

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 13, 2019

1:33 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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 & HELD

PREVIOUS COMMITTEE ACTION

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)
02/15/19 (S) Heard & Held
02/15/19 (S) MINUTE(JUD)
02/18/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/18/19 (S) Heard & Held
02/18/19 (S) MINUTE(JUD)
02/22/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/22/19 (S) -- MEETING CANCELED --
02/25/19 (S) JUD WAIVED PUBLIC HEARING NOTICE,RULE
23
02/28/19 (S) JUD AT 5:00 PM BELTZ 105 (TSBldg)
02/28/19 (S) -- MEETING CANCELED --
03/04/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/04/19 (S) Scheduled but Not Heard
03/08/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/08/19 (S) Scheduled but Not Heard
03/13/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

BUDDY WHITT, Staff
Senator Shelley Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented a sectional analysis for SB 35 on behalf of the Chair, Senator Shelley Hughes.

REGINA LARGENT, Staff
Senator Shelley Hughes
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on behalf of the Chair, Senator Shelley Hughes.

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

POSITION STATEMENT: Answered questions during the hearing on SB 35.

MATT DAVIDSON, Program Officer
Division of Juvenile Justice (DJJ)
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on SB 35.

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

POSITION STATEMENT: Answered questions during the hearing on SB 35.

ACTION NARRATIVE

[1:33:19 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, Kiehl, Micciche, Shower, and Chair Hughes.

SB 35-CRIMES;SEX CRIMES;SENTENCING; PAROLE

[1:33:56 PM](#)

CHAIR HUGHES announced that the only 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."

[1:34:07 PM](#)

CHAIR HUGHES made opening remarks.

[1:34:21 PM](#)

SENATOR REINBOLD moved to adopt the proposed committee substitute to SB 35, labeled 31-GS1873\U, Radford, 3/12/19, Version U, as the working document of the committee.

[1:34:30 PM](#)

CHAIR HUGHES objected for the purpose of discussion.

[1:35:14 PM](#)

REGINA LARGENT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, introduced herself.

[1:35:17 PM](#)

BUDDY WHITT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, expressed thanks to members for their work on the proposed changes to SB 35. He directed attention to SB 35, Section 7 of Version A, AS 11.61.118(a), related to harassment in the first degree and Section 13, AS 11.81.900(b) regarding sexual contact, which have been removed from the bill. Those provisions were placed in a bill sponsored by Senator Micciche, currently before the Senate Finance Standing Committee.

MR. WHITT reviewed the changes in the proposed committee substitute for SB 35, Version U, beginning with the title change.

Explanation of Changes in Committee Substitute for
CSSB35

Version A to U

Title Changes: The following has been added to the title to the bill in order to conform to added provisions of the CS;

- relating to sexual abuse of a minor
- relating to indecent exposure
- relating to the distribution of child pornography
- relating to automated victim notification system
- relating to the definition of 'sex offense'

[1:36:49 PM](#)

MR. WHITT explained that corrections for small drafting errors along with some substantive amendments were requested of Legislative Legal Services and will be forthcoming.

CHAIR HUGHES said she hoped to take up amendments at a subsequent hearing on SB 35.

[1:37:41 PM](#)

MR. WHITT turned to Section 1.

Section 1: Conforming changes to clarify references with the new work draft and references to previous legislation in order to clarify legislative intent.

MR. WHITT said Section 1 would require convicted offenders listed on sex registries in other jurisdictions to register in Alaska.

[1:38:08 PM](#)

MR. WHITT turned to Section 7.

Section 7: Amends AS 11.41.458(a) to make masturbation in front of someone under the age of 16 the crime of indecent exposure in the first degree. (Conforming language will add this as a registerable sex offense) (Page 3, Line 31 through Page 4, Line 11)

MR. WHITT reviewed the forthcoming change to this section. He directed attention to page 4, lines 1-11 of SB 35, Version U. Chair Hughes and some members wanted to make the offense that occurs in front of a person under 16 years of age a stricter penalty. The penalty is currently a class C felony and would be increased to a class B felony.

[1:39:24 PM](#)

SENATOR KIEHL related his understanding that an offender who exposes and masturbates in front of a victim who is under 16 years of age, knowing the victim can see the perpetrator, would be guilty of a sex felony as opposed to a sex misdemeanor crime.

MS. LARGENT agreed that is correct, before an unwilling person.

SENATOR KIEHL related his understanding that this provision would include an exhibitionist in a hotel window, which is clearly inappropriate and criminal, but it would be a sex felony crime instead of a sex misdemeanor crime.

MS. LARGENT said that is correct.

[1:40:36 PM](#)

MR. WHITT directed attention to page 5, lines 3-20, Section 9, to a small change in the wording to ensure that indecent viewing or a "peeping Tom" is covered under the criminal statutes. He deferred to the Department of Law to further explain.

CHAIR HUGHES asked staff to further clarify.

[1:41:37 PM](#)

MS. LARGENT explained that the Department of Law and Senator Reinbold pointed out some ambiguity in this provision. After

meeting with the DOL and the legislative bill drafter. Section 9 contains the cleanup language, she said.

MR. WHITT, in response to Chair Hughes, said small conforming language changes were made in Section 9 to ensure that "peeping Tom" offenders were not being protected. It was not listed in the explanation of changes document because it is not a substantive change, but he would add it.

CHAIR HUGHES agreed the document should reflect the conforming change to Section 9.

[1:42:44 PM](#)

SENATOR KIEHL asked whether the "peeping Tom" penalty is at the same level as viewing a picture but producing the picture would still be at a higher penalty.

MR. WHITT deferred to the Department of Law but said that was the sponsor's intent.

[1:43:11 PM](#)

SENATOR REINBOLD clarified that the language seemed to legalize "peeping Tom" activities and the intent is to close that loophole.

MR. WHITT confirmed that the small language change fixes it.

[1:43:45 PM](#)

MR. WHITT read Section 12:

Section 12: Amends AS 11.61.123(f) to indecent viewing or production of a picture a class B felony, when the person capturing the picture is an adult and the picture being captured of a minor. (Page 5, Line 31 through Page 6, Line 10)

CHAIR HUGHES explained that prior to this change in Section 12 of Version U, to page 6, line 3-5, the penalties for viewing and production were both a class C felony. However, production is more serious since it might include installing cameras or creating videos rather than just looking in a window. Changes in Section 12 would increase the penalty for production. She pointed out that if victim is an adult, the penalties are at two levels, but the viewing and production of the picture for a minor was at the same level. She explained that in the drafting multiple things were bumped up.

[1:45:16 PM](#)

SENATOR MICCICHE referred to page 5 of Version U, Section 9, and asked why this language seems to allow youth ages 13-16 to give consent to be photographed, including the private exposure parts on [page 5], line 7.

MR. WHITT and Ms. Largent deferred to the Department of Law.

[1:46:53 PM](#)

KACI SCHROEDER, Assistant Attorney General, Central Office, Criminal Division, Department of Law, Juneau, said she was not privy to discussions between members and the Chair. She asked whether it was his understanding those sections would be changed.

SENATOR MICCICHE asked whether youth between the ages of 13-16 could give consent for a photograph to be viewed or produced of them, including the private exposure of items listed on page 5, line 7 [the genitals, anus, or female breast of another person].

MS. SCHROEDER answered that a youth between the ages of 13-16 would need to give consent and have parental consent from both parents. That is the way SB 35 is currently drafted, she said. She said that if members want to change it that it is a policy call that they can make.

SENATOR MICCICHE asked said that a 13-year-old cannot consent to having sex since it would be considered rape. Further, parents cannot give consent for a child between the ages of 13-16 to have sex. She asked for further clarification on the reason that this would be different for an indecent private exposure.

MS. SCHROEDER clarified that this is not involving pornography or a person engaging in a lewd act. This pertains to private exposure. She advised that the delineations on who can give consent was made by the legislature a long time ago. She said it is open for discussion if these need to be revisited.

SENATOR MICCICHE said he was trying to understand when that activity would occur.

MS. SCHROEDER explained that sometimes youth between the ages of 13-16 agree to that type of conduct. They may be in a relationship with someone who is older, but the safeguard would be that they also need parental consen. She said that these are

older children and even if the parents give consent, they may want to have say over what is happening with their own bodies.

CHAIR HUGHES said she was struggling to understand when this would be sanctioned, perhaps for art purposes.

[1:49:48 PM](#)

SENATOR MICCICHE answered that perhaps it would apply to a medical journal. He said that parents should not have children under their care who could subject their children to some pretty horrible things. He offered his belief that this section requires additional conversation. He maintained he is trying to understand an application where it would be a really good idea to give consent.

MS. SCHROEDER said that the department has had a case where a 14-year-old wanted to have those types of photos, but the parents did not consent. She offered that for younger children, under 13 years of age, it pertained to situations where parents may wish to take photographs of their baby in a bathtub.

[1:50:59 PM](#)

CHAIR HUGHES clarified that she would not find it appropriate for explicit photographs of children between the ages of 13-16 but perhaps for medical purposes.

[1:51:22 PM](#)

SENATOR KIEHL said his question was on Section 12. He asked Mr. Whitt to review the section.

[1:51:54 PM](#)

MR. WHITT reviewed Section 12.

Section 12: Amends AS 11.61.123(f) to make indecent viewing or production of a picture a class B felony, when the person capturing the picture is an adult and the picture being captured is of a minor. (Page 5, Line 31 through Page 6, Line 10)

SENATOR KIEHL related his understanding that this would pertain to a minor 16 years of age and under and not someone who is 17 years old.

MR. WHITT said that was his interpretation.

[1:53:05 PM](#)

SENATOR REINBOLD asked the Department of Law to weigh in on the class B felony in Sections 7 and 12. She asked how this compares with other class B felonies and if the penalties are appropriate for the conduct.

MS. SCHROEDER asked for further clarification if this section was one that had drafting issues.

CHAIR HUGHES asked whether this would go from a class C felony to a class B felony.

MR. WHITT explained that the purpose and intent of Section 7 is that the penalties for indecent exposure in the first degree for a victim who is a minor, 16 years of age and under, would be different than when the victim is over 16 years of age. This would differentiate between victims who are minors and adult victims. He said that Chair Hughes requested that the crime involving a minor should be classified as a class B felony. He anticipated this change would be included in a forthcoming amendment.

SENATOR REINBOLD said it causes her a lot of pause. For example, if the activity was between two 15-year-olds who are minors. She asked for further clarification on whether the crime would be consistent with other class B felonies.

MS. SCHROEDER answered that if the legislature wants to differentiate between penalties for crimes involving children and those involving adults, it would be is a policy call. She offered her belief that this particular suggestion does not seem to be in "left field."

[1:56:29 PM](#)

SENATOR REINBOLD asked whether the penalty provisions in Sections 7 and 12 that increase from a class C felony to a class B felony were appropriate penalties for the crimes.

MS. SCHROEDER said that would be the same answer. If the legislature would like to elevate charges for crimes against children, it is a policy call.

CHAIR HUGHES clarified that a difference exists for the crime of viewing and of production. She agreed that those sections still need additional work.

SENATOR REINBOLD said she was contemplating the penalties for actual abuse and ones in which the perpetrator does not touch the victims at all.

[1:57:59 PM](#)

CHAIR HUGHES asked Ms. Schroeder to review how conduct between two 15-year-old minors is different from the conduct when the perpetrator is a 30-year-old adult and the victim is a 15-year-old minor.

MS. SCHROEDER said that when two minors under the ages of 18 years of age engage in consensual behavior, it would be viewed differently. The department would exercise its prosecutorial discretion differently than if the conduct is between a 30-year-old and a 15-year-old minor. She said it was important to keep in mind that unless the person is waived into adult court, which happens infrequently, the Division of Juvenile Justice (DJJ) would handle these cases. She deferred to the DJJ to further explain.

SENATOR REINBOLD asked for clarification on the intent of the penalties in this section.

CHAIR HUGHES responded that the intent is for the penalty for the crime of production of a photograph of a minor to be a class B felony.

SENATOR REINBOLD asked for the penalties in Section 7.

[1:59:17 PM](#)

MR. WHITT reiterated that forthcoming language changes would make the penalty for indecent exposure in the first degree when the victim is under the age of 16 years of age and the offender is an adult a class C felony.

SENATOR REINBOLD asked whether 18 years of age is considered an adult.

MS. SCHROEDER answered that someone 18 years of age or above is an adult.

[1:59:56 PM](#)

SENATOR MICCICHE asked how that relates to the age differences built into the penalties for statutory rape. For example, if an adult 18 years of age is independent from these statutes.

MS. SCHROEDER responded that those age differences are independent of this statute.

2:00:48 PM

SENATOR SHOWER offered his belief that the age groupings are confusing, such that some provisions apply to victims ages 13-16, but 18 years and older refers to an adult. He asked if it could be rephrased.

MS. SCHROEDER responded that the underlying statute is very confusing. The Department of Law tried to make improvements and the Legislative Legal Services has made improvements. However, additional improvements could be made, she said. The department has reverted to the use of minor in this section, which is someone under the age of 18. She said that this is the intent of the Department of Law, but she was unsure if it meshes with the committee's intent. She explained that it would be a registerable sex offense if someone committed this offense and the victim is a minor or someone under 18 years old. She said the committee could make other age delineations as a matter of policy.

SENATOR REINBOLD remarked that any clarification on the bill would be helpful.

2:02:33 PM

MATT DAVIDSON, Program Officer, Division of Juvenile Justice (DJJ), Department of Health and Social Services (DHSS), Juneau, stated that he could speak generally on questions about juvenile offenders. He explained that juveniles 17 years of age or younger are referred to DJJ. The division handles these cases based upon their risk and needs and the risk of them reoffending. He said that sentencing provisions do not apply, that the division would make its own determination on penalties, whether the penalty would be incarceration, probation, or treatment. The division said that indecent viewing and production are crimes that juveniles commit on each other. He said that kids take pictures of each other in locker rooms and other locations. These types of offenses are often referred to the DJJ and criminal charges are filed by the police.

2:04:13 PM

SENATOR REINBOLD asked whether the crimes listed in Section 7 should be class B felonies.

MR. DAVIDSON asked for further clarification.

MR. WHITT explained that in Section 7 an adult convicted of indecent exposure in the first degree by victimizing a minor under the age of 16 would be guilty of a class B felony. However, if two minors under the ages of 16 engage in consensual conduct, the class B penalty would not apply to them.

CHAIR HUGHES related her understanding that under current law an adult convicted of indecent exposure in the first degree for victimizing a minor under the age of 16 would be guilty of a class C felony.

MR. DAVIDSON said that if both the offender and the victim were juveniles it would stay in the juvenile system. He said that earlier Ms. Schroeder mentioned an automatic waiver. These are juveniles who have been waived to the adult system under AS 47.12.030 due to the severity of the crimes. He said that statute lists offenses that tend to be the more severe unclassified felonies, including arson, sexual assault, and other high-level crimes that juveniles ages 16 and over engage in, but the class B felonies are not typically waived to adult court.

[2:06:44 PM](#)

SENATOR REINBOLD asked whether it is the committee's intention to make the penalty for an adult, an 18-year-old, who masturbates in front of a juvenile under the age of 16 years old a class B felony. She asked whether he would support prosecuting that crime as a class B felony.

MR. DAVIDSON answered that he does not have an opinion on it. He said it would be a policy call by the legislature. Further, it would not be a juvenile matter if the offender is 18 years old.

[2:07:32 PM](#)

SENATOR MICCICHE said he was unsure of when an inappropriate photo becomes pornography. He wondered how parents could give permission to a 13-year-old to produce an inappropriate photo. It said he was struggling with those sections of the bill.

[2:08:33 PM](#)

MS. SCHROEDER said that the conduct referred to as indecent viewing addressed in Sections 9, 11, and 12, is the private exposure of someone. She described the activity as capturing a nude person in a photo, but not doing anything else. She said the specific definition for child pornography is a person under the age of 18 engaging in:

- (1) sexual penetration,
- (2) the lewd touching of another person's genitals, anus, or breast
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of a child's genitals; or
- (7) sexual masochism or sadism.

She said that is the range of conduct considered when discussing making child pornography, distributing child pornography, and possessing child pornography.

CHAIR HUGHES understood that sexual activity is involved in the imagery in child pornography that is not included with production of photographs.

SENATOR MICCICHE said that is helpful. He still does not support the section related to producing nude photos. He would like to continue to work on it.

2:10:46 PM

SENATOR KIEHL asked whether a parent can consent for juveniles ages 14-16, but it would require consent of both parents for juveniles ages 13 and under.

MS. SCHROEDER answered that the word "and" means that it needs both parents to consent.

SENATOR KIEHL [referred to page 5, line 14]. He read portions of [Section 12], paragraph (2), which read:

- (2) produces a picture of the private exposure of the genitals, anus, or female breast of another person and the production occurs without the knowledge or consent of
 - (A) the parent or guardian of under 16 years of age; and
 - (B) the person shown in the picture if the person shown is at least 13 years of age.

He said that consent of the minor and the parents is required if the child is 13 or 14, but only parental consent for juveniles ages 15-16. He thought it might be worth reviewing the underlying law.

MS. SCHROEDER said that [in Section 12] if the juvenile is under 16, it would require parental consent and if the minor is at least 13, it requires both parents and the 13-year-old. She interpreted that to mean it only requires the parental consent if the minor is under the age of 13.

[2:12:26 PM](#)

SENATOR SHOWER asked whether that has been adjudicated through the courts for the ages of 13 or below.

MS. SCHROEDER said this section of criminal law is often litigated because it is drafted in a confusing manner. She said that the committee may bring further clarity in terms of the age distinctions.

SENATOR MICCICHE suggested considering a reasonable upper age limit.

[2:13:40 PM](#)

MR. WHITT suggested that the Department of Law could highlight the reason for changes to this section, which is to add clarity to current law.

MS. SCHROEDER explained that the Department of Law originally started amending [AS 11.61.120] for two reasons. First, the statute is drafted in a confusing manner and the department often spends time litigating it. Second, the department would like to make some conduct, in particular the production of photos, a sexual felony. This conduct is currently not a sexual felony. Using a tiered approach where the victim is juvenile, the offense is sentenced at a higher range. If the victim is an adult and produces photographs, it is a class C felony but also a registerable sex offense. She emphasized that the department is trying to make some of that conduct a registerable sex offense. In current statute, viewing and production are jumbled together. The department would like to separate out that conduct, which is the goal. The department is very open to further clarification in this area.

[2:15:27 PM](#)

MR. WHITT reiterated that this bill seeks to clarify current law and not create more issues. The committee will continue to work to tweak the language.

CHAIR HUGHES acknowledged that some issues have been raised about age differences. Further, the committee needs to consider

a parent allowing minors to pose for photos except for a medical journal.

[2:16:24 PM](#)

MR. WHITT read Section 7(a).

(a) An offender commits the crime of indecent exposure in the first degree if the offender violates AS 11.41.460(a) and

(1) while committing the act constituting the offense, the offender knowingly masturbates; or

(2) the offense occurs within the observation of a person under 16 years of age and the offender has been previously convicted under

(A) this section;

(B) AS 11.41.460(a); or

(C) a law or ordinance of this or another jurisdiction with elements similar to a crime listed under (A) or (B) of this paragraph.

He explained that the crime occurs when the offender commits indecent exposure when they commit the crime within the view of someone under 16 years of age and the offender had previously committed the crime in Alaska or another jurisdiction. He said the intent is not just related to age but also relates to repeated indecent conduct.

[2:17:37 PM](#)

SENATOR SHOWER asked whether this bill applies to sex trafficking and cybercrime or if it should be expanded to cover those crimes.

MS. SCHROEDER answered that it does not matter if the activity involving photographs occurs online. However, if the picture is of sexual acts, the department has a whole host of statutes that it can charge under.

[2:18:50 PM](#)

SENATOR KIEHL said that currently if an adult exposes themselves to a person under 16 years of age, the offender would already be guilty of indecent exposure in the first degree.

MR. WHITT offered to review it.

[2:19:39 PM](#)

MS. LARGENT answered that he is correct that the language is not currently fixed. She said that provision is intended to increase to a class B felony. The class B felony issue discussed today is [where the conduct occurred in front of someone under] 16 years of age and had a prior conviction.

SENATOR KIEHL asked whether there is a way to specifically address that but not bump masturbation in front of someone who does not wish to see it to a charge of indecent exposure in the first degree.

CHAIR HUGHES related her understanding that the penalty would only be increased if the indecent exposure happened in front of minors.

MS. LARGENT clarified it would be for indecent exposure to minors and for having a second conviction. She asked whether Senator Kiehl was interested in sentencing enhancement.

SENATOR KIEHL asked whether Section 7 would increase the penalty for masturbating in front of an adult who does not want to see it. He related his understanding that this would increase the penalty from indecent exposure in the second degree to indecent exposure in the first degree.

MS. LARGENT answered that is correct. It would also be a crime for someone to masturbate in front of someone 16 years or older.

SENATOR KIEHL asked whether Section 7 would make it a higher level of crime. He understood the rationale for masturbating in front of a 16-year-old and for repeat offences. He was unsure of [the increased penalty].

CHAIR HUGHES asked whether this would increase the level of crime for victims who are adults, which was not the intent.

[2:22:04 PM](#)

MR. WHITT answered that this would need to be amended since it was not the intent. The intent is that the penalty would be a higher-level crime when the offender is an adult and the victim is a minor. He agreed that is not the way the bill currently reads.

[2:22:52 PM](#)

SENATOR REINBOLD asked for further clarification on age classifications.

CHAIR HUGHES asked the Department of Law if a minor is someone age 17 and under.

MS. SCHROEDER answered yes.

CHAIR HUGHES asked whether there is a separate definition for a child.

MS. SCHOREDER answered no.

[2:23:33 PM](#)

SENATOR MICCICHE said that AS 11.41.460(a) relates to indecent exposure and does not cover masturbation.

MR. WHITT pointed out that AS 11.41.460 relates to indecent exposure in the second degree and this relates to indecent exposure in the first degree. In order to be guilty of indecent exposure in the first degree the person must have committed indecent exposure in the second degree plus the added pieces of this section. He agreed that the section needs work.

[2:24:52 PM](#)

SENATOR MICCICHE said he would like to hear the Department of Law address this over the next few days. He offered that the department has a familiarity with this statute, and he would like to hear their suggestions rather than for the committee to "chase our tails."

CHAIR HUGHES remarked that the committee's goal is to try to get this right. She offered to have conversations with the Department of Law to try to clarify the problematic provisions.

[2:26:40 PM](#)

MR. WHITT reviewed Section 13.

Section 13: Amends AS 11.61.125(e) to make distribution of child pornography a class A felony on first offense. (Page 6, Line 11 through line 17)

MR. WHITT reminded members that the repealer section is at the end of the bill. He pointed out that AS 11.61.124(e)(1) would be repealed. This lists class B felony. He reiterated that section changes the crime to class A felony regardless of whether it is a first offense or a repeat offense.

[2:27:33 PM](#)

MR. WHITT reviewed Section 14.

Section 14: Amends AS 12.55.015 by adding a new subsection (1) that states there is a presumption of a no contact order between the defendant and the victim until the defendant is unconditionally discharged. (Page 6, lines 18 through 23)

MR. WHITT explained that this change was suggested by Senator Kiehl. He pointed out a drafting error. This section was intended to specifically apply to sex offenses as defined under AS 12.63.100 or a crime involving domestic violence as defined in AS 18.66.990. He stated a forthcoming amendment would fix this.

CHAIR HUGHES said that Senator Kiehl's request was to narrow it to apply to domestic violence. She related her understanding that technical problems arose in Version U when it was drafted.

MR. WHITT responded that was his understanding.

SENATOR KIEHL agreed.

[2:28:45 PM](#)

MR. WHITT turned to Section 15 related to enhanced sentencing for class B felonies and assault in the second degree. This section has been addressed in another bill and will be removed from SB 35.

[2:29:16 PM](#)

MR. WHITT read Section 16.

Section 16: Amends AS 12.55.125(i) with sentencing guideline language to conform with Section 7 "sexual abuse of a minor in the third degree", Section 9 "indecent viewing or production of a picture" and Section 13 "distribution of child pornography". (Page 7, line 14 through Page 10, line 5) (Section changes are found on page 8, line 5 and Page8, lines 18 through 21)

[2:29:36 PM](#)

MR. WHITT read Section 17.

Section 17: No substantive change but a clean-up in wording for AS 12.55.145(a)(4)(D). (Page 11, line 31 through Page 12, line 2)

MR. WHITT said that this would relate to convictions in another jurisdiction. It specifically relates to guidelines for the purposes of considering prior conviction and imposing sentences. He clarified that it carries the same intent the bill sponsor would like to accomplish.

[2:30:26 PM](#)

MR. WHITT read Section 19.

Section 19: Conforming language for the definition of "sexual felony" to include "sexual abuse of a minor in the third degree" and "indecent viewing or production of a picture". These changes in sentence structure conform to changes in Sections 7 and 9 of the bill.

[2:30:51 PM](#)

MR. WHITT read Section 20.

Section 20: Amends AS 12.61.050(c) to direct the Department of Corrections to include in the Victim Notification System (VINE) information for victims of a crime involving domestic violence or a sex offense, on how to request a protective order and to provide contact information for state victim resources. (Page 13, lines 6 through 13)

He said this is also conforming language to Sections 7 and 9 of the bill.

MR. WHITT reviewed Section 20.

Section 20: Amends AS 12.61.050(c) to direct the Department of Corrections to include in the Victim Notification System (VINE) information for victims of a crime involving domestic violence or a sex offense, on how to request a protective order and to provide contact information for state victim resources. (Page 13, lines 6 through 13)

MR. WHITT said the victim notification system is already in statute and is already working. Senator Kiehl suggested this language, so that a victim of domestic violence or sex offense would be given additional information to secure a protective order against the individual's past victimizer.

[2:31:47 PM](#)

MR. WHITT read Section 21-22.

Section 21: Amends AS 12.63.010(d) with conforming language for Sections 22 and 23. (Page 13. Lines 14 through 27)

Section 22: Amends AS 12.63.020 with language to reconcile the duration requirements in Section 23 for sex offenders from other jurisdictions to register when in the state of Alaska. (Page 13, line 28 through Page 15, line 23)

MR. WHITT explained that Section 22 was requested by Ms. Largent to tighten up and make clear the state's desire that people coming to Alaska from other jurisdictions need to register as sex offenders in the state.

[2:32:26 PM](#)

MR. WHITT reviewed Section 26.

Section 26: Amends AS 33.16.090(b) with conforming language for Section 25, as well as making class B and C sex offenses ineligible for discretionary parole. (Page 18, line 24 through Page 20, line 23)

He said that many of these sections are also included in SB 34. Chair Hughes would like to remove Sections 25 and 26 and insert them in SB 34, where the changes are more appropriate.

[2:33:09 PM](#)

MR. WHITT reviewed Sections 27-29.

Section 27: Amends AS 44.19.647(a) and instructs the Alaska Judicial Council to include in their annual report, data collected by the Department of Law as described in Section 29. (Page 20, line 24 through Page 21, line 8)

Section 28: Adds a new subsection (k) to AS 44.23.020 instructing the Department of Law to develop a [tracking mechanism to obtain] certain information [regarding] sex offense complaints by region. (Page 21, line 9 through line 19)

Section 29: Adds a new subsection (b) to AS 44.23.040 instructing the Department of Law to gather and report data on felony sex offenses including the number

reported but not referred for prosecution, the number referred for prosecution that were not prosecuted, and the number the number that resulted in a conviction of a crime other than a sex offense. (Page 21, line 20 through line 29)

MR. WHITT explained that these three sections all relate to information gathering for reporting. Chair Hughes would like the state to have a better grasp on what is happening in the state with respect to unreported sex crimes and the reasons that some sex crimes are not prosecuted.

[2:34:35 PM](#)

CHAIR HUGHES said that [Standing Together Against Rape] (STAR) brought these requests forward. She asked Ms. Largent to explain an additional language request from STAR. She indicated she liked the recommendation since it was more descriptive, but the committee was unable to make the change.

MS. LARGENT said that STAR asked to rename sexual assault because jurors sometimes expect victims to have visible injuries. Sometimes this charge is related to a victim who does not have the capacity to consent and the offender is charged with sexual assault. Legislative Legal Services does not have the power to make the change. She said that the statute headings are created by the revisor of statutes. The process used to change the headings happens when substantive changes are made to statutes. The legislature could then request the change. However, in this instance no substantive change was being made.

CHAIR HUGHES said at the point when substantive changes are next made, the legislature would request it through the revisors bill since it was a good idea.

[2:36:40 PM](#)

MR. WHITT read Section 30.

Section 30: Amends AS 47.17.020(e) adds indecent viewing or production of a picture as described in Sections 8 and 9, as possible criminal conduct that must be reported under the State's "duty to report" statutes. (Page 21, line 30 through Page 22, line 12)

[2:37:08 PM](#)

MR. WHITT read Section 33.

Section 33: Instructions for revisor to change the heading of AS 11.61.123 to "Indecent viewing or production".(Page 23, line 11 through Page 23, line 16)

CHAIR HUGHES pointed out the genesis of the change in Section 30. Senator Reinbold brought up the prevalence of students who text explicit photos to one another. She said that school staff has a duty to report that conduct.

CHAIR HUGHES remarked that some items would need to be fixed.

CHAIR HUGHES removed her objection. There being no further objection, the committee substitute (CS) for SB 35, Version U was adopted.

2:38:28 PM

SENATOR KIEHL said he researched the issue of requiring sex offenders convicted in another jurisdiction to register in Alaska. He offered his belief that the existing statute could use some tightening. He expressed concern that the way the governor's bill is written it delegates the legislature's constitutional authority to other state legislatures. He was unsure if it was constitutional to do so. It would require people to register for things that are not crimes in Alaska or anywhere in the U.S.

SENATOR KIEHL, in response to Chair Hughes, said an example would be engaging in consensual homosexual sex. He said at least one state requires adults engaging in that behavior to register as sex offenders. He said that he is working on language that would tighten the registry that would require offenders who have committed crimes in other states who must register in Alaska to do so. However, if the other state's law is broader than Alaska law and the conduct is not against the law in Alaska those offenders would not be required to register in Alaska.

MS. LARGENT acknowledged that as Senator Kiehl mentioned, some crimes on the list do not exactly match up. She said that any laws that make sodomy a crime in other states are unenforceable. These laws were overturned by the U.S. Supreme Court under Lawrence v. Texas, 1994. She has requested that the Department of Public Safety ask whether the state's sex registry has been purged for anyone who was convicted in another state under sodomy laws. She offered to report back to the committee and Senator Kiehl's office.

[SB 35 was held in committee.]

2:41:48 PM

CHAIR HUGHES reviewed upcoming committee announcements.

2:42:29 PM

SENATOR SHOWER remarked that he was unsure that the Legislative Legal Services bill drafters could draft the amendments timely.

2:43:04 PM

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 2:43 p.m.