:23 PM](#)

CHAIR HUGHES asked for further clarification on "production." She offered her belief that the person capturing these explicit images on film would be indecent viewing, but the person could capture it on film. If so, the intent would be to use it at a later date. She suggested that it seems as though the "production" should be considered at a higher level.

MR. SKIDMORE said that she is correct. He related a crime that occurred a number of years ago, in which a man installed a small camera in a smoke detector in the changing room at a local

swimming pool. That was connected to a closed-circuit television, which could have been watched live, but was also recorded. The materials were discovered prior to the recordings being viewed and the person was prosecuted and convicted. In that context it captured private exposure.

He agreed that penalties were the same for "viewing" and "production." However, the courts would also have a range of penalties available between 2-12 years. The court would have discretion to consider the facts and circumstances of the case. He said both instances consist of a violation of privacy for an individual. He acknowledged that the committee many wish to elevate one of the crimes, which is within its prerogative. He related that "viewing" and "production" of explicit images are currently dealt with on exactly the same level for a child and for an adult. This bill would substantially increase the penalties for a child victim and increase the penalties for "production" involving an adult victim. It would also require offenders to register, he said. The department would be willing to discuss any amendments the committee would like to consider.

[2:53:35 PM](#)

SENATOR MICCICHE asked for further clarification on the penalty provision on the chart that states "viewing" explicit pictures would be a class A misdemeanor with 0-30 days and a one year maximum. It further lists the penalty for "production" of explicit images of a child as a class C sexual felony, with a presumptive penalty range between 2-12 years and with aggravators could reach a maximum of 99 years. In addition, the offender must register as a sex offender, he said.

MR. SKIDMORE answered yes, that the penalty was increased to a class C sex felony with a maximum of 99 years, and the presumptive range for a first offense is 2-12 years. Further, with prior offenses the presumptive range would be higher, he said. He acknowledged that aggravators would give the court greater discretion.

SENATOR MICCICHE offered his support for the dramatic increase in penalties for "production" of explicit images. He turned to the knowledge and consent provision, on page 5, line 9, of SB 35, which read:

(A) the parent or guardian of the person shown in the picture, if the person shown is under 16 years of age;

(B) the person shown in the picture, if the person shown is at least 13 years of age.

He related his understanding that a parent or guardian could give permission for someone to be shown in the explicit picture. Further, the parent and the child must also give permission for explicit pictures under 13 years of age. He asked for clarification why someone would give permission for a child under the age of 16 to be photographed in such a way. He said that it seems absurd.

MR. SKIDMORE provided an example, such that a parent giving a newborn baby a bath who recorded the activity with a picture or a video. The potential exists that the photograph or video, which is intended to be viewed within the family and is not criminal in nature would be captured by the language.

[2:56:09 PM](#)

MR. SKIDMORE acknowledged his point, which is what other circumstances would arise that explicit photographs would be appropriate. He conceded that the statute for a child under the age of 16 would assume that the parents are exercising appropriate discretion about what is best for their child, although he agreed that sometimes that may not be the case, but until and unless the court terminated someone's parental rights, the state will trust the parents to make the best decisions for their children.

[2:56:58 PM](#)

SENATOR REINBOLD expressed concern about "viewing" and "production." She asked how this language would address students receiving texts that they do not want, but who are afraid to stand up for themselves. She said she would cover a few scenarios. For example, what happens if people obtain popups on their computers, or e-mails with images they are not interested in receiving. She asked for further clarification if the law acknowledges these types of problems. She said she was shocked that the state has only prosecuted one case of indecent viewing.

MR. SKIDMORE recalled one case that was taken to the court of appeals, who issued an opinion and published it. He recalled that three or four other cases were considered as MOJ's (memorandum of judgment], which are unpublished cases that are from the court of appeals. He added that many cases never make it to the court of appeals. His comment was related to the cases that make it to the court of appeals, and not the number of prosecutions, he said.

[2:58:56 PM](#)

SENATOR REINBOLD directed attention to the slide to "production" of explicit images as a class C sexual felony. She asked whether this activity would include taking pictures and forwarding them to friends. She asked if the person who received the unwanted text [photo] could be charged and need to be registered as a sex offender.

MR. SKIDMORE answered no. He said that indecent "viewing" or "production" relates to the "production" of the explicit photograph, and not what happens to the photograph since other statutes relate to that aspect and activity. In terms of the person receiving the explicit photograph and what type of penalties would result, this goes back to the concept of "mens rea" and "actus reus" that must apply to any crime. That would mean that the person would need to have the mental knowledge of wrongdoing and proof of the physical act of the crime itself. The person who receives the explicit photo must have the mental state of intent of viewing the picture as a criminal act. He said that both concepts must coexist. However, a person who opens an e-mail or text and does not want to see the material has not committed a crime.

[3:01:01 PM](#)

SENATOR REINBOLD said that it seemed subjective. She wondered how this might apply if a teenager gets a photo, thinks it is funny, and forwards it to another person. She said that she thinks that is a common practice.

MR. SKIDMORE reiterated that the taking of the photo or viewing it are very different crimes. He said what is being amended in SB 35 does not apply.

[3:01:46 PM](#)

SENATOR REINBOLD asked whether that activity should be addressed. She reiterated that this activity is common practice in schools, and it is not appropriate. She said it has caused significant trauma. She said that people do not know how to address it. At the very least, she said she thinks that mandatory reporting requirements should be instituted if the state wants to address these types of issues.

[3:02:53 PM](#)

CHAIR HUGHES remarked that pornography is prevalent. She said the average age for seeing images is in the second and third grade since many children have cell phones. She asked whether

there is a correlation in the increased availability of pornography and an increase in sexual crimes in Alaska. She could not recall the year that smart phones came out.

MR. SKIDMORE said he was unsure. He stated that sex crime statistics have been increasing. However, he was unsure if any causation or correlation with smart phones occurs. He acknowledged that it is a concern and steps should be taken, but he was not prepared to engage in that discussion. Some other laws address this issue. He offered to review them to better be able to hold a discussion.

CHAIR HUGHES asked if sex crimes involving minors and by minors has increased since smart phones have become mainstream.

[3:06:08 PM](#)

SENATOR MICCICHE suggested that a chart showing statutes related to sexual crimes would show that a number of issues have been addressed in different sections of law. He offered his belief that some gaps exist and those could be discussed outside of the committee. He said that Mr. Skidmore is an amazing resource. He asked whether Mr. Skidmore could develop a cross-reference chart, which would be very helpful.

[SB 35 was held in committee.]

[3:06:45 PM](#)

CHAIR HUGHES reviewed upcoming announcements.

[3:07:16 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:07 p.m.