

**AALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

March 18, 2019

1:32 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. 89

"An Act relating to the Legislative Ethics Act; and providing for an effective date."

- HEARD & 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 & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 89

SHORT TITLE: LEGISLATURE: ETHICS, CONFLICTS

SPONSOR(s): RULES

03/13/19 (S) READ THE FIRST TIME - REFERRALS  
03/13/19 (S) JUD  
03/18/19 (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)  
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)  
03/13/19 (S) Heard & Held  
03/13/19 (S) MINUTE(JUD)  
03/18/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR JOHN COGHILL  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as sponsor of SB 89.

CHAD HUTCHISON, Majority Counsel  
Senator John Coghill  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented a PowerPoint and sectional analysis on SB 89.

VIKKI JOE KENNEDY, representing herself  
Kodiak, Alaska

**POSITION STATEMENT:** Testified during the hearing on SB 89, urging members to stay accountable and ethical.

DAN WAYNE, Attorney  
Legislative Legal Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on SB 89.

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

**POSITION STATEMENT:** Answered questions and presented amendments for CSSB 35, Version U, on behalf of Senator Hughes, Chair.

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

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

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

**POSITION STATEMENT:** Answered questions during the hearing on SB 35 on behalf of Senator Hughes, Chair.

JOHN SKIDMORE, Division Director  
Criminal Division  
Central Office  
Department of Law  
Anchorage, Alaska

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

#### **ACTION NARRATIVE**

[1:32:09 PM](#)

**CHAIR SHELLEY HUGHES** called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kiehl, Reinbold, Micciche, Shower, and Chair Hughes.

CHAIR HUGHES made brief opening remarks.

**SB 89-LEGISLATURE: ETHICS, CONFLICTS**

[1:32:43 PM](#)

CHAIR HUGHES announced that the first order of business would be SENATE BILL NO. 89, "An Act relating to the Legislative Ethics Act; and providing for an effective date."

[1:33:31 PM](#)

SENATOR JOHN COGHILL, Alaska State Legislature, Juneau, as sponsor of SB 89, paraphrased from his sponsor statement:

SB 89 clarifies uncertainties that have emerged after the 2018 passage of SCS CSSSHB 44(STA) (known as "House Bill 44" or "HB 44"). Specifically, certain portions of HB 44 eroded Alaskans' ability to have full, constitutionally required representation by a citizen legislature. In some cases, conflict provisions are currently so restrictive that a legislator can't live in "the real world," with a family, and do the duties that they were elected to do.

For example, successful miners can't carry a mining bill. Successful commercial fishermen can't carry a fishing bill. The alleged "conflicted" subject matter can only be discussed in a public forum, including a committee and the floor, and only upon declaring a conflict to the legislature.

In addition: A legislator's spouse or immediate family cannot be connected to the alleged "conflicted" subject matter either. In essence, legislators that have a certain expertise in a field, or that are most knowledgeable, or because of broad family connections, can't talk about multiple subject areas that are important to the state of Alaska, except under, essentially, unreasonably tight conditions.

Those elements combined damage the legislative process. Currently there can be no private meetings on any "conflicted" subject matter. There are severe restrictions on "official action," in multiple forms (including drafting of legislation and mere discussion). A vast "net" of alleged "conflict" now exists because of the bill's language extending "conflict" to immediate family members. "Conflicts" have been expanded to "financial interests" and measured against "the general public."

What are the proposed changes? 1. Definitions are being changed back to the way they existed, prior to HB 44 (2018). 2. The "committee process" language is being removed. 3. "Financial interest" is being changed to back to "equity or ownership interest." 4. "General public" is being returned to "substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region." 5. There is an immediate effective date. Please join the Senate Rules Chair in supporting this necessary legislation.

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CHAD HUTCHISON, Majority Counsel, Senator John Coghill, Juneau, introduced himself.

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SENATOR COGHILL stated the genesis of SB 89. Last year the legislature passed House Bill 44, which changed provisions related to ethical standards of conduct. He referred to two of ten sections in AS 24.60.030(a)-(j). It became clear that the bill made it more difficult to determine unethical behavior since the law extended to legislators' family members and private activities, making the law ambiguous. Legislators who want to follow the ethics law became unsure of entanglement due to their knowledge and expertise on issues. For example, one legislator who also works in the mining industry has gained substantial knowledge about the industry. Under House Bill 44 law, this legislator could not hold conversations about the industry, offer amendments, or craft a bill to address issues within the industry because the legislator exceeded the \$10,000 limit on earnings.

SENATOR COGHILL explained that these concerns were not the typical ethical concerns but are ones related to the process.

The current ethics law raised serious doubts about what legislators could do.

SENATOR COGHILL referred to an advisory opinion that was approved in November [2018 by the Select Committee on Legislative Ethics. He offered additional examples, such as legislators whose family members work in the oil and gas industry, could not participate in the bill process except to hold public discussions or vote on the floor. Instead, these legislators would need to declare a conflict of interest and ask to be excused from voting. Again, these provisions were so broad that legislators felt the need to declare a conflict if they or their family members were involved in or had knowledge of any industry in Alaska, he said.

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SENATOR COGHILL referred to SB 89 to AS 24.60.030(f)-(g), which reset the standards of conduct and reverts to the pre-House Bill 44 ethics law. It would remove the language related to family members. He explained that under House Bill 44 law, a legislator might later find out that a family member had earnings of \$10,000 or more on an issue that came before the legislature, making the legislator "unethical" after the fact. Under SB 89, if legislators are seeking employment or acquire benefits or losses, they can declare a conflict of interest and ask to be excused from voting. Post-House Bill 44 law extends beyond identifying unethical behavior and created a process that lended doubt about whether legislators were following the ethics law. The ethics law is designed to promote public trust, he said.

He clarified that SB 89 would not rewrite the entire Ethics Act but would revert to ethics language that would clearly identify conflicts of interest. He acknowledged that the legislature may decide to revise the standard of conduct code at a later date. He characterized SB 89 as a discrete reset that clarifies ethical behavior. He emphasized that legislators want to serve the public and uphold the highest standards. He said that his staff will explain how the bill accomplishes this.

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SENATOR KIEHL asked for further clarification on the change in disclosures.

SENATOR COGHILL said that SB 89 reverts to pre-House Bill 44 law to address conflict of interest disclosures within a committee and on any floor vote. He said it is very important before

official action occurs that any disclosures are made, which is the floor vote.

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SENATOR REINBOLD referred to page 2, line 16, of SB 89 to the language "shall not vote" instead of "shall declare a conflict of interest." She asked whether this is the intent.

SENATOR COGHILL answered that Section 2 pertains to the Uniform Rules of the Alaska State Legislature and states that legislators may not vote if they have an equity or ownership interest in an issue that is beyond a substantial class of people. For example, if a legislator is the only one receiving a pay raise or obtaining a contract, he/she may not vote. The legislator must stand up on the floor, state the conflict, and make a motion to be excused from voting. It is up to the body to excuse the legislator from voting, he said.

He deferred to Chad Hutchison to provide reasons why legislators should vote even when the perception of a conflict of interest exists. He said it really comes down to legislators' constitutional duty to represent their constituents and determine when they have a real conflict of interest. He said that the "perceived conflict" is a bigger problem than the actual conflict. He said that having a motion in front of a committee could create a "perceived conflict." He said that SB 89 would like to return it to a real conflict.

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SENATOR REINBOLD said it could be viewed as strengthening the ethics law.

SENATOR COGHILL said that if legislators have a real conflict, they should not be allowed to vote. He said the distinction is if the individual benefit is greater than the group benefit, the legislator should not vote. He said that it typically has not happened in the legislature. However, the current law is so ambiguous that it creates perceived conflicts. He said that the pre-House Bill 44 law has been tested in the Select Committee on Legislative Ethics. It makes everyone think about real conflicts, he said.

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CHAIR HUGHES said she understands that the bill drafters did not realize how the ethics law would be interpreted under House Bill 44 law. She asked whether the sponsor was aware of specific problems during his tenure in the legislature. She hoped for

reassurances that problems would not be bubbling up if this bill passes.

SENATOR COGHILL explained that Alaska has a citizen legislature, comprised of legislators with backgrounds as pilots, in law enforcement or the military. They work as teachers, accountants, and lawyers. He worked in a Christian counseling position, he said. He identified potential personal conflicts. For example, if his pay was increased or his position was guaranteed, and he did not declare a conflict, it would be unethical. He said if a legislator was a teacher who worked in a school that was singled out for raises, that would be a conflict and the legislator should be excused from voting. However, it would not be unethical if a legislator is a teacher and generally spoke about [issues that affect schools] or if someone worked in an industry and discussed issues related to the industry without obtaining a specific benefit. In those instances, the legislator would declare the perceived conflict, and the body would allow the legislator to vote. During his 20 years serving as a legislator, many perceived conflicts have been declared. However, no one has had a specific cost or benefit that prevented him/her from voting. Alaska has unique geographical fisheries and some people believe that legislators who commercially fished had a conflict, but the issues were broadly discussed, and they were not prevented from voting. In Alaska, many legislators come from industries or enterprises that are impacted by legislation, including shipping, fishing, schools, and legal professions. These legislators bring their expertise gained from working in their respective fields, but unless they obtain a specific benefit that exceeds the benefit others in the industry obtain, they do not have a conflict of interest.

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SENATOR MICCICHE said it goes beyond the industry to obtaining a benefit not given to "a substantial class of persons to which the legislator belongs." He said that he has worked in the oil and gas industry and in the fishing industry. He has always declared a perceived conflict of interest when matters affecting those industries are being voted on. However, the legislature has rulings from [the Select Committee on Legislative Ethics] that they were acting on behalf of a substantial class and not as individuals. He said that ethics should not be based on whether legislators like the outcome, but rather if they have real conflicts of interest.

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SENATOR COGHILL agreed. He said that SB 89 brings the definition back to "a substantial class." Currently, a conflict of interest could be related to an involvement in a business, property, profession, private relation, or a source of income that results in the legislator receiving or expecting to receive a benefit greater than the general population. He offered his belief that this would likely put most legislators in a unique circumstance. He emphasized that the language needed to be changed to greater than the effect on "a substantial class of persons to which the legislation belongs as a member of a profession, occupation, industry, or region"]. He emphasized the need to remove any ambiguity in the ethics law. He characterized House Bill 44 law as one that created unintended consequences.

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MR. HUTCHINSON said he would discuss some constitutional issues that have arisen since House Bill 44 law was implemented. He pointed out that during the committee process last year, Mr. Wayne recognized constitutional issues with House Bill 44.

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MR. HUTCHINSON reviewed slide 2.

To be clear: This bill **does not** repeal the majority of the ethics legislation (House Bill 44)(2018) passed last year

[1:52:28 PM](#)

MR. HUTCHINSON paraphrased slide 3.

The following remains **intact**:

- ▶ Prohibitions on expenditures and contributions by foreign-influenced corporations and foreign nationals in state elections.
- ▶ Limitations on member travel.
- ▶ Per diem restrictions
- ▶ The Legislative Council's ability to adopt policy on per diem and moving expenses.
- ▶ Lobbyist restrictions on buying food and beverages for members or staff.
- ▶ Gift restrictions to members

He noted that the gift restrictions to members of \$250 or more was not included in House Bill 44, but it still remains intact.

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CHAIR HUGHES said she wanted the record to reflect she is eager to fix the issues with the ethics law that have impacted her so much.

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MR. HUTCHINSON turned to slide 4, "What this bill does:"

Simply resets the conflict provisions to the way they were prior to House Bill 44 (HB44) (2018).

[1:53:37 PM](#)

MR. HUTCHINSON turned to slide 5, "Noteworthy: How many Constitutional Issues Have Emerged Because of the Conflict Provisions of HB44 (2018)?"

- ▶ Alaska Constitution - Article II - Legislature - Diminishment of Core Legislative Functions and Representation
  - ▶ Example: Successful miners can't talk or meet ("official action") about mining legislation in private. In addition, the miner can't carry legislation. Successful commercial fishermen/women can't talk about commercial fishing in private. The fishermen/women can't carry legislation.
- ▶ Federal Constitution - First Amendment - Fundamental Right
  - ▶ Freedom of Speech for legislator and constituents
  - ▶ Right to assemble
  - ▶ Right to petition the government for redress
- ▶ Alaska Constitution - Article I, Sections 1, 5, & 6
  - ▶ Article 1, Section 1 - "Equal Rights"
  - ▶ Article 1, Section 5 - "Freedom of Speech"
  - ▶ Article 1, Section 6 - "Freedom to Assemble and Petition"

He said that there are a number of constitutional problems with the conflict provisions. He said this slide lists the fundamental rights, which can be restricted, but the government can only do so if it is necessary to a compelling governmental

interest and the restriction is narrowly tailored for the least restrictive alternative.

MR. HUTCHINSON referred to the State of Alaska v. Planned Parenthood case in 2007. He said that the Alaska Supreme Court extensively discussed this issue.

He pointed out the list of fundamental rights on the slide, beginning with the diminishment of core legislative functions and representation. He said that the legislators need to be able to talk to their constituents.

MR. HUTCHINSON said that Article I of the U.S. Constitution is the most important section from the constitutional founders' perspective. Any restriction of Article II rights granted by the U.S. Constitution, such as voting or freedom of speech, must be the least restrictive alternative. When legislators cannot talk to certain constituent groups on legislation or potential bills, based on their background or the constituents' background, it represents a major constitutional violation. For example, one of the reasons Senator Coghill got elected may be because he has expertise in placer mining. However, he cannot speak with constituents on these matters or propose legislative changes under the current legislative ethics law. Instead, he must shift the issue to someone else who may not have the background.

He said that the 14th Amendment contains a due process provision and any infringement, such as liberty, must be narrowly tailored in the least restrictive alternative.

MR. HUTCHISON reviewed the issues listed on slide 5 related to the Alaska Constitution. He said that Article 1 provides that similarly situated people cannot be treated differently. He highlighted that people from the travel industry wanted to speak with a legislator, but due to the connection to an immediate family member, the group cannot meet with the legislator. He emphasized that it is too broad, and not the least restrictive alternative. He cautioned members to consider these factors when amending this bill.

[1:57:50 PM](#)

MR. HUTCHINSON reviewed slide 6, "Section 1 amends AS 24.60.030(e)."

- ▶ How does it exist under HB 44 (2018)?
  - ▶ Currently, a legislator can only take official action on an alleged "conflicted bill" in public

discussion or debate (including in committee and on the floor).

- ▶ In addition, the legislator is "conflicted" if the subject matter is connected to the legislator (or the legislator's immediate family) if the legislator (or the immediate family) made over \$10,000 in the immediate 12-month period.
- ▶ The practical result?
  - ▶ No private meetings about the "conflicted" subject matter.
  - ▶ A severe restriction on official action, in multiple forms (drafting of legislation, discussion, etc.)
  - ▶ A vast "net" of "conflict" because of the extension to the immediate family.
- ▶ See Advisory Opinion 18 05 for more information.

He said it is noteworthy that the sponsor of House Bill 44 provided a chart that had two states with more than \$10,000, including Michigan and Texas with \$25,000 as their threshold. There was an acknowledgement that a wide scope exists for what constitutes "conflicted" such as a percentage of a financial interest in a particular business. Under the Alaska Supreme Court interpretation of fundamental rights, it's important to consider whether \$10,000, the immediate 12-month period, or the expansion to include family members is truly least restrictive. He suggested these things will be debated by legislators through the committee process.

MR. HUTCHINSON said the practical result of [House Bill 44] means that no private meetings can be allowed. It severely restricts official action, including drafting legislation or amendments. Further, the net of conflict has been extended to include family members and is not the least restrictive alternative, as compared to pre-2018 law, he said.

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MR. HUTCHINSON reviewed slide 7, "What are the proposed changes?"

- ▶ The language is returned to the language used before 2018, prior to the passage of HB 44.
  - ▶ This includes the following:
    - ▶ The language is returned to "unless required by the Uniform Rules of the Alaska State Legislature."

- ▶ Passages that restrict legislator advocacy to only narrow avenues of public discussion or debate are eliminated.
- ▶ The language re: "immediate family" is eliminated.
- ▶ The income threshold of "\$10,000" for the "preceding 12-month period" is removed.

He pointed out the bill would return to the language in Uniform Rule 34(b). He pointed out that Mason's Manual rules are also tied to this rule. He suggested reviewing Sections 24, 522 and 560 of Mason's Manual. He referred to Advisory Opinions 0402, 0801, 1105, and 1301 to provide interpretations of conflict prior to passage of House Bill 44 in 2018. He emphasized that concern about extending conflicts to legislators' immediate family and the \$10,000 threshold exist because they are not the least restrictive alternatives. Other states have higher thresholds and these issues must be debated.

[2:01:12 PM](#)

MR. HUTCHINSON reviewed slide 8, "Section 2 - Amends AS 24.60.030(g)."

- ▶ How does it exist under HB 44 (2018)?
  - ▶ Currently, conflicts (which are expanded) have to be declared in the committee process and the floor.
  - ▶ Conflicts are expanded to "financial interests" of a business, investment, real property, lease, or other enterprise. There is an expansion to measuring the "interest" against "the general public."
  - ▶ The practical result?
    - ▶ Discussion on relevant issues is severely restricted.
    - ▶ Conflicts will have to be declared in the committee process. If there is an alleged "conflict," there are legitimate concerns about passing otherwise viable legislation from the committee because members would be barred from private discussion on certain topics.
    - ▶ A broadening of the "scope of conflict" cast a "wide net."

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MR. HUTCHINSON turned to slide 9, "What are the proposed changes?"

- ▶ The "committee process" language is being removed.
- ▶ "Financial interest" is being changed to back to "equity or ownership interest."
- ▶ "General public" is being returned to "substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region."

[2:03:16 PM](#)

MR. HUTCHINSON reviewed slide 10, "Section 3 simply repeals AS 24.60.030(j)(2) and 24.60.990(a)(6)."

AS 24.60.030(j)(2) says:

"substantially benefit or harm" means the effect on the person's financial interest is greater than the effect on the financial interest of the general public of the state.

- ▶ This language is being removed.
  - ▶ Reasoning:
    - ▶ Clarifies uncertainty.
    - ▶ Fairly easily, a legislator can have an alleged "substantial" "financial interest" in a specific area that's greater than most of the general public of the state. The spectrum is wide as it can pertain to businesses, investments, real property, leases, or, broadly, other enterprises.
    - ▶ Since the language of "general public" in AS 24.60.030(g) is being changed back to "substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region," this passage is appropriate for removal.

[2:04:07 PM](#)

MR. HUTCHINSON reviewed slide 11, "Section 3 - Continued."

- ▶ AS 24.60.990(a)(6) says:

"financial interest" means ownership of an interest or an involvement in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.

▶ This language is being removed.

▶ Reasoning:

▶ Since the language of "financial interest" is being changed in AS 24.60.030(g) back to "equity or ownership interest," this provision is being removed.

[2:04:41 PM](#)

MR. HUTCHINSON reviewed slide 12, titled "Section 4."

▶ Section 4 makes the act effective immediately.

[2:04:57 PM](#)

MR. HUTCHINSON turned to slide 13, "This clarification attempts to find the right balance."

▶ High moral and ethical standards among public servants in the legislative branch are essential to government trust, respect, and confidence of the people of this state. See Advisory Opinion 19-01. See also AS 24.60.010(1).

▶ Right of members to represent their constituencies is of such major importance that members should be barred from their constitutionally required representative duties only in clear cases of personal enrichment.

▶ Members are encouraged to review Uniform Rule 34(b), *Mason's Manual of Legislative Procedure* at sections 241, 522, 560, Advisory Opinion 2004-02, Advisory Opinion 2008-01, Advisory Opinion 2011-05, and Advisory Opinion 2013-01 for interpretations of conflict prior to 2018

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MR. HUTCHINSON turned to the final slide, slide 14, "Questions?"

[2:05:55 PM](#)

SENATOR KIEHL said he was unsure of some of the constitutional arguments, especially in terms of the least restrictive means. The legislature is exempt from the Open Meetings Act, which is a set of rules imposed on the executive branch, school districts, and municipalities. It is vastly more restrictive than anything the legislature is operating under. He asked whether the Open Meetings Act is unconstitutional.

MR. HUTCHINSON explained that what he can say is unconstitutional is when constituents cannot meet with their legislators because of conflict provisions related to House Bill 44 law. That is unconstitutional because it prohibits legislators who have a similar background from participating on an issue, whether it is mining and the legislator is a miner, or fishing and the legislator is a fisherman. He said that commenting on the Open Meetings Act is beyond the scope of his testimony today. He emphasized that infringements, such as constituents not being able to meet at any level with their duly elected representatives due to a conflict provisions that are too strict is a violation.

[2:07:24 PM](#)

SENATOR KIEHL turned to disclosure. He asked whether he was arguing that constitutional issues exist with disclosure.

MR. HUTCHINSON answered that is correct. It has to be the least restrictive alternative in terms of disclosures. He pointed out the sponsor of House Bill 44 law presented information that indicates other states disclosure levels are much higher, with Texas and Michigan at \$25,000. In addition, the scope of what qualifies as immediate family is much more limited. The problem in Alaska is that the scope is broadened so much it essentially prohibits people from talking to their legislators and violates Article I and Article II of the Constitution of the State of Alaska.

SENATOR KIEHL pointed out that disclosure does not have anything to do with who legislators can talk to or what meetings can be held. He acknowledged he is not an attorney, but he was pretty sure that "least restrictive" does not mean that [Alaska] must adopt the highest state threshold for dollar amounts. He said that the public official financial disclosures require disclosure threshold of \$1,000. He asked whether those reporting requirements are unconstitutional.

MR. HUTCHINSON related his understanding he was talking about disclosures. He clarified that he is not discussing the Alaska

Public Offices Commission disclosures that candidates and legislators must file, although they coalesce, but this is something different. He explained that if the monetary amount affects your immediate family and that creates such a broad scope of conflict that legislators are prohibited from talking with representative groups that may have the same background as your wife, husband, or immediate family, it raises the issue as to whether it is truly the least restrictive alternative. He offered his belief that this will be an ongoing debate. He argued that the legislature operated for years [prior to passage of House Bill 44] so it obviously was not the least restrictive alternative.

[2:10:13 PM](#)

SENATOR REINBOLD pointed out she served on the Legislative Ethics Committee when the two advisory opinions were issued. She said she thought they went far beyond [the least restrictive alternative], and she was pretty frustrated with the advisory opinions. In fact, she was a dissenting vote. She recalled the opinion would impact legislators who belonged to a union, Native organization, fishing group, oil and gas industry, or health care. She anticipated that it would affect every legislator. She acknowledged the public wants ethical legislators, but if it creates barriers for constituency groups concerned about an issue important to the district, it is problematic.

[2:11:51 PM](#)

CHAIR HUGHES opened public testimony on SB 89.

[2:12:15 PM](#)

VIKKI JOE KENNEDY, representing herself, Kodiak, urged members to stay accountable and ethical. She stated that she has been in Juneau for the last fifteen months. She said she was in Juneau when House Bill 44 passed the legislature last year. She said that any bill that holds everyone accountable and cautious about ethics is a good thing. She was told in January she could not talk to a senator. She said when legislators sit on boards and legislators can financially benefit [from decisions made by the board], it could be an issue. She said she has seen "a lot of fine things" happening [in the legislature], but she thinks strictness makes everyone "stay aware". She said she has carried a copy of the [Constitution of the State of Alaska] with her since she arrived in Alaska. She urged members to stay accountable and ethical. She said she appreciates the work the committee was doing on SB 89.

[2:14:02 PM](#)

CHAIR HUGHES closed public testimony on SB 89.

2:14:19 PM

SENATOR KIEHL referred to language being repealed in the definition section of the ethics law. He said that deletes language [in AS 24.60.990(a)(6), "financial interest" means ownership of an interest or an involvement in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit.] He read the language, "from which, or as a result of which, a person has received or expects to receive a financial benefit." He asked if SB 89 were to pass, whether legislators would not need to disclose any "hefty" increase or benefit they received from a program implemented via legislative action.

MR. HUTCHINSON said he thought the person would be subject to APOC, depending on the amount. He said that advisory opinions required certain disclosures must occur. There have been ethical rulings on a case-by-case basis on whether it represented a substantial interest. He stated, informally, that anything over \$250 is generally interpreted as a substantial interest by the Legislative Ethics Committee. He presumed that if it is a significant amount, it must be disclosed on the legislative APOC reports. He emphasized that this bill does not change any of the APOC reporting requirements, but it ensures that the scope of influence is not expanded so much that people cannot meet with certain groups since they have common ties or their immediate family.

CHAIR HUGHES asked the legislative legal counsel if anything in SB 89 changes what must be disclosed in the APOC financial disclosure.

2:16:54 PM

DAN WAYNE, Attorney, Legislative Legal Services, Legislative Affairs Agency, Juneau, answered that it does not. He said that SB 89 changes what must be disclosed on the floor, but not the financial disclosures under AS 24.60.200.

SENATOR KIEHL clarified his question, that if it is not through an equity interest in a business or real estate, but it would enhance his finances, whether he would not have to rise and declare [a conflict of interest on the floor.]

MR. WAYNE interpreted the bill to mean that the income could fall under "other enterprise" or "business, investment real property, or lease." If it did not fall under one of those categories, then Senator Kiehl is correct that it would not need to be disclosed or require requesting to abstain from a vote.

CHAIR HUGHES asked under SB 89, if it were to pass, whether the disclosure would only apply if it gave that person a benefit beyond the people in that industry or class or region.

MR. WAYNE answered that is correct. He directed attention to lines 23-24, "a substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region class of persons." He said that language would modify part of the sentence before that language, that it is all part of one calculation. He said that at the end of that calculation the legislator would need to determine whether to disclose a conflict or request to abstain.

[2:19:09 PM](#)

SENATOR MICCICHE said that the conduct Senator Kiehl is describing would either be bribery or else the legislator must report it as a conflict of interest. He clarified that if the legislator was the only one receiving the benefit or the benefit is separate from the substantial class, it represents a true conflict that must be declared, and the legislator cannot vote. Legislators still must declare any perceived conflicts so the whole world has knowledge. For example, if he owned rental units and a bill came before the legislature related to landlord-tenant rights, he would declare a perceived conflict prior to voting on the measure even though the law would affect him the same as anyone else who is a landlord. Therefore, he would not have a true conflict of interest and would be allowed to vote on the bill.

[2:21:04 PM](#)

MR. WAYNE said that he appreciates that clarification. He related a scenario in which a legislator is not being paid for his/her vote, but the legislator would still benefit from legislation, such as a tax break, or something other people will not get. He said if the legislator did not own a business, investment, real property, lease, or other enterprise, then [the language in SB 89] is silent. He asked whether it is okay for a [legislator] to benefit as long as it is not a business or investment benefit.

SENATOR MICCICHE responded that without him mentioning "a substantial class," that his answer is incomplete.

MR. WAYNE agreed. He acknowledged that if a legislator is going to be \$2,000 richer next year if the bill passes is one thing, but if the bill is a permanent fund dividend bill everyone else benefits, so he/she would not need to declare a conflict of interest.

MR. HUTCHINSON explained that it would be determined on a case-by-case basis, which is the reason for the advisory opinions. He pointed out that other avenues exist if people think unethical behavior is occurring, such as censure. Elections and recalls can remove people from office, and sanctions exist for people who are unethical. Currently, a particular representative has ongoing sanctions with financial repercussions.

SENATOR KIEHL said, "Not if you write those rules out of the law. Then those avenues are not available, right?"

MR. HUTCHINSON answered no, that the behavior occurred before House Bill 44 and it exists to this day. The individual member is still making payments because of behavior that was found to be unethical.

[2:24:23 PM](#)

SENATOR KIEHL said he will have to do research on the member who was found to be unethical without violating any of the ethics code.

MR. HUTCHINSON answered that there was a violation.

[SB 89 was held in committee.]

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

[Contains discussion of SB 34.]

[2:25:01 PM](#)

CHAIR HUGHES announced that 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."

[2:25:14 PM](#)

CHAIR HUGHES made opening remarks.

[2:25:43 PM](#)

At-ease.

[2:27:02 PM](#)

CHAIR HUGHES reconvened the meeting.

[2:27:43 PM](#)

SENATOR REINBOLD moved to adopt Amendment 1, work order 31-GS1873\U.1, Radford, 3/13/19.

**AMENDMENT 1**

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "U"

Page 1, line 5:

Delete **"relating to assault in the second degree;"**

Page 6, line 24, through page 7, line 13:

Delete all material.

Renumber the following bill sections accordingly.

Page 22, line 28:

Delete all material.

Renumber the following paragraphs accordingly.

Page 22, line 29:

Delete "sec. 16"

Insert "sec. 15"

Page 22, line 30:

Delete "sec. 17"

Insert "sec. 16"

Page 22, line 31:

Delete "sec. 18"  
Insert "sec. 17"

Page 23, line 1:  
Delete "sec. 19"  
Insert "sec. 18"

Page 23, line 4:  
Delete "sec. 21"  
Insert "sec. 20"

Page 23, line 5:  
Delete "sec. 22"  
Insert "sec. 21"

Page 23, line 6:  
Delete "sec. 23"  
Insert "sec. 22"

Page 23, line 7:  
Delete "sec. 24"  
Insert "sec. 23"

Page 23, line 8:  
Delete "sec. 25"  
Insert "sec. 24"

Page 23, line 9:  
Delete "sec. 26"  
Insert "sec. 25"

CHAIR HUGHES objected for the purpose of discussion.

[2:28:03 PM](#)

BUDDY WHITT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, on behalf of Chair Hughes, stated that Amendment 1 was previously discussed [on March 13]. He referred to page 6, line 24 through page 7, line 13, related to sexual assault in the first degree and enhanced sentencing structure for sexual assault in the third degree. This enhanced sentencing structure was put into a previous bill, SB 12, and is no longer needed in this bill.

[2:28:59 PM](#)

SENATOR REINBOLD asked what would happen if SB 12 does not pass.

MR. WHITT answered that this provision would not pass. He suggested that the committee could keep the language in both bills, but the language should be identical.

CHAIR HUGHES related her understanding that the language is similar but not identical. She said that removing the language would clear up any ambiguity and if SB 12 were to falter, the committee could look at another vehicle.

SENATOR REINBOLD related her understanding that a different version was in the other body.

[2:29:58 PM](#)

At-ease.

[2:31:16 PM](#)

CHAIR HUGHES reconvened the meeting.

[2:31:26 PM](#)

MR. WHITT said that several sections of the bill were removed and placed in SB 12. He reminded members that it was the will of the committee to make SB 12 a stand-alone vehicle to address the issues in the Justin Schneider case and it includes the enhanced sentence structures for sexual assault and assault.

[2:32:02 PM](#)

CHAIR HUGHES removed her objection.

[2:32:14 PM](#)

SENATOR REINBOLD objected to ask whether enhanced sentencing will not be in effect if SB 12 does not pass.

MR. WHITT agreed that if SB 12 does not pass that there would not be any enhanced sentencing, clarification on the definition of sexual contact, credits for electronic monitoring or a fix for the Justin Schneider loophole since those provisions are in SB 12.

SENATOR REINBOLD related her understanding that if SB 12 does not pass there will not be any enhanced sentencing, which is the reason she raised the "red flag" to make sure people understand the implications. She expressed her concern

SENATOR REINBOLD removed her objection.

CHAIR HUGHES indicated that multiple vehicles exist to remedy this, including floor amendments.

There being no further objection, Amendment 1 was adopted.

[2:33:36 PM](#)

CHAIR HUGHES said many of the amendments were generated from her office. She asked Senator Reinbold to move Amendment 2.

[2:33:53 PM](#)

SENATOR REINBOLD moved to adopt Amendment 2, work order 31-GS1873\U.6, Radford, 3/13/19.

**AMENDMENT 2**

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "U"

Page 1, line 9:

Delete "**relating to eligibility for discretionary parole;**"

Page 17, line 29, through page 20, line 23:

Delete all material.

Renumber the following bill sections accordingly.

Page 23, lines 8 - 10:

Delete all material.

SENATOR MICCICHE objected for discussion purposes.

[2:34:12 PM](#)

MR. WHITT explained that Amendment 2 would remove language that is in another bill, SB 34, which is in the committee. It relates to discretionary parole. When the original bills for SB 34 and SB 35 were read across, the sections related to discretionary parole matched. However, because the Senate State Affairs Standing Committee made a change to SB 34, and the committee amended SB 35, this language is being removed to avoid having two competing provisions in separate vehicles.

SENATOR REINBOLD asked whether the issues will remain if SB 34 does not pass.

CHAIR HUGHES responded that she hopes that SB 34 passes since discretionary parole issues are very important. However, if SB 34 does not pass, the issues will remain.

MR. WHITT agreed, that if SB 34 does not pass, the provisions [related to discretionary parole] will not pass.

SENATOR HUGHES clarified that if SB 34 does not pass, SB 35 could be amended on the floor.

2:35:49 PM

SENATOR MICCICHE removed his objection.

There being no further objection, Amendment 2 was adopted.

2:36:01 PM

SENATOR REINBOLD moved to adopt Amendment 3, work order 31-GS1873\U.11, Radford, 3/14/19.

### AMENDMENT 3

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "U"

Page 12, line 1:

Delete "the elements"

Insert "those"

Delete "under state"

Insert "defined as such under Alaska"

CHAIR HUGHES objected for the purpose of discussion.

MR. WHITT explained Amendment 3, stating that it makes a slight change to the bill. He referred to page 12, line 1. This corrects a drafting error. He referred to page 11, line 31 [through page 12, line 2] of SB 35, Version U, which read, "(D) a conviction in this or another jurisdiction of an offense having elements similar to the elements of a felony under state law at the time the offense was committed is considered a prior felony conviction;". It should be changed to read, "(D) a conviction in this or another jurisdiction of an offense having elements [similar to] those of a felony [defined as such under Alaska] law at the time the offense was committed is considered a prior felony conviction;" and said that this makes a minor technical change and also adds "defined as such under Alaska." This means that if an offense occurs in another state that is similar law in the State of Alaska it is considered a prior felony conviction in the state.

[2:37:56 PM](#)

SENATOR MICCICHE asked him to repeat the proposed language.

[2:38:05 PM](#)

MR. WHITT read, "... having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;".

[2:38:37 PM](#)

SENATOR KIEHL referred to the language in other sections of the bill [that is existing law]. He asked whether this language in other subsections should conform to the [language in Amendment 3].

MR. WHITT deferred to the Department of Law (DOL) to respond.

[2:39:29 PM](#)

KACI SCHROEDER, Assistant Attorney General, Central Office, Criminal Division, Department of Law, Juneau, responded that this language was copied from page 10, lines 13-15, which read:

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

MS. SCHROEDER said this language was inserted [in subparagraph D on page 12, line 1] to restore this provision.

SENATOR KIEHL referred to language on page 1, lines 24-26.

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

He also referred to language on page 11, lines 17-19.

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

SENATOR KIEHL asked whether these provisions should conform to the language in Amendment 3. He noted that this could be handled at another time.

[2:40:42 PM](#)

SENATOR MICCICHE asked whether the language "having elements similar to" is clear enough under law. He wondered what happens if [another jurisdiction] charged a crime as a class A misdemeanor and Alaska charges it as a class B misdemeanor, but the crimes were essentially the same.

MS. SCHROEDER answered that it is clear. She explained that there are numerous instances of case law surrounding how the state interprets "elements similar to" and that it is an element by element analysis. The Department of Law will often argue it before the court, but the court has the ultimate decision. She reiterated that it is clear.

[2:41:24 PM](#)

CHAIR HUGHES removed her objection. There being no further objection, Amendment 3 was adopted.

[2:41:35 PM](#)

SENATOR REINBOLD moved to adopt Amendment 4, work order 31-GS1873\U.17, Bruce/Radford, 3/15/19.

#### AMENDMENT 4

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "U"

Page 23, following line 10:

Insert a new bill section to read:

**"\* Sec. 33.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Law, the attorney general, the Department of Public Safety, and the commissioner of public safety may adopt regulations necessary to implement the changes made by secs. 28 and 29 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the relevant provision of this Act implemented by the regulation."

Renumber the following bill sections accordingly.

Page 23, following line 15:

Insert a new bill section to read:

"\* **Sec. 35.** Sections 27 - 29 of this Act take effect July 1, 2020."

Renumber the following bill section accordingly.

Page 23, line 16:

Delete "This"

Insert "Except as provided by sec. 35 of this Act, this"

CHAIR HUGHES objected for discussion purposes.

MR. WHITT said that Amendment 4 was requested by the Department of Law. He referred to pages 20-21 to Sections 27, 28, and 29. The committee would like to gather data on prosecutions of sexual crimes and reasons cases are not documented. The Department of Law (DOL) and the Department of Public Safety will work in conjunction to gather data. Amendment 4 would set the effective date, as requested by the DOL, to July 1, 2020 to allow it enough time to efficiently gather and report the data.

[2:43:01 PM](#)

SENATOR SHOWER asked to revert to Amendment 3. He asked whether there is any conforming language in rest of the bill.

MS. SCHROEDER answered no.

SENATOR REINBOLD asked if this language simply creates an extension to allow the departments to coordinate their efforts and it would not affect regulations.

MS. SCHROEDER answered that the language in the committee substitute (CS) for SB 35, Version U, is a new obligation for the Department of Law. The DOL would need to develop a mechanism to track the data and develop regulations. Amendment 4 would give the department about a year to implement the change.

CHAIR HUGHES removed her objection. There being no further objection, Amendment 4 was adopted.

[2:44:19 PM](#)

SENATOR REINBOLD moved to adopt Amendment 5, work order 31-GS1873\U.4, Radford, 3/14/19.

#### AMENDMENT 5

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "U"

Page 6, line 19, following "section":

Insert "for a defendant convicted of a crime involving a sex offense as defined in AS 12.63.100 or a crime involving domestic violence as defined in AS 18.66.990"

Page 6, lines 20 - 21:

Delete "by a preponderance of the evidence"

CHAIR HUGHES objected for discussion purposes.

[2:44:39 PM](#)

MR. WHITT explained Amendment 5, which was requested by Senator Kiehl. He referred to page 6, line 19, which relates to presumption of no contact orders. The language in Version U includes the presumption of no contact orders for every single crime in AS 12.55.015. However, the intent is that it would be specific to AS 12.63.100, relating to sex offenses, and AS 18.66.990, which relates to crimes involving domestic violence. Amendment 5 would specify no contact orders for those provisions.

SENATOR REINBOLD asked for further clarification on the effect of deleting "by a preponderance of the evidence."

[2:45:34 PM](#)

REGINA LARGENT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, answered that this was unnecessary language, that the courts will use the lowest burden of proof unless otherwise specified. This language was not requested and was removed.

[2:46:12 PM](#)

CHAIR HUGHES removed her objection. There being no further objection, Amendment 5 was adopted.

[2:46:17 PM](#)

SENATOR REINBOLD moved to adopt Amendment 6, work order 31-GS1873\U.12, Radford, 3/14/19.

#### AMENDMENT 6

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "U"

Page 13, line 1, following "degree":  
Insert "if the victim is at least six years  
younger than the offender"

CHAIR HUGHES objected for discussion purposes.

MR. WHITT referred to page 13, line 1 to Section 19 of SB 35. The definition [in AS 12.55.185] for "sexual felony" was amended to add conforming language due to changes in sexual abuse of a minor in the third degree. However, language was inadvertently omitted that would read, "if the victim is at least six years younger than the offender".

MS. LARGENT related her understanding that this language was originally in the bill but was removed. The Department of Law asked that the language be added.

[2:47:29 PM](#)

SENATOR REINBOLD asked whether the department thinks this is well written.

MS. SCHROEDER nodded yes.

[2:47:47 PM](#)

CHAIR HUGHES indicated that Ms. Schroeder, seated in the audience, had nodded affirmatively.

CHAIR HUGHES removed her objection, and after determining Senator Shower had a question withdrew removing her objection.

[2:47:58 PM](#)

SENATOR SHOWER recalled the committee held a long discussion on minors defined as younger than age 17. He asked for further clarification that this change "lines up" with the issues previously discussed.

MR. WHITT responded that an additional amendment will clarify the language in Sections 7 and 12 of the bill related to minors.

[2:49:01 PM](#)

MS. LARGENT concurred that Mr. Whitt is correct that separate amendments address those provisions. Further, the Department of Law is working on other amendments to address it.

[2:49:21 PM](#)

SENATOR SHOWER remarked that the discussion last week was confusing. He said that identifying that the sexual assault language related to minors needed to be updated came up, but he has not been able to identify all the sections in statute that pertain to sexual assault. He wanted to be certain that this language "matches up." He asked for clarification on how six years was determined.

[2:50:34 PM](#)

MS. SCHROEDER explained that Amendment 6 is cleanup language. She related that the underlying bill makes it a sexual felony sentence to the higher presumptive sentence when there is a six-year age difference between the offender and the victim for sexual abuse of a minor in the third degree.

She referred to the definition of sexual abuse of a minor in the third degree [AS 11.41.438(a)]:

(a) An offender commits the crime of sexual abuse of a minor in the third degree if being 17 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least four years younger than the offender.

She said that if the victim is at least six years younger than the offender, the offender would be sentenced as a class C felony. However, the bill would acknowledge that a six-year age difference is more predatory, and the crime would be a sexual felony sentenced to the higher presumptive ranges associated with sex felonies. Amendment 6 would clarify that aspect in the definition of a sexual felony.

[2:51:51 PM](#)

SENATOR REINBOLD said that the committee received the amendments this morning. She asked for further clarification on whether the "newer fix" is a change from the original bill or if it refers to the committee substitute.

MS. LARGENT referred to the internal document, not posted to BASIS, which consisted of staff notes. One column was titled, "new or fix." She stated that "fix" was intended as a reminder that the amendment was something not drafted as requested, or

the Legislative Legal Counsel, Legislative Legal Services, Legislative Affairs Agency removed the language and Chair Hughes requested that it be reinserted.

SENATOR REINBOLD asked for further clarification that Amendment 4 referred to one specific crime.

MS. SCHROEDER answered yes. She said that Amendment 4 would draw the line at six years of an age difference. If the offender and the victim were within six years of age, the offender would be sentenced to a lower-level sentence. If the offender and victim were six years apart or above, the offender would receive a higher level of sentence. The crime in both instances would be sexual abuse of a minor in the third degree, but two different sentencing structures would be used, depending on the age difference.

[2:53:44 PM](#)

SENATOR KIEHL asked for further clarification that the six-year age difference would relate to sexual contact and not sexual penetration, which would be more serious.

MS. SCHROEDER answered yes.

[2:54:08 PM](#)

CHAIR HUGHES removed her objection. There being no further objection, Amendment 6 was adopted.

[2:54:16 PM](#)

SENATOR REINBOLD moved to adopt Amendment 7, work order 31-GS1873\U.13, Radford, 3/14/19.

#### AMENDMENT 7

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "U"

Page 21, lines 12 - 19:

Delete all material and insert:

"(1) develop a tool to track felony sex offenses reported to the Department of Public Safety by geographic location; the tracking tool must include a means to record the reason a reported offense was not referred for prosecution or, if referred, the reason the offense was not prosecuted and, if

applicable, the reason a sex offense charged as a felony resulted in a conviction of an offense other than a sex offense under a plea agreement;

(2) develop regulations and procedures to implement the requirements established under (1) of this subsection; and

(3) provide training for the implementation of the regulations and procedures established under (2) of this subsection in each state department as necessary."

CHAIR HUGHES objected for discussion purposes.

[2:54:47 PM](#)

MR. WHITT said that Amendments 7, 8, and 9 coincide. He explained that the language in Sections 28 and 29 of the CSSB 35, Version U, related to gathering more data on cases and reasons sexual felony cases are prosecuted or not to develop a tool to track offenses. He said the language in the CSSB 35, Version U was not the language requested. He reviewed the language in Amendment 7, paragraphs (1)-(3), which specifically lists the desired data and directive to the pertinent departments.

[2:56:10 PM](#)

SENATOR MICCICHE asked whether this would ask the Department of Public Safety (DPS) to record [statistics] on defendants who are found not guilty. He said if defendants are not prosecuted that they are still presumed innocent until proven guilty. He asked whether this would require tracking offenses that are not prosecuted.

MR. WHITT responded that tracking the data would not include any personal or proprietary information, but rather the number of cases that were reported, but were not ultimately prosecuted. Further, it would track cases that were reported but ultimately dropped, as well as the number of cases that were pursued and prosecuted. He characterized it as raw data not containing personal information or data.

[2:58:04 PM](#)

SENATOR MICCICHE asked for further clarification on this section.

MS. SCHROEDER responded that the department views Amendment 7 as a query for the reasons why cases are not prosecuted. The department currently attempts to track these reasons internally.

She concurred with Mr. Whitt that this would require the department to report the data. For example, the department declined this many sexual felonies for these reasons, evidentiary reasons, witness not available, or other reasons the cases were not pursued.

SENATOR MICCICHE asked whether this was in the original bill and for further clarification on the goal of this section.

[2:59:15 PM](#)

MR. WHITT explained that Sections 8 and 9 of the committee substitute (CS) SB 35, Version U, were not in the original version of the bill. Amendments 7-9 add language originally requested by Chair Hughes and Vice Chair Reinbold in Version U.

SENATOR REINBOLD recalled that 43 percent of misdemeanors are dismissed. She said she was uncertain about the number of felonies that are dismissed, but 63 percent of [sexual assaults] are unreported nationwide. She said this is a "red flag" for the public and the reason she thinks the amendment is a good idea.

SENATOR SHOWER said he understood the value of obtaining data and to track it. He expressed concern to ensure that the record reflects the legislative intent on the type of data. He would like the record to reflect that only raw data would be collected.

[3:01:13 PM](#)

CHAIR HUGHES asked the record to reflect that the privacy of individuals will be protected and that this relates to raw data for statistical purposes.

MS. SCHROEDER agreed that is how the the Department of Law interprets the language in Amendment 7.

[3:01:39 PM](#)

SENATOR SHOWER asked the record to reflect that the legislature wants the department to protect the privacy of individuals. He said that the intent of Amendment 7 is to provide raw data only and not any identifying data so the department can use it appropriately.

SENATOR KIEHL agreed with the intent. He asked how granular the DOL intends and the usefulness to future legislators. He recalled the reports to the committee and his alarm at the number of sex crimes that are not [prosecuted]. He wondered if future legislators would interpret this to mean that victims do

not feel safe and to work on victim's services or police training. He asked for further clarification on what types of analysis legislators would be able to do with the collected data.

[3:02:55 PM](#)

MS. SCHROEDER answered that the department views this as a new area and she was unsure how granular, or the level of detail, the department would obtain, but she offered to work with the legislature to further define the type of information the department should extract. She characterized it as a first step.

MR. WHITT referred to discussions in Chair Hughes's office. He said that not knowing what can be done with the data is a moot point. Once the legislature obtains the data and can analyze it, it is possible the legislature can do something to improve the numbers.

[3:03:55 PM](#)

CHAIR HUGHES said she appreciated the discussion.

[3:04:10 PM](#)

CHAIR HUGHES removed her objection. There being no further objection, Amendment 7 was adopted.

[3:04:15 PM](#)

SENATOR REINBOLD moved to adopt Amendment 8, work order 31-GS1873\U.14, Radford, 3/14/19.

**AMENDMENT 8**

OFFERED IN THE SENATE BY SENATOR HUGHES  
TO: CSSB 35(JUD), Draft Version "U"

Page 21, lines 28 - 29:

Delete all material and insert:

"(3) the number of sex offenses referred for prosecution that were charged as a felony and, under a plea agreement, resulted in a conviction for a crime other than a sex offense."

CHAIR HUGHES objected for discussion purposes.

MR. WHITT explained that Amendment 8 would add previously requested language. He referred to page 21, lines 28-29, [of the proposed committee substitute (CS) for SB 35 (JUD), Version U] and read the language in Amendment 8. He explained that this is clarifying language that also would add a bit more data.

[3:05:01 PM](#)

CHAIR HUGHES removed her objection, and after determining Senator Micciche had a question, withdrew removing her objection.

[3:05:16 PM](#)

SENATOR MICCICHE said this language would only change paragraph (3). He read paragraphs (1)-(3).

- (1) the number of felony sex offenses reported to the Department of Public Safety that were not referred for prosecution;
- (2) the number of felony sex offenses referred for prosecution that were not prosecuted; and
- (3) the number of felony sex offenses.

He asked whether a fourth paragraph should be added since paragraph 3 of Amendment 8 only captures those cases under a plea agreement.

[3:06:18 PM](#)

MS. SCHROEDER commented that Senator Micciche makes a good point. The proposed language would exclude cases that were taken to trial, and the defendant was acquitted on all sex offenses, was convicted on a non-sex offense.

[3:06:39 PM](#)

SENATOR MICCICHE moved to adopt Conceptual Amendment 1 to Amendment 8, beginning on page 21, line 30, which would add paragraph (4).

MR. WHITT interjected by relating that the Department of Law has pointed out the effect of Amendment 8 could be achieved by deleting the language "under a plea agreement."

[3:07:27 PM](#)

At-ease.

[3:09:12 PM](#)

CHAIR HUGHES reconvened the meeting.

3:09:12 PM

SENATOR MICCICHE restated his motion to adopt Conceptual Amendment 1 to Amendment 8. On page 21, line 30, [of the CSSB 35, Version U] would renumber paragraph (3) of Amendment 8 to paragraph (4) and insert the language, "the number of sex offenses referred for prosecution that were charged as a felony and, under a plea agreement, resulted in a conviction for a crime other than a sex offense." This would essentially separate the data for sex offenses under a plea agreement.

CHAIR HUGHES objected for discussion purposes.

SENATOR SHOWER asked whether this language should be broken down further or if the [Conceptual Amendment 1 to Amendment 8] will capture what is needed since the other categories were mentioned.

MR. WHITT offered to read the language, as amended [by the Conceptual Amendment to] Amendment 8. He directed attention to page 21. Lines 28 and 29 would remain in the CS as written, but a new paragraph (4) would be added. Amendment 8, as amended by Conceptual Amendment 1, would read:

(3) the number of felony sex offenses that resulted in a conviction for a crime other than a sex offense; and

(4) the number of sex offenses referred for prosecution that were charged as a felony and, under a plea agreement, resulted in a conviction for a crime other than a sex offense.

3:11:21 PM

SENATOR MICCICHE explained that a number of reasons exist for prosecutors to decide not to charge a person of a sex offense, but the offender could be convicted of a crime other than a sex offense. However, Alaska ranks number one in the country for sexual assaults. He stressed the importance of obtaining data to help the legislature develop laws to reduce these numbers. A separate category for plea agreements could help [the state] to better understand the effect that plea agreements have on the lack of convictions and how to identify and improve the number of convictions. The importance of this has been highlighted by the recent high-profile case that brought this to light, he said.

CHAIR HUGHES said she appreciated this since it may help close a loophole.

SENATOR SHOWER said his question was not answered. He asked whether the two or three other categories previously mentioned should also be added or if Conceptual Amendment 1 to Amendment 8 will capture the needed data. He was unsure if it was necessary to break the categories out further for the fidelity of the data.

MS. SCHROEDER asked whether he was referring to the other categories in Section 29.

SENATOR SHOWER answered no. He recalled that in a previous discussion the committee rattled off about four other categories. However, he did not specifically recall the categories.

MS. SCHROEDER offered her belief that the CSSB 35, Version U, with Conceptual Amendment [1 to Amendment 8], would capture everything necessary, including trial and non-trial plea agreements.

SENATOR SHOWER said he wanted to be sure it captures the necessary data.

[3:13:31 PM](#)

CHAIR HUGHES removed her objection. There being no further objection, Conceptual Amendment 1 to Amendment 8 was adopted.

CHAIR HUGHES said that brings Amendment 8, as amended, before the committee. There being no objection, Amendment 8, as amended, was adopted.

[3:13:56 PM](#)

CHAIR HUGHES moved to adopt Amendment 9, work order 31-GS1873\U.19, Radford, 3/15/19.

#### AMENDMENT 9

OFFERED IN THE SENATE BY SENATOR REINBOLD  
TO: CSSB 35(JUD), Draft Version "U"

Page 13, line 11, following "resources":

Insert ", including the Council on Domestic Violence and Sexual Assault, the Alaska Network on Domestic Violence and Sexual Assault, the Office of Victims' Rights, and the Violent Crimes Compensation Board"

CHAIR HUGHES objected for discussion purposes.

[3:14:24 PM](#)

SENATOR REINBOLD explained that Amendment 9 would direct the [Department of Corrections] to include the Council on Domestic Violence and Sexual Assault, the Alaska Network on Domestic violence and Sexual Assault, the Office of Victims' Rights, and the Violent Crimes Compensation Board to provide clarity and be more victim-focused in the bill.

[3:14:42 PM](#)

CHAIR HUGHES removed her objection. There being no further objection. Amendment 9 was adopted.

[3:15:12 PM](#)

SENATOR REINBOLD moved to adopt Amendment 10, work order 31-GS1873\U.2, Radford, 3/14/19.

#### AMENDMENT 10

OFFERED IN THE SENATE BY SENATOR KIEHL  
TO: CSSB 35(JUD), Draft Version "U"

Page 2, line 2:  
Delete "AND 24"  
Insert "22, AND 25"

Page 2, line 29:  
Delete "sec. 24"  
Insert "sec. 25"

Page 3, line 3:  
Delete "sec. 24"  
Insert "sec. 25"

Page 3, line 7:  
Delete "sec. 24"  
Insert "sec. 25"

Page 13, following line 27:

Insert a new bill section to read:

**"\* Sec. 22.** AS 12.63.010 is amended by adding a new subsection to read:

(g) Notwithstanding the requirement to register under this section, a sex offender or child kidnapper, as that term is defined in AS 12.63.100(6)(B), may petition the department for removal from the central registry of sex offenders and child kidnappers and to be exempt from the registration requirements under this section. The department shall grant the petition if the petitioner submits proof acceptable to the department that the facts underlying the conviction in another jurisdiction do not constitute a sex offense or child kidnapping in this state. When the petition is granted, the department shall remove from the central registry information about the sex offender or child kidnapper as provided in AS 18.65.087(d)(4)."

Renumber the following bill sections accordingly.

Page 15, line 14, following "section":

Insert "and of the procedure to petition for removal from the central registry"

Page 15, line 23, following "occurred":

Insert "i  
(3) procedures to remove a sex offender or child kidnapper, as that term is defined in AS 12.63.100(6)(B), from the central registry of sex offenders and child kidnappers"

Page 17, following line 28:

Insert new bill sections to read:

**"\* Sec. 26.** AS 18.65.087(d) is amended to read:

(d) The Department of Public Safety  
(1) shall adopt regulations to  
(A) allow a sex offender or child kidnapper to review sex offender or child kidnapper registration information that refers to that sex offender or child kidnapper, and if the sex offender or child kidnapper believes the information is inaccurate or incomplete, to request the department to correct the information; if the department finds the information is inaccurate or incomplete, the department shall correct or supplement the information;

(B) ensure the appropriate circulation to law enforcement agencies of information contained in the central registry;

(C) ensure the anonymity of members of the public who request information under this section;

(2) shall provide to the Department of Corrections and municipal police departments the forms and directions necessary to allow sex offenders and child kidnapers to comply with AS 12.63.010;

(3) may adopt regulations to establish fees to be charged for registration under AS 12.63.010 and for information requests; the fee for registration shall be based upon the actual costs of performing the registration and maintaining the central registry but may not be set at a level whereby registration is discouraged; the fee for an information request may not be greater than \$10;

(4) shall remove from the central registry of sex offenders and child kidnapers under this section information about a sex offender or child kidnapper

(A) required to register under AS 12.63.020(a)(2) at the end of the sex offender's or child kidnapper's duty to register if the offender or kidnapper has not been convicted of another sex offense or child kidnapping and the offender or kidnapper has supplied proof of unconditional discharge acceptable to the department;

(B) who has successfully petitioned the Department of Public Safety to be removed from the central registry of sex offenders and child kidnapers under AS 12.63.010(g) [IN THIS PARAGRAPH, "SEX OFFENSE" AND "CHILD KIDNAPPING" HAVE THE MEANINGS GIVEN IN AS 12.63.100].

\* **Sec. 27.** AS 18.65.087 is amended by adding a new subsection to read:

(j) In this section, "sex offense" and "child kidnapping" have the meanings given in AS 12.63.100."

Renumber the following bill sections accordingly.

Page 23, line 5:

Delete "sec. 22"

Insert "sec. 23"

Page 23, line 6:

Delete "sec. 23"

Insert "sec. 24"

Page 23, line 7:  
Delete "sec. 24"  
Insert "sec. 25"

Page 23, line 8:  
Delete "sec. 25"  
Insert "sec. 28"

Page 23, line 9:  
Delete "sec. 26"  
Insert "sec. 29"

Page 23, following line 10:  
Insert a new subsection to read:  
"(d) AS 12.63.010(g), enacted by sec. 22 of this Act, applies to the duty to register as a sex offender for offenses committed before, on, or after the effective date of sec. 22 of this Act."

CHAIR HUGHES objected for the purpose of discussion. She indicated that Amendment 10 was Senator Kiehl's amendment. She asked him to speak to Amendment 10.

[3:15:22 PM](#)

SENATOR KIEHL explained that Amendment 10 is designed to address the issue where sex offenders convicted in other jurisdictions are required to register in Alaska, but the crime they were convicted of is not considered a registerable sex offense in Alaska. If the person can demonstrate to the Department of Public Safety that the crime that the person was convicted of in another state is not a crime in Alaska, the department can remove the individual's name off the registry. He further explained the process, such that the individual would need to petition the department and provide proof that is acceptable to the department. The state would maintain its constitutional duty to write Alaska's laws, but still capture everyone who has been convicted of crimes that are considered sex crimes in Alaska.

[3:16:39 PM](#)

CHAIR HUGHES expressed concern that the full faith and credit clause in the U.S. Constitution requires states to honor the judgments of other states. She asked whether Alaska would honor the judgement or conviction in another state for a sex crime. For instance, Alaska honors the domestic violence protective

orders from other states even if the orders do not align identically with Alaska law.

[3:17:22 PM](#)

MS. LARGENT explained that the full faith and credit provision in the U.S. Constitution provides a foundational way to view this proposal. It really is not the distinction of whether Alaska laws match other states, but if Alaska will give full faith and credit for a conviction, a judgment, of a sex crime in another state.

She provided an example, when Francis Scott Key argued that a judgment between the states should be brought in as evidence. The U.S. Supreme Court disagreed. Justice [Joseph] Story said this interpretation would render the cause "utterly unimportant and illusory." The court went on to hold that a judgment that is rendered conclusive must be held conclusive elsewhere. She said that subsequent case law has indicated that is not an unqualified command. The courts have held that a jurisdiction might go back and inquire whether a court had actual jurisdiction. If not, it could raise due process issues. The court goes back to see if new evidence contradicts that judgment, which is "reaching back into the judgment." The specific language has been that states are not required to enforce a law from another state that is obnoxious to its public policy. For example, if enforcing a sex crime judgment from another state would be obnoxious to Alaska's public policy, there is room for [argument], but unless that bar is met, under the U.S. Constitution's full faith and credit provisions, Alaska is under somewhat of a directive to give credit to those judgments.

[3:20:35 PM](#)

JOHN SKIDMORE, Division Director, Criminal Division, Central Office, Department of Law, Anchorage, said the issue with Amendment 10 is that it would gut the underlying concept. Alaska suffers from one of the worst sex offense rates in the country. The public and the administration were concerned when Alaska's statutes were interpreted during a case to mean that individuals who moved to Alaska but were convicted of an offense that required them to register as sex offenders in other states could move to Alaska and not have to register as sex offenders.

He said that what upset people were examples of people who committed offenses in other states who moved to Alaska and committed sex offenses in Alaska. The intent behind [SB 35] is to eliminate the incentive for individuals to seek out Alaska to

avoid sex offender registration requirements. The state may wish to review and crimes in other states that require sex offender registration but are not crimes in Alaska and consider if that conduct should be criminalized. The goal is to avoid encouraging sex offenders to come to Alaska to avoid sex offender registry. He characterized it as hanging a sign over Alaska's door saying, "Sex offenders welcome."

MR. SKIDMORE said that Amendment 10 is still stricter than current law. However, it would require substantial effort by the Department of Public Safety to compare Alaska's law to other states' laws to determine the underlying conduct. One thing pointed out by the New Mexico Supreme Court, which is cited in the Doe case, is that if you follow this approach, it relies on the conduct for which someone was convicted. Sometimes it is very clear, but other times is not as clear. For instance, the New Mexico court considered whether a person convicted of an offense who was required to register, had been convicted using a plea agreement without an allocution, meaning the defendant did not stand up and recite the facts. In those instances, the courts are left to compare the statutes but not the conduct itself. The original bill was more encompassing since it said if an offender is required to register in another state, the offender must also register in Alaska. The DOL and administration oppose Amendment 10 because it would gut the concept, he said.

[3:25:06 PM](#)

SENATOR MICCICHE said that he cannot support Amendment 10. He reminded members that the committee worked on [SB 12] to close the Justin Schneider loophole, because his crimes were not considered sexual crimes. The legislature recognized these actions should have been crimes. However, if someone had come to Alaska who had recently strangled someone to the point of unconsciousness [and done the things Justin Schneider did], he would not be required to register in Alaska. He acknowledged that Alaska has gaps, but some other states have done a very good job. He said it does not work for him and he did not think Amendment 10 works for Alaskans.

[3:26:02 PM](#)

SENATOR KIEHL said that he was not concerned with the U.S. Constitution's full faith and credit issue since there is not any opportunity to retry the facts or the conviction. This simply looks at whether the facts would be registerable sex crimes in Alaska. The legislature would not ask the Department of Public Safety to judge the credibility of a witness. He

maintained his belief that it is not a full faith and credit issue, but it relates to the Alaska Constitution. In the State of Missouri, a person must register as a sex offender if he/she is a teacher and has sex with a student, even if the student is 18 years old. Alaska has not made that a sex crime. In Michigan, consensual sex between people within the third degree of kindred is a registerable sex offense, but it is not in Alaska, which is a conscious choice, and not a loophole in Alaska. Ultimately, it is important to look at what actions constitute a registerable sex crime in Alaska. He said that troopers look at the elements of the offense all day long. And when they have a question, they call the lawyer for advice. He offered his belief that administering this is straightforward. The presumption is that sex offenders must register and the burden of proof that it does not constitute a sex crime in Alaska is on the offender. He characterized it as a minor adjustment for the rare cases in which Alaska has decided the conduct is not a crime.

3:28:58 PM

MR. SKIDMORE said that some of the examples do not track with Alaska's law. He said that the Michigan law talks about incest in the third degree, which is criminalized in Alaska. He offered his belief that there are some factual errors. Further, he fails to identify where in the Constitution of the State of Alaska it shows some reason that someone should not have to register as a sex offender. He said he goes back to the government's compelling state interest to not encourage sex offenders to move to Alaska to avoid having to register as sex offenders. He acknowledged that the current law focuses only on elements and that his amendment would have the department look at facts. However, he was also trying to highlight that looking at facts and determining what are the facts that resulted in the conviction is not as easy as one might think without an allocution from the defendant. Absent the allocution, the state is left only with the elements, which is the problem the state faces today. The issue becomes that Amendment 10 is not achieving that underlying goal or principle of discouraging people from moving to Alaska to avoid sex offender registry when they have already committed sex offenses. Those are the reasons the department is opposed to Amendment 10.

3:31:04 PM

CHAIR HUGHES offered her belief that Amendment 10 would put the Department of Public Safety (DPS) in the position of making a judgment in violation of the full faith and credit clause of the U.S. Constitution by asking the department whether it will honor judgments from other states and that concerns her. She said the

compelling interest to eliminate the problem of Alaska being a magnet to sex offenders trumps everything. She said she will not be supporting Amendment 10.

SENATOR KIEHL said the question of a plea agreement without allocution, arguably leaves the offender in the unenviable position of not being able to prove the facts do not match and so he/she would have to register. That is how Amendment 10 is written, he said. He said he appreciated Mr. Skidmore's talent at hyperbole, but the State of Michigan's criminal sexual conduct in the fourth degree is not the crime of incest.

[3:32:27 PM](#)

CHAIR HUGHES maintained her objection.

[3:32:34 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 10 and Senators Reinbold, Micciche, Shower, and Hughes voted against it. Therefore, Amendment 10 failed by a 1:4 vote.

CHAIR REINBOLD moved to adopt Amendment 11.

CHAIR HUGHES objected for discussion purposes.

[3:33:02 PM](#)

CHAIR HUGHES asked whether the committee could continue since the allotted committee time was up.

[3:33:20 PM](#)

At-ease.

CHAIR HUGHES reconvened the meeting. She said that she would hold off on the remaining amendments.

[The committee treated Amendment 11 as not offered at this time.]

[3:34:12 PM](#)

MR. WHITT said he would review the action the committee took on Amendment 8.

[SB 35 was held in committee.]

[3:35:10 PM](#)

CHAIR HUGHES reviewed upcoming committee announcements.

[3:35:23 PM](#)

There being no further business to come before the committee, adjourned the Senate Judiciary Standing Committee meeting at 3:35 p.m.