

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 5, 2019

1:34 p.m.

MEMBERS PRESENT

Senator Shelley Hughes, Chair
Senator Mike Shower
Senator Peter Micciche
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Lora Reinbold, Vice Chair

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 AND 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)
 03/13/19 (S) Heard & Held
 03/13/19 (S) MINUTE(JUD)
 03/18/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/18/19 (S) Heard & Held
 03/18/19 (S) MINUTE(JUD)
 04/01/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/01/19 (S) <Bill Hearing Canceled>
 04/05/19 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

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

POSITION STATEMENT: Reviewed the changes in the proposed committee substitute (CS) for SB 35, Version K, on behalf of Chair Hughes.

RAMIN DUNFORD, Sergeant
 Department of Public Safety
 Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on SB 35.

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

POSITION STATEMENT: Testified and answered questions during the discussion of 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 Chair Hughes.

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

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

NATALIE NORBERG, Director
Office of Children's Services
Central Office
Department of Health and Social Services
Juneau, Alaska

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

ACTION NARRATIVE

[1:34:27 PM](#)

CHAIR SHELLEY HUGHES called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Shower, Micciche, Kiehl and Chair Hughes.

SB 35-CRIMES;SEX CRIMES;SENTENCING; PAROLE

[1:34:55 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."

1:35:14 PM

CHAIR HUGHES made opening remarks and stated her intent to hold the bill in committee.

1:35:39 PM

SENATOR MICCICHE moved to adopt the proposed committee substitute to SB 35, work order 31-GS1873\K, Radford, 4/2/19, Version K, as the working document.

CHAIR HUGHES objected for discussion purposes.

1:36:54 PM

BUDDY WHITT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, reviewed the changes in the committee substitute (CS) for SB 35, Version K.

Title Changes: The following has been added to the title in order to conform to changes and added provisions;

- relating to sexual assault
- relating to unlawful exploitation of a minor
- relating to definitions of sexual felony, sex offense and sex offender

1:37:12 PM

MR. WHITT reviewed Section 1.

Section 1: Adds subsection (f) intent language added for the Department of Public Safety to make additional resources available to expand investigation of online exploitation of children (Page 3, Line 7 and 8).

MR. WHITT said that several members planned to offer an amendment to address this, but instead it was included in Version K. He invited Senator Kiehl to speak to the proposed change and Senator Micciche to address the finance aspects.

1:38:21 PM

SENATOR KIEHL said he discovered, while conducting research on a bill related to child pornography, that the state does not currently have personnel resources dedicated to actively finding people who post explicit content online. However, when someone fixes a computer or an internet service provider "red flags"

exploitive content, Alaska does conduct an investigation. He applauded the Department of Public Safety (DPS) for working with local law enforcement through a multi-agency Internet Crimes Against Children Task Force. He supported the intent language to proactively seek information on online exploitation of children as worthwhile. He pointed out that this effort would have a budgetary impact.

SENATOR MICCICHE said he appreciated this change. He related that the Senate Finance [Standing] Committee is evaluating the cost, but he plans on putting it in the Senate's version of the budget. He said he would meet with the DPS commissioner to get a better idea of the program.

[1:40:24 PM](#)

CHAIR HUGHES advised the public that a publication by the U.S. Department of Justice related to child pornography is posted online. She explained that she met with DPS and learned about the dark web. It takes special skills to pinpoint these activities, she said. Many of the changes in SB 35 would tighten penalties for sexual crimes against children. She appreciated the intent language. She would like pedophiles to know they are not welcome in Alaska.

[1:41:32 PM](#)

SENATOR MICCICHE recalled that Chair Hughes reported that child pornography is not illegal in 55 countries. Whenever there is a market, there will be some to provide that product, [that legality is not the issue]. He offered his belief that SB 35 would help identify perpetrators of these crimes.

[1:42:06 PM](#)

RAMIN DUNFORD, Sergeant, Department of Public Safety, stated that he is the supervisor of the four Internet Crimes Against Children Task Force investigators, one computer forensic examiner civilian, and one mobile forensic examiner civilian. He also supervises the Financial Crimes Unit. In response to Chair Hughes, he reported that in the last 30 days the unit discovered one network with 42 independent IP addresses in Alaska that actively contained images of sexually exploited children.

[1:43:42 PM](#)

MR. WHITT reviewed Section 2.

Section 2: Added section which amends AS 11.41.420(a)(3) to revise the mental state for sexual assault in the second degree when the offender engages

in penetration with someone who is mentally incapable, incapacitated or unaware that a sexual act is being committed (Page 3, Line 19 through 23).

Section 3: Added section which amends AS 11.41.425(a) to revise the mental state for sexual assault in the third degree when the offender engages in sexual contact with someone who is mentally incapable, incapacitated or unaware that a sexual act is being committed (Page 4, Line 1 through 5).

MR. WHITT explained that these changes were suggested by Senator Reinbold. Section 2 would remove language that the "offender knows" that the victim is mentally incapable. This means it is not an excuse when an offender knows that the victim is mentally incapable, incapacitated or unaware that a sexual act is being committed.

[1:45:17 PM](#)

MR. WHITT reviewed Sections 6 and 7.

Section 6: Added section which amends AS 11.41.438(b) adding that the crime of sexual abuse of a minor in the third degree is a class C felony punishable under AS 12.55.125(e) when the offense occurs outside the provisions if section (c) of this section (Page 5, Line 5 through 8).

Section 7: New subsection AS 11.41.438(c) that sexual abuse of a minor is a class C felony punishable under AS 12.55.125(i) if the victim is at least six years younger than the offender (Page 5, Line 9 through 12).

MR. WHITT reminded members that the committee previously held discussions on the differences in ages between the perpetrator and the victim and how it affects criminal charges. These two sections provide that the penalty for the crime is a class C felony, but the penalty would be more severe if the age difference is six years or more.

SENATOR SHOWER said that an 18-year-old having sex with a 12-year-old is not acceptable. He asked for further clarification on the age differences between the victim and offender for sexual abuse of a minor.

[1:47:45 PM](#)

JOHN SKIDMORE, Director, Criminal Division, Central Office, Department of Law, Anchorage, stated the law for sexual abuse of a minor in the third degree is when the victim is age 13,14, or 15 and a four-year age difference occurs between the victim and the offender. Mr. Whitt described the penalties are greater with a six-year-age difference, but the threshold remains as stated for sexual abuse of a minor in the third degree.

CHAIR HUGHES asked for further clarification that there would be a stiffer penalty an 18-year-old having sex with a 12-year-old.

MR. SKIDMORE said having sex with a 12-year-old would constitute sexual abuse of a minor in the second degree and would carry a greater penalty. However, this bill does not address that crime.

[1:49:43 PM](#)

SENATOR MICCICHE asked for further clarification on the age of consent.

MR. SKIDMORE explained that the age of consent is 16 years of age. The Alaska statutes break victims into groups: under the age of 12 carried the most stringent penalties, ages 13 to 16, carries a slightly lower penalty so long as the age is appropriate between the victim and the offender. He said he hoped to put together a chart to better clarify the penalty provisions.

SENATOR MICCICHE agreed a chart would be helpful. He related his understanding that a three-year age difference would be more serious than if the victim was 17 years old and the offender was 18 years old.

MR. SKIDMORE said that sexual activity between an 18-year-old and 17-year-old would not fall under sexual abuse of minor since it is above the age of consent. The department would evaluate as to whether the activity was without consent. He related a scenario with an 18-year-old offender and a 16-year old victim, which would fall under the sexual assault statutes.

SENATOR MICCICHE asked whether the penalty would be different for an 18-year-old perpetrator and a 15-year old victim or a 17-year-old perpetrator and a 14-year-old victim since the 18-year-old would be an adult.

MR. SKIDMORE responded that two provisions of law come into play. First, the scenario indicates a 3-year-age difference so it would not fall under sexual abuse of a minor. However, if the

ages in the scenario slightly increased and the perpetrator was 17 years old and the victim was 13 years old or the perpetrator was 18 years old and the victim was 14 years old, there would be a four-year age difference. The question would be whether those juveniles would be charged in adult court. It would not fall under an automatic waiver unless it was considered a class A felony offense or an unclassified felony. That determination would be made based on whether penetration or sexual contact occurred. He said that an 18-year-old would be treated as an adult and a 17-year-old would be treated as a juvenile. He said that sexual abuse of a minor is a class B felony, so it would not fall under an automatic waiver. Thus, the two individuals would be treated differently, he said.

[1:54:53 PM](#)

SENATOR KIEHL recalled that the penalty for sexual abuse of a minor was a class C felony.

MR. SKIDMORE clarified the difference in felony penalties for sexual abuse of a minor. The crime would be a class B felony if the crime included sexual penetration and it would be a class C felony if the crime included sexual contact.

SENATOR KIEHL directed attention to the proposed changes in SB 35. He related his understanding that the crime of sexual abuse of a minor in the third degree was not one involving force, but it was a crime because the age difference is too great for consent to be allowed.

MR. SKIDMORE answered yes.

SENATOR KIEHL referred to Section 7 to the 6-year age gap between the perpetrator and the victim. He noted the more stringent penalty. He asked whether the penalty for that crime would include registration as a sex offender.

MR. SKIDMORE answered yes.

SENATOR KIEHL and Chair Hughes agreed that a chart would be helpful.

[1:57:32 PM](#)

MR. WHITT reviewed Section 11.

Section 11: Amends AS 11.41.455(c) increasing the criminal classification for unlawful exploitation of a minor (Page 5, Line 28 through Page 6, Line 5).

MR. WHITT highlighted the current penalties:

- The first offense of exploitation of a minor is a class B felony
- The second offense of exploitation of a minor is a class A felony.

Under SB 35, Version K, the penalties would increase, as follows:

- The first offense of unlawful exploitation of a minor would be a class A felony; and
- The penalty for the minor being exploited who is under the age of 13 would be an unclassified felony.

In response to Chair Hughes, he confirmed that the penalties for exploitation of a minor under the age of 13, were as follows:

- The penalty for exploitation of a minor under the age of 13 would be an unclassified felony; and
- The second offense for exploitation of a minor under the age of 13 would also be an unclassified felony.

SENATOR SHOWER asked whether jurisdiction means Alaska and includes offenders convicted in other states.

MR. WHITT explained that topic would be addressed in Section 22 of SB 35.

[1:59:44 PM](#)

CHAIR HUGHES remarked that an unclassified felony is very serious. However, as the legislature toughens its criminal penalties, it should keep in mind penalties for crimes against children in other jurisdictions. For example, in Oklahoma, offenders convicted of any offense of forcible anal or oral sodomy rape, rape by instrumentation, or lewd molestation of a child under the age of 14 shall be punished by death or by imprisonment for life without parole. She asked the record to reflect this consideration.

[2:00:45 PM](#)

MR. WHITT added that Section 11 was added at the request of several members, including Senator Reinbold.

2:01:09 PM

MR. WHITT reviewed Section 12.

Section 12: Amends AS 11.41.458(b) which clarifies that indecent exposure in the first degree is a class B felony when the offense occurs in the view of a minor under 16 years of age (Page 6, Line 18 through 21).

2:01:31 PM

SENATOR KIEHL asked for further clarification on the penalty for indecent exposure in the first degree. He referred to lines 20-21 and asked whether the class B felony is for the first or second offense.

CHAIR HUGHES, reading from her notes, reviewed the penalties for indecent exposure, as follows:

- Indecent exposure in the second degree plus masturbation, when the victim is 16 years of age or older would be a class C felony;
- Indecent exposure in the second degree plus masturbation when the victim is 15 years of age or younger, would be a class B felony;
- Indecent exposure in the second degree when the offender has a prior conviction for indecent exposure and the victim is 16 years of age or older, would be a class C felony; and
- Indecent exposure in the second degree when the offender has a prior conviction for indecent exposure and the victim is 15 years of age or younger would be a class B felony.

MR. SKIDMORE responded that he believed the penalty provisions stated were correct. He confirmed that the determination of penalties for a class B felony or a class C felony would depend on the age of the victim. However, indecent exposure in the first degree is dependent upon one of two factors, whether the crime also included masturbation or if it was a second indecent offense. Finally, as Chair Hughes indicated, the penalty would change based on the victim's age.

2:03:48 PM

SENATOR KIEHL expressed concern because the penalties seemed disproportionate. He acknowledged that a person streaking in the

view of a high school would be engaging in criminal activity and must be prosecuted. However, he was unsure that the penalties for these crimes were on par with other class B felonies. He said he viewed indecent exposure as being in a different class than the crime of sexual penetration of a minor. In response to Chair Hughes, he confirmed his scenario involved a person streaking in the view of a high school.

REGINA LARGENT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, stated that indecent exposure in the second degree involves the exposure of genitals. She reiterated that the distinction of a class C felony was related to adding the sexual act of masturbation to the crime. The penalty was increased to a class B felony when a person who is 15 years or younger was exposed to genitals plus a sexual act or if it pertained to a repeat offender. She emphasized that a repeat offender created a demonstrable danger to children.

[2:05:56 PM](#)

MR. WHITT explained that Sections 14 through 18 all pertain to the crime of indecent viewing or production of a picture. He reviewed Section 14.

Section 14: Amends AS 11.61.123(a) for the crime of indecent viewing or production of a picture (Page 7, Lines 13 through 30).

MR. WHITT said the language "production of a picture" replaces the language "photography" in current statute. Section 14 would remove the ability for the minor and parent to consent for viewing or production of a picture. It specifies that a crime occurs any time that the person viewed or produces an image of someone under the age of 16. He said that someone 16 years of age and over can give consent. However, it is a crime if consent is not given for the indecent viewing or production of a picture.

MR. WHITT skipped ahead to Section 17.

Section 17: Amends AS 11.61.123(f) to add classifications for the crime of indecent viewing or production of a picture (Page 8, Line 10 through 28).

MR. WHITT reviewed the penalties:

- Indecent viewing or production of a picture is a class B felony if the victim is a minor;

- Indecent viewing or production of a picture is a class C felony if the victim is a minor 16 years of age or over; and
- Indecent viewing or production of a picture if the victim is an adult is a class A misdemeanor.

MR. WHITT said Section 15 would provide a carve out for law enforcement conducting their duties. Section 16 would provide a defense for lawful surveillance systems or crime prevention for prosecution. Section 18 would allow lawful interaction with a child for physical or mental health reasons, he said.

[2:08:39 PM](#)

SENATOR SHOWER asked whether the defense provision established in Sections 15-16 should state reproduction rather than production or if the semantics matter if the material is being reproduced.

MR. SKIDMORE answered no. He said he would like to verify the definition of "production" to ensure that it is correct. However, he offered his belief that production means any time the image is produced, whether it is the first time or if it is being "remade".

SENATOR SHOWER asked the record to reflect that a discussion related to producing or reproducing photographs or images was held.

[2:10:15 PM](#)

MS. LARGENT recapped the classifications for indecent viewing or production of a picture. She reviewed the penalties for indecent viewing or production of a picture in Version K. She reviewed the penalty provisions for indecent viewing or production of a picture:

- Indecent viewing of a minor is a class C felony;
- Indecent viewing of an adult is a class A misdemeanor;
- Indecent production of a picture of an adult is a class C felony; and
- Indecent production of a picture of a minor is a class B felony.

2:11:03 PM

SENATOR KIEHL said he appreciated that this provision addressed concerns about parental consent that were raised during a prior hearing. He asked for further clarification on how this would affect 15-year old students sending and sharing naked selfies to one another.

MR. WHITT explained that staff held discussions with the Department of Law, including Ms. Largent, and the department worked on carve out language to avoid charging minors for sharing explicit images with one another. However, the feeling was that allowing explicit images to be shared would be sending the wrong message to teens. Secondly, the department indicated it does not prosecute consensual sharing of images between two minors as per advice from the [National Center for Missing and exploited Children]. Further, this crime would be one that would fall under the [Division of Juvenile Justice, Department of Health and Social Services].

MS. LARGENT commented that she had nothing more to add.

MR. SKIDMORE confirmed that the conduct Senator Kiehl described would be referred to the Division of Juvenile Justice. He added that the DJJ's statistics indicate very few of these cases, in the single digits, result in any action.

SENATOR KIEHL said he appreciated the "best practices" approach. He asked what level of offense the department would not be pursuing.

MR. SKIDMORE responded that it would be evaluated on whether charges should be filed against a juvenile under the age of 16. He elaborated that the department would consider whether it was a private exposure, which means a person exposed a person's body or part of a body in a place and under circumstances that the person reasonably believed would not result in the person's body or body parts being viewed by the defendant or produced in a picture or produced in a photo. However, a person cannot have a reasonable expectation that the photo was not taken if the individual takes a selfie and sends it, he said.

SENATOR MICCICHE suggested more time might need to be spent on this provision because he was not sure where the photos end up. For example, these photographs could end up on a child porn site. He hoped the activity would not ultimately be ignored and that it would warrant the Division of Juvenile Justice (DJJ) to

take seriously that two underage individuals were sending inappropriate photos to one another and not ignore it.

2:16:20 PM

CHAIR HUGHES asked Mr. Skidmore whether the situation of two teenagers taking a private consensual photo and one sharing the photo with a third person could be pursued with DJJ. She also asked if other laws would apply if the photo were to appear on a child porn site.

MR. SKIDMORE offered a two-phased answer. First, he reread the definition of private exposure, which is "exposed a person's body or part of a body in a place and under circumstances that the person reasonably believed would not result in the person's body or body parts being viewed by the defendant." If person (a) did not reasonably believe that person (c) would view the photo, he believed that the law would provide for prosecution.

MR. SKIDMORE said, secondly, the question would be whether the photograph that was posted in some other location would qualify as child pornography. Although he thought it was possible, he recalled that the definition of child pornography must be something slightly more than a photograph of a naked person. It would need to be based on the facts plus he would also review the definition of child pornography to make that determination, he said.

2:19:17 PM

SENATOR MICCICHE expressed concern that some of these photographs end up in suicides and other very serious consequences. He related a scenario in which a teenage girl has a boyfriend. She thinks she will marry him, so she decides to send an explicit photograph of herself to her boyfriend. The boyfriend subsequently shows it to the hockey team. That type of behavior often destroys a teenage girl's life, he said.

He argued it should only be legal for adults to share explicit photographs. He questioned whether the age of consent should be 16 years of age. He characterized this issue as unresolved and problematic. Although he said he did not plan to hold the bill up because of this provision, more work needs to be done.

CHAIR HUGHES asked for further clarification from Mr. Skidmore on the above scenario.

MR. SKIDMORE agreed that the boyfriend sharing an explicit image with the hockey team would result in criminal behavior because

the victim would have a reasonable belief that photograph would not be viewed by another. He clarified that it would apply not only to the viewing but also to production since the image was passed on to the team.

[2:21:12 PM](#)

SENATOR MICCICHE said that what seems to be missing is a lack of consequences for the initial production and distribution of the image to another young person. Once the photo is distributed it is too late because the damage is done. If the person is too young to consent to sexual activity the individual should not be able to consent to sexually explicit photographs, he said.

CHAIR HUGHES related her understanding that Senator Micciche would like it to be a crime before the explicit photograph is shown to the hockey team.

MR. WHITT referred to language on pages 22-23, line 9, to AS 47.17.020(e). He explained that language was added that relates to criminal conduct. The department must notify the nearest law enforcement agency if the department suspects criminal activity. He said that subparagraph (A) lists a number of statutes that this applies to, including AS 11.41.410-11.41.458 and AS 11.61.116. These statutes refer to sending an explicit image of a minor, harassment in the first degree with contact over the clothing, harassment in the second degree specifically with photographs and pictures, indecent viewing or production of a picture, and distribution of indecent material to minors. Further, this provision specifically states, "including sex offenses committed by a minor against a minor." He said that when someone in the Department [of Health and Social Services] becomes aware of this conduct, the person is required to report it to the nearest law enforcement agency for further investigation.

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At-ease.

[2:29:59 PM](#)

CHAIR HUGHES reconvened the meeting.

[2:30:32 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, Juneau, suggested that some confusion might be arising from one change made to Section 14, where the age of consent was raised from 13 to 16 years of age.

She said that the committee previously expressed concern that a parent could consent to the private exposure of an older child. [Under Version K] subsection (a) of Section 14 reads, "anyone under the age of 16 cannot consent to the private exposure." However, as Mr. Skidmore pointed out "private exposure" means a person exposed a person's body or part of a body in a place and under circumstances that the person reasonably believed would not result in the person's body or body parts being viewed by the defendant or produced in a picture."

MS. SCHROEDER said that definition could potentially imply consent because the individual sending the image could not reasonably expect others not to view the image. She suggested that the committee could consider adjusting the language "private exposure" to clarify that anyone under the age of 16 cannot consent. She suggested that would make Section 14 work harmoniously.

CHAIR HUGHES clarified that had been her intention all along. She said that she supports adjusting the language and the definition.

SENATOR MICCICHE agreed but said he would like to see the specific language. He suggested that teenagers ages 16 to 18 years might be smarter about what they are doing to themselves. However, one could argue they might not be smarter. He related a scenario that teenagers playing doctor is one thing but sending the photograph to someone else could have much more significant results. He reminded members of reports of suicides throughout the U.S. because teens just do not think about the consequences of their actions.

CHAIR HUGHES suggested that the Division of Juvenile Justice could address this by creating a learning opportunity for the young person. The person could learn the ramifications of what that type of behavior would be for adults.

MR. WHITT skipped Section 18. The explanation reads as follows:

Section 18: Adds a new subsection AS 11.61.123(g) to provide for exceptions crimes of Indecent Viewing or Production of a Picture (Page 8, Line 29 through Page 9, Line 4).

[2:34:02 PM](#)

MR. WHITT reviewed Section 19.

Section 19: Amends AS 11.81.900(b) to add a new paragraph defining semen (Page 9, Line 5 through 7).

He referred to a letter in members' packets from the Department of Public Safety's forensic laboratory [dated February 26, 2019] that had a scientific definition of semen. That definition was added to Section 19.

[2:34:49 PM](#)

SENATOR KIEHL expressed his appreciation for the definition of semen since the lab also answered questions on semen along with the fact that there is not any lab test for vaginal secretions. He thought it would be helpful to have the letter as part of the packet for SB 12, which is a bill that would close the Justin Schneider loophole. He characterized it as a very valuable letter that could answer any potential equal protection challenges.

[2:35:28 PM](#)

MR. WHITT reviewed Section 20.

Section 20: Amends AS 12.55.015 by adding a new subsection specifying that in the cases of domestic violence or sex crimes, there is a presumption by the court of a no contact order (Page 9, Line 8 through 14).

MR. WHITT explained that this change was requested by Senator Kiehl. The previous language had a presumption of a protective order for any crimes, which was fixed with a reference to AS 12.63.100 and AS 18.66.990.

[2:36:15 PM](#)

MR. WHITT reviewed Section 21.

Section 21: Amends AS 12.55.125(i) to add conforming sentencing guidelines for the crimes of unlawful exploitation of a minor, indecent exposure in the first degree, sexual abuse of a minor in the third degree, and indecent viewing or production of a picture (Page 9, Line 15 through Page 12, Line 23).

MR. WHITT explained that this provision would also increase presumptive sentencing ranges for distribution of child

pornography. The presumptive sentencing ranges are listed in the following sections of SB 35:

- Unlawful exploitation for a minor is referenced in Section 11.
- Indecent exposure in the first degree is listed in Section 12. Sexual abuse of a minor in the third degree is listed in Sections 6 and 7.
- Indecent viewing or production of a picture as described in Sections 14 and 17.

MR. WHITT referred to changes in Section 21, on page 11, line 12, that would increase the presumptive sentencing ranges for distribution of child pornography.

[2:37:32 PM](#)

CHAIR HUGHES expressed concern that the penalties in Alaska may be too lenient and might invite some unsavory people to Alaska. She explained that those involved in the production and development of child pornography websites should be punished more harshly. SB 35 would toughen up penalties, she said.

MS. LARGENT asked the record to reflect that she, Senator Kiehl and the Department of Law met with Sergeant Dunford who helped educate them on peer-to-peer networks and mass distribution schemes. She deferred to Sergeant Dunford to further explain.

[2:40:13 PM](#)

SERGEANT DUNFORD explained that peer-to-peer networks consist of computers that share files. Other computers within the network provide a table of contents for users to access and locate specific files. The computer can make a direct connection and share the file to the requesting computer. Other types of networks share files in different ways, he said.

CHAIR HUGHES related her understanding that sharing information located on these folders would not be considered "accidental." She offered her belief that it could indicate a person is a member of a pedophile ring.

SERGEANT DUNFORD clarified that he was referring to peer-to-peer networks, in which computers are sharing files. He acknowledged that people could accidentally download explicit images when searching for music. However, if the person deleted the explicit

material and notified law enforcement, it would be an affirmative defense.

CHAIR HUGHES asked for further clarification that sharing folders would not be considered accidental and would indicate nefarious activity.

SERGEANT DUNFORD explained that these networks have the ability to efficiently receive and send files. If someone chooses not to share, the system would throttle the computer's ability to receive information, which encourages sharing. He acknowledged that it would be clear to the user that the program is designed to share files and the user agreement states the nature of the program.

CHAIR HUGHES wondered what defense someone who did not intend to download the explicit images would have. She asked the record to reflect that the sites on the dark web are not registered. This means a person who instituted a "Google" search would not pull up the dark website. The user would need to know the specific name of the dark website, she said.

[2:45:08 PM](#)

SENATOR KIEHL asked whether these sharing programs are the only way that people receive images. He related his understanding that other ways exist on the dark web to receive them.

SERGEANT DUNFORD answered yes. He referred to a 2015 study that showed 60,092 specific URLs and 442 newsgroups contain child sexual abuse images.

SENATOR KIEHL said he supports the approach. He said he thought that the language in the bill was appropriate.

[2:46:27 PM](#)

SENATOR MICCICHE said he likes old Ford pickups and goes on internet sites looking for photos and parts. He asked whether that activity was similar to the peer-to-peer networks. For example, he has posted photographs of his 1979 Ford on sites.

SERGEANT DUNFORD explained that when the person performs a Google search on the internet to search for something specific, such as a bezel for a headlight, the chances of the person accessing one of the URLs on the dark web is unlikely. He explained that as a person continues to search, the chances are the topics will be less and less related and relevant.

SENATOR MICCICHE said that he participates in a group that likes old trucks. He asked whether that would site would constitute a peer-to-peer site. He was not concerned about inadvertently accessing a dark web site. Instead he would like to better understand if it is the same type of technology, he said.

SERGEANT DUNFORD answered no; that the type of registered site Senator Micciche is using is not part of the dark web. That is a registered site on the internet and not the dark web, he said.

CHAIR HUGHES asked whether the basic structure for the dark web works in the same manner, even though Senator Micciche's site is legit.

SERGEANT DUNFORD answered that the peer-to-peer networks work differently. The files on the dark web are shared from computer to computer. The photographs are sent to the webserver where the form is kept, all of which is part of the dark web.

SENATOR MICCICHE related his understanding that someone who is actively sharing explicit photos and child porn is someone who is actively seeking out this material and it is not accidental.

SERGEANT DUNFORD answered yes, absolutely. He said evidence that supports child pornography begins with the fact that these images are on a secret computer. It indicates that people are purposefully looking for these materials. He said that the investigators also find evidence in the person's web browser history. The evidence is not just an image on a computer, but a compilation of the things that support that the person had an interest in viewing images of sexually abused children.

[2:52:15 PM](#)

MR. WHITT reviewed Section 22.

Section 22: Amends AS 12.55.145(a) to add a new subsection to specify that, for the purposes of considering prior sentences when imposing a sentence of imprisonment, a crime occurring in another state that is similar to a crime in the state of Alaska is considered a prior conviction (Page 14, Line 18 through 21).

MR. WHITT explained that this provision addresses a question Senator Shower previously had related to consideration of prior convictions.

[2:52:56 PM](#)

MR. WHITT reviewed Section 24.

Section 24: Amends AS 12.55.185(16) to add sexual abuse of a minor in the third degree if the victim is at least six years younger than the offender and indecent viewing or production of a picture, to the definition of "sexual felony" (Page 15, Line 16 through 25).

He said the language in Section 24 was changed during a previous hearing. However, he anticipated that a forthcoming amendment would change language on line 19, related to sexual abuse of a minor in the third degree, to reference AS 18.41.438 and specify that the victim is at least six years younger than the offender. He characterized the proposed amendment as technical cleanup language.

[2:53:46 PM](#)

MR. WHITT reviewed Section 25.

Section 25: Amends AS 12.61.050 by adding a new subsection directing the Department of Corrections to include in the Victim Notification System that victims of domestic violence or sexual offenses shall be informed of their rights to secure a protective order and that certain state victim resources are available to them (Page 15, Line 26 through [Page 16] Line 5).

He explained that Senator Kiehl requested this change, but Senator Reinbold added the request that certain state victim resources be made available to those victims.

[2:54:42 PM](#)

MR. WHITT reviewed Section 31.

Section 31: Amends AS 44.23.020(k) with specific language change requests for the tool which will be used that will be developed by the Department of Law for tracking felony sex offenses (Page 21, Line 6 through 19).

MR. WHITT explained that this is cleanup language that the committee previously discussed. It would direct the attorney general in consultation with the Department of Public Safety to develop certain tools to track sex offenses in the state.

[2:55:26 PM](#)

MR. WHITT reviewed Section 32.

Section 32: Amends AS 44.23.040(b) with specific language to direct the Department of Law on data that will be reported on sexual offenses in the state of Alaska (Page 21, Line 20 through Page 22, Line 1).

He explained that that Section 32 was amended during a prior committee, and it was conceptually amended by Senator Micciche. This language has been incorporated in Section 32. It would clean up four subsections of the bill related to the gathering and reporting of data. In response to Chair Hughes, he agreed that this issue was initially brought to the committee's attention by the organization Standing Together Against Rape (STAR).

[2:56:07 PM](#)

MR. WHITT reviewed Section 33.

Section 33: Amends AS 47.17.020(a) to require under duty to report law, that if the harm against a child appears to be the result of a suspected sex offense, it must be reported to law enforcement (Page 22, Line 2 through 24).

MR. WHITT said he anticipated a forthcoming amendment to change the word "and" to "or" so the person reporting can make the determination, through training, to identify suspected sex offense and report directly to law enforcement rather than to two separate entities.

CHAIR HUGHES asked whether this would give the reporter a choice or require them to report.

MS. LARGENT stated that the intent was to report suspected child sexual abuse to law enforcement. However, the language in the committee substitute, Version K, included an "and." This change would not give the person reporting the offense a choice but would allow the person to follow standard practices and procedures when child abuse is suspected. However, if the suspected abuse was sexual in nature it must be reported immediately to law enforcement. She characterized this provision as correcting a drafting error.

CHAIR HUGHES related her understanding that this would require reporting suspected child abuse to law enforcement and not to

the Office of Children's Services (OCS). She emphasized that this is important because incidents in schools should be reported to law enforcement officers and not to a principal or OCS.

MR. WHITT clarified that the language requires the person to immediately report any suspicions of sexual offenses regarding children. He indicated the language on line 6 reads, "shall."

MS. LARGENT added that this would not create a substantial change in process. Reports of neglect or abuse can currently be made either to the Department of Health and Social Services (DHSS) or to a local police officer. Currently, mandatory reporters, including those involved in film, internet services, or photographs, who see sexual exploitation of children must immediately report it to law enforcement. This effectively would bring other sexual abuse of a minor reports in line with that requirement.

[3:00:07 PM](#)

CHAIR HUGHES said that not only would people be required to report to law enforcement, but this provision would also include "sending explicit images of a minor, harassment in the first degree, sexual harassment in the second degree, indecent viewing or photography, [and] distribution of indecent material to a minor."

SENATOR MICCICHE said that he supports the proposed amendment as it currently reads. He expressed concern that in some parts of the state people will not report or are less likely to report to law enforcement. He said at least some reporting would occur under the current requirements. He said, "Peter Miller raped babies for 30 years." He offered his belief that if people had concerns, they would likely report them to the department. He also thought they would report suspected sexual offenses to law enforcement. He thought that the current language would increase the probability that at least some reporting would happen.

[3:01:37 PM](#)

SENATOR SHOWER asked for further clarification on the department that would receive the report. He read, "immediately report harm to the nearest office of the department."

CHAIR HUGHES answered it would be the Department of Health and Social Services (DHSS).

MR. WHITT confirmed it was defined in statute.

SENATOR KIEHL asked whether the Office of Children's Services could testify on the shift in the approach from DHSS to law enforcement.

3:02:46 PM

NATALIE NORBERG, Director, Office of Children's Services, Central Office, Department of Health and Social Services, Juneau, said that the department initially had some concerns about double reporting. However, she also shared Senator Micciche's concern. She suggested that it would be better to have both ways to report these suspected crimes because the OCS has a centralized reporting system. Since the OCS has implemented a statewide hotline, it has seen an increase in the number of reports. It really shows that a simple, centralized reporting system lends itself to being very effective. However, figuring out who to call and what number to call could be confusing and result in fewer reports. The OCS had concerns that mandated reporters may be calling different jurisdictions on children since children could be seen by a provider in a different region of the state than where they normally live because of travel. She reiterated that it would be better to have overreporting than trying to address the concern that reports might not be made.

CHAIR HUGHES noted that Ms. Norberg and Senator Micciche both preferred "and".

3:04:30 PM

SENATOR KIEHL asked whether any situations occur in which law enforcement is not called when reports of harm are made or conversely, where law enforcement is called but OCS is not informed.

MS. NORBERG explained that there are times when the department and law enforcement are called separately. She said the statutes provide a clear process and that process is the department's current practice. She said that if the OCS receives a report of sexual abuse or a medical issue, and the child's abuser is outside the family, the department will automatically notify law enforcement. However, if law enforcement receives a report but the victim is not related to the perpetrator, the OCS would not be notified.

CHAIR HUGHES asked whether the centralized call-in line is manned 24-7.

MS. NORBERG answered no. Currently, two shifts provide approximately 14 hours of coverage. However, the OCS is working to expand it to 24/7.

CHAIR HUGHES affirmed that it would be important to have the call to law enforcement for that reason. She pointed out that sometimes the window for collection of evidence is limited.

3:06:19 PM

SENATOR MICCICHE said he has researched this due to a recent case. He highlighted that in some parts of Alaska local law enforcement do not actively pursue certain cases. He maintained his strong support for double reporting, which would help. The OCS would ensure that the information is appropriately used. He reminded members that it is the legislature's job to be sure everyone is treated the same. This provision would make it more likely for that to occur.

3:07:13 PM

CHAIR HUGHES said that leaving in "and" would increase the chances of reporting. It would also increase the likelihood of a response to that report. She noted that a proposed amendment was developed to address the concern about double reporting, but it may not be offered. Since Senator Micciche has withdrawn that concern, she felt satisfied in leaving in the word "and." She said she did not hear any objection at this point.

SENATOR KIEHL asked whether adding the word "and" would mean that the OCS would start receiving calls on suspected sex offenses by offenders not related to the victim. He asked whether the OCS will inform law enforcement. He asked for further clarification on how the OCS would handle the increased volume of calls.

MS. NORBERG answered that under the current law, the OCS would continue to receive all reports, including any child abuse regardless if a parent, a non-parent, or a caregiver is the perpetrator. The OCS has dedicated, trained, skilled staff to speak to the person reporting. She highlighted that staff does not investigate or make solo decisions when child abuse is reported. This language would require additional reporting to law enforcement if sexual abuse was reported.

CHAIR HUGHES clarified that a number of sexual crimes were already on the mandatory reporting list and this provision added additional crimes, as well as the law enforcement contact.

[3:09:59 PM](#)

MR. WHITT skipped Section 34. The explanation of changes read as follows:

Section 34: Amends AS 47.17.020(e) with conforming language for the added provisions in Section 33 (Page 22, Line 25 through Page 23, Line 9)

[3:10:38 PM](#)

MR. WHITT reviewed Section 35.

Section 35: Amends AS 47.17.020(g) with conforming language for the added provisions in Section 33 (Page 23 Line 10 through 15).

He said that if an amendment is not offered to Section 33, Section 35 would need to be amended. He explained that the word "or" would need to be amended to "and" in this section to conform to Section 33.

CHAIR HUGHES suggested that Senator Micciche could make a conceptual amendment when the committee considers amendments.

[3:10:51 PM](#)

MR. WHITT reviewed Section 36.

Section 36: Amends AS 47.17.022(b) to add a requirement for in-service training to recognize possible sex offenses, for those occupations or positions described in Section 33 (Page 23, Line 16 through 25).

MR. WHITT explained that a forthcoming amendment would be offered to remove "in service." He related his understanding that resources were available that are more efficient to provide that training. Although it would not be cost prohibitive to have face-to-face training, there were more cost-efficient ways to provide it.

[3:11:45 PM](#)

MS. NORBERG responded that currently the OCS provides mandated training through an online training module, which can easily be updated to add new components. The OCS believes it would be more efficient to offer the training online rather than during an annual in-person staff training session. She pointed out that this training is for department staff and school district employees. She said that providing online training to all

reporters would have a wider impact. In response to Chair Hughes, she agreed that the training can be accessed by the school districts, but sometimes the districts use their own training.

[3:12:57 PM](#)

MR. WHITT reviewed Section 37.

Section 37: Adds a new paragraph to AS 47.17.290 for the definition of sex offense (Page 23, Lines 26 & 27).

MR. WHITT reviewed Section 39.

Section 39: Changes made to the applicability section to conform with changes in the bill (Page 23, Line 29 through Page 24, Line 28).

MR. WHITT reviewed Section 40.

Section 40: New section added for the Department of Law and Department of Public Safety to adopt necessary regulations for the implementation of sections 31 and 32 (Page 24, Line 29 through Page 25, Line 4).

He explained that this change was at the request of Chair Hughes.

[3:14:02 PM](#)

SENATOR KIEHL said he was still interested in hearing from the public defender about the change in mental state in Sections 2 and 3 of the bill for sexual assault in the second and third degrees.

CHAIR HUGHES said the public defender was not available today.

[3:14:57 PM](#)

SENATOR MICCICHE offered his belief that it was not necessary to change Section 35 from "or" to "and." He explained the committee preferred the language "and" remain in Section 33, subsection (a). He noted that Mr. Whitt suggested that Section 35 would need to be amended. However, the "as required under subsection (a) of this section" seemed to be adequate to ensure that it be reported. He asked Mr. Skidmore if he could advise if that would suffice.

MR. SKIDMORE answered that it would depend on the committee's intent. He said that "or" would allow the mandatory reporter to report to either the department or a law enforcement agency. If the language read "and," it would require reporting to the department and to a law enforcement agency.

[3:17:03 PM](#)

CHAIR HUGHES asked whether he would review the language "and" in Section 33 and determine whether "or" would suffice in Section 35.

MR. SKIDMORE said that the language seemed inconsistent. He offered his belief that in both instances it should read "and" or else "or" to be consistent.

SENATOR MICCICHE explained that Section 33 contains both "and" and "or." It becomes an "and" in instances of suspected sex offenses. However, Section 35 refers to the requirements in subsection (a). He interpreted it to mean reports must be made to the department and a law enforcement agency as required in subsection (a), which would mean "or" would be correct. He offered his belief that "and" would counter Section 33.

MR. SKIDMORE said that he would need more time to review the language in Sections 33 and 35 to figure out how they work together. He was not prepared to give the interpretation on the fly, he said.

MR. WHITT deferred to Ms. Norberg.

MS. NORBERG offered her belief that the language needs to change to read "and" a law enforcement agency as required under subsection (a) of this section.

[3:20:14 PM](#)

SENATOR MICCICHE argued that subsection (a) does not require reporting to law enforcement for suspected child abuse. It would only need to be reported when suspected sexual abuse of a child occurred. He said "and" would require reporting to both agencies which may cause a conflict between these two sections.

[3:20:56 PM](#)

CHAIR HUGHES asked Mr. Skidmore to consider the language in both sections.

[3:21:16 PM](#)

SENATOR SHOWER referred to Section 5. He asked if it would be a valid defense if someone has the paperwork in hand.

MR. SKIDMORE clarified that his question was related to the marriage defense and if the party were to prove the marriage and had not filed for separation, divorce, or dissolution and whether that was enough to be a complete defense.

SENATOR SHOWER clarified it was whether either party has filed.

MR. SKIDMORE said the act of filing does not allow the defense. The rationale is that once one party has filed for a change in marital status, it puts the couple or parties in a contentious situation. The defense was limited to situations in which both parties wanted to be together. The defense would apply if one person is a law enforcement officer or works as a probation officer or other position in which the the state would normally find sexual activity unacceptable. However, if the parties are married, law enforcement would not interfere with marital relations. He clarified that the filing would mean the defense would no longer apply.

[3:24:32 PM](#)

CHAIR HUGHES removed her objection. There being no further objection, the committee substitute (CS) for SB 35, work order 31-GS1873\K, Version K, was adopted.

[3:24:49 PM](#)

At-ease.

[3:25:35 PM](#)

CHAIR HUGHES reconvened the meeting.

[SB 35 was held in committee.]

[3:26:16 PM](#)

CHAIR HUGHES reviewed upcoming committee announcements.

[3:26:48 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:26 p.m.