

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

February 25, 2022

1:33 p.m.

**MEMBERS PRESENT**

Representative Matt Claman, Chair  
Representative Liz Snyder, Vice Chair  
Representative Harriet Drummond  
Representative Jonathan Kreiss-Tomkins  
Representative David Eastman  
Representative Sarah Vance

**MEMBERS ABSENT**

Representative Christopher Kurka

**COMMITTEE CALENDAR**

HOUSE BILL NO. 172

"An Act relating to admission to and detention at a subacute mental health facility; establishing a definition for 'subacute mental health facility'; establishing a definition for 'crisis residential center'; relating to the definitions for 'crisis stabilization center'; relating to the administration of psychotropic medication in a crisis situation; relating to licensed facilities; and providing for an effective date."

- MOVED CSHB 172 (JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 11 (JUD)

"An Act relating to community property and to community property trusts; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 325

"An Act relating to domestic violence."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 172

SHORT TITLE: MENTAL HEALTH FACILITIES & MEDS

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

04/12/21 (H) READ THE FIRST TIME - REFERRALS  
 04/12/21 (H) JUD, HSS, FIN  
 05/14/21 (H) JUD AT 1:00 PM GRUENBERG 120  
 05/14/21 (H) Heard & Held  
 05/14/21 (H) MINUTE(JUD)  
 05/15/21 (H) JUD AT 1:00 PM GRUENBERG 120  
 05/15/21 (H) -- MEETING CANCELED --  
 02/14/22 (H) JUD AT 1:00 PM GRUENBERG 120  
 02/14/22 (H) -- MEETING CANCELED --  
 02/16/22 (H) JUD AT 1:30 PM GRUENBERG 120  
 02/16/22 (H) Heard & Held  
 02/16/22 (H) MINUTE(JUD)  
 02/21/22 (H) JUD AT 1:00 PM GRUENBERG 120  
 02/21/22 (H) Heard & Held  
 02/21/22 (H) MINUTE(JUD)  
 02/23/22 (H) JUD AT 1:30 PM GRUENBERG 120  
 02/23/22 (H) Heard & Held  
 02/23/22 (H) MINUTE(JUD)  
 02/25/22 (H) JUD AT 1:30 PM GRUENBERG 120

BILL: SB 11

SHORT TITLE: COMMUNITY PROPERTY TRUSTS

SPONSOR(s): BEGICH

01/22/21 (S) PREFILE RELEASED 1/8/21  
 01/22/21 (S) READ THE FIRST TIME - REFERRALS  
 01/22/21 (S) L&C, JUD  
 03/10/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 03/10/21 (S) -- MEETING CANCELED --  
 03/12/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 03/12/21 (S) Heard & Held  
 03/12/21 (S) MINUTE(L&C)  
 03/19/21 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
 03/19/21 (S) Moved SB 11 Out of Committee  
 03/19/21 (S) MINUTE(L&C)  
 03/22/21 (S) L&C RPT 4DP  
 03/22/21 (S) DP: COSTELLO, GRAY-JACKSON, STEVENS,  
 HOLLAND  
 05/05/21 (S) JUD AT 1:30 PM BUTROVICH 205  
 05/05/21 (S) Heard & Held  
 05/05/21 (S) MINUTE(JUD)  
 05/10/21 (S) JUD AT 1:30 PM BUTROVICH 205  
 05/10/21 (S) Moved CSSB 11(JUD) Out of Committee  
 05/10/21 (S) MINUTE(JUD)  
 05/11/21 (S) JUD RPT CS 3DP 2NR SAME TITLE  
 05/11/21 (S) DP: HOLLAND, HUGHES, KIEHL

05/11/21 (S) NR: MYERS, SHOWER  
05/17/21 (S) TRANSMITTED TO (H)  
05/17/21 (S) VERSION: CSSB 11(JUD)  
05/18/21 (H) READ THE FIRST TIME - REFERRALS  
05/18/21 (H) L&C, JUD  
02/02/22 (H) L&C AT 5:15 PM BARNES 124  
02/02/22 (H) Heard & Held  
02/02/22 (H) MINUTE(L&C)  
02/14/22 (H) L&C AT 3:15 PM BARNES 124  
02/14/22 (H) Moved CSSB 11(JUD) Out of Committee  
02/14/22 (H) MINUTE(L&C)  
02/16/22 (H) L&C RPT 5DP 2NR  
02/16/22 (H) DP: SNYDER, MCCARTY, SCHRAGE,  
SPOHNHOLZ, FIELDS  
02/16/22 (H) NR: NELSON, KAUFMAN  
02/25/22 (H) JUD AT 1:30 PM GRUENBERG 120

BILL: HB 325  
SHORT TITLE: DOMESTIC VIOLENCE  
SPONSOR(s): RASMUSSEN

02/16/22 (H) READ THE FIRST TIME - REFERRALS  
02/16/22 (H) JUD  
02/25/22 (H) JUD AT 1:30 PM GRUENBERG 120

**WITNESS REGISTER**

HEATHER CARPENTER, Senior Policy Advisor  
Department of Health and Social Services  
Juneau, Alaska  
**POSITION STATEMENT:** Explained Amendment 5 to HB 172, Version W.

SENATOR TOM BEGICH  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** As prime sponsor, introduced SB 11.

TREVOR BAILLY, Staff  
Senator Tom Begich  
Alaska State Legislature  
Juneau, Alaska  
**POSITION STATEMENT:** On behalf of Senator Begich, prime sponsor,  
presented SB 11 and gave a sectional analysis.

BILL PEARSON, Shareholder  
Foley and Pearson, P.C.  
Anchorage, Alaska

**POSITION STATEMENT:** Provided invited testimony in support of SB 11.

LINDA HULBERT, Registered Representative and Insurance Agent  
New York Life  
Fairbanks, Alaska

**POSITION STATEMENT:** Provided invited testimony in support of SB 11.

MATTHEW BLATTMACHR, President and Chief Executive Officer  
Peak Trust Company  
Anchorage, Alaska

**POSITION STATEMENT:** Provided invited testimony in support of SB 11.

REPRESENTATIVE SARA RASMUSSEN  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As prime sponsor, introduced HB 325.

CRYSTAL KOENEMAN, Staff  
Representative Sara Rasmussen  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** On behalf of Representative Rasmussen, prime sponsor, explained HB 325 and answered questions.

LOREE MORTON, Advocacy Initiatives Director  
Alaska Network on Domestic Violence and Sexual Assault  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 325.

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

**POSITION STATEMENT:** Answered questions during the hearing on HB 325.

MICHAEL HENRY, Sergeant  
Alaska State Troopers  
Department of Public Safety  
Soldotna, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 325.

KELLY HOWELL, Special Assistant to the Commissioner

Department of Public Safety  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 325.

**ACTION NARRATIVE**

[1:33:50 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 1:33 p.m. Representatives Vance, Drummond, Snyder, Kreiss-Tomkins, Eastman, and Claman were present at the call to order.

**HB 172-MENTAL HEALTH FACILITIES & MEDS**

[1:34:30 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 172, "An Act relating to admission to and detention at a subacute mental health facility; establishing a definition for 'subacute mental health facility'; establishing a definition for 'crisis residential center'; relating to the definitions for 'crisis stabilization center'; relating to the administration of psychotropic medication in a crisis situation; relating to licensed facilities; and providing for an effective date." [Before the committee, adopted as a working document on 2/16/22 and amended on 2/23/22, was the proposed committee substitute (CS) for HB 172, Version 32-GH1730\W, Foote, 2/16/22 ("Version W").]

CHAIR CLAMAN explained that the offered amendment would address previously expressed concerns from the committee pertaining to grievance procedures. He stated that the timeline proposed for the Department of Health and Social Services (DHSS) to report grievance procedures to the legislature would be one year from the effective date of the bill. This would allow the department to confer with stakeholders and licensing organizations. He stated that Legislative Legal Services has permission to make any technical and conforming changes to the proposed legislation.

[1:36:14 PM](#)

REPRESENTATIVE SNYDER moved to adopt Amendment 5 to HB 172, Version W, as amended, labeled 32-GH1730\W.20 Foote 2/24/22, which read as follows:

Page 12, following line 31:

Insert a new bill section to read:

"\* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORT TO THE LEGISLATURE. (a) One year after the effective date of this Act, the Department of Health and Social Services and the Alaska Mental Health Trust Authority shall submit a joint report to the senate secretary and chief clerk of the house of representatives and notify the legislature that the report is available. The report must

(1) include an assessment of the current state, federal, and accrediting body requirements for psychiatric patient rights, including patient grievance and appeal policies and procedures; the assessment must address the adequacy of these policies and procedures and the practical challenges patients face in availing themselves of these rights;

(2) identify and recommend any additional changes to state statutes, regulations, or other requirements that could enhance patient rights, particularly involving involuntary admissions, involuntary medications, and the practical ability of patients to avail themselves of their rights; and

(3) assess and recommend any needed changes to current processes for data collection and reporting of patient grievances and appeals, patient reports of harm and restraint, and the resolution of these matters.

(b) The process used by the Department of Health and Social Services and the Alaska Mental Health Trust Authority to develop the assessment and recommendations under (a) of this section must include convening a diverse stakeholder group that includes members representing patients with lived experience, patient advocates, the Disability Law Center of Alaska, providers of psychiatric services, the ombudsman, the Alaska Mental Health Board, the Department of Health and Social Services, and the Alaska Mental Health Trust Authority. A draft assessment and any recommendations must be made available for public comment, and any comments must be given due consideration before the production and transmittal of the final report."

Renumber the following bill sections accordingly.

Page 13, line 14:  
Delete "Section 27"  
Insert "Section 28"

CHAIR CLAMAN objected.

[1:36:26 PM](#)

HEATHER CARPENTER, Senior Policy Advisor, Department of Health and Social Services, spoke to Amendment 5. She stated that the amendment was drafted following concerns expressed by the committee. She stated that the amendment refers to a "report". She explained that the report could be described as an action plan. She stated that stakeholders, including DHSS, the Alaska Mental Health Trust Authority, individuals with lived experience, patient advocates, the Disability Law Center of Alaska, and the Alaska State Ombudsman would provide transparency, bring forth concerns, and conduct a full review. She stated that this would require a public process, including a comment period and a report to be issued to the legislature.

REPRESENTATIVE EASTMAN stated that the proposed amendment did not include on-site visits and was associated with oversight of accrediting bodies. He expressed the opinion that the legislature should take steps to ensure on-site visits.

[1:39:28 PM](#)

CHAIR CLAMAN withdrew his objection. There being no further objection, Amendment 5 was adopted.

REPRESENTATIVE DRUMMOND expressed her belief that HB 172 would benefit Alaskans.

REPRESENTATIVE VANCE expressed the recognition of the need to keep [those suffering with a mental illness] out of emergency rooms and jails. She expressed concerns regarding the involuntary administration of psychotropic medications.

REPRESENTATIVE EASTMAN expressed the intent to vote to keep the bill in committee. He expressed concerns regarding the involuntary administration of medications.

CHAIR CLAMAN noted that the passage of Version W would maintain the status-quo on the rights of patients and the administration of psychotropic medications. He stated that a bill had been

passed in a previous legislature which addressed the matter. He stated that the Citizen's Commission on Human Rights of Alaska, Montana, and Washington has provided a letter, dated May 12, 2021; however, the letter did not take into consideration Version W. He noted that the lawsuit with the Disability Law Center, relating to access to psychiatric treatment, is in the process of being settled. He noted that the Disability Law Center has been involved in testimony and has expressed its support for the proposed legislation.

[1:45:11 PM](#)

REPRESENTATIVE SNYDER moved to report HB 172, Version W, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

[1:45:24 PM](#)

REPRESENTATIVE EASTMAN objected.

A roll call vote was taken. Representatives Drummond, Snyder, Kreiss-Tomkins, and Claman voted in favor of moving HB 172, Version W, as amended, out of committee with individual recommendations and the accompanying fiscal notes. Representatives Vance and Eastman voted against it. Therefore, CSHB 172(JUD) was reported out of the House Judiciary Standing Committee by a vote of 4-2.

### **SB 11-COMMUNITY PROPERTY TRUSTS**

[1:46:06 PM](#)

CHAIR CLAMAN announced that the next order of business would be SENATE BILL NO. 11, "An Act relating to community property and to community property trusts; and providing for an effective date."

[1:46:24 PM](#)

SENATOR TOM BEGICH, Alaska State Legislature, as prime sponsor, introduced SB 11. He stated that the bill would address community property trusts and had been introduced in the previous legislature. He stated that the bill would provide a reinterpretation of the community trust laws established in 1998. He stated that the assumption has been trusts would include the appreciation of assets. He quoted former Representative Joe Ryan, who said, "When one of the partners

dies, the basis for the value of the asset is that at which it was purchased and any appreciation of that on behalf of the estate." He stated that a recent court decision did not include appreciation in the valuation of assets. He stated that SB 11 would remove ambiguity and would more accurately reflect legislative intent. He added that there would be no impact on pending legislation, and the bill would include a provision to ensure no lawsuits occurring prior to the law taking effect would be impacted.

[1:49:09 PM](#)

TREVOR BAILLY, Staff, Senator Tom Begich, Alaska State Legislature, on behalf of Senator Begich, prime sponsor, presented the sponsor statement [included in the committee packet] which read as follows [original punctuation provided]:

Alaska is a state with favorable trust laws and favorable laws for property ownership between spouses. Alaska allows for "opt in" community property ownership between married spouses. Community property ownership can provide tremendous tax advantages to spouses. In Alaska, residents can enter into community property agreements, and residents and nonresidents can enter into Alaska community property trusts. This benefits the individuals entering these agreements, the trust industry of Alaska, increases deposits in Alaska banks and through the revenue generated by the formation of a new trust, the state.

Community property is simply a way to own joint property. A common way to enter a community property agreement is in conjunction with one's spouse. Each party must elect into this agreement and the agreement provides, most commonly, equal ownership and management of specific property.

Currently, community property has a significant tax advantage. When a spouse dies, community property is placed into a category that allows tax advantages when that property is sold. To realize these advantages, appreciation and income must be characterized as community property.

The default rule has generally been that appreciation and income on community property will be characterized as community property, unless otherwise declared in

the community property trust. Trust attorneys have attested to this interpretation, however recent court rulings have created an ambiguous understanding of this general criterion. This legislation, consistent with industry understandings of trusts, seeks to clearly define community property as including appreciation and income on community property.

SB 11 establishes a clear definition of appreciation and income as community property, as intended by The Community Property Trust Act. Portions of this legislation also have a retroactive effective date of May 23, 1998.

MR. BAILLY provided the sectional analysis [included in the committee packet] which read as follows [original punctuation provided]:

Section 1. Clarifies intent of subsection (h) under AS 34.77.030 to ensure any financial gains directly related to appreciation of community property trusts are treated as community property unless legal trust documents clearly state otherwise.

Section 2. Adds a new subsection under AS 34.77.030 to retroactively apply the above changes in statute to community property trust agreements established on or after May 23, 1998. This section also applies an existing statutory definition of "community property trust. "

Section 3. Adds as a new uncodified law of the State of Alaska to ensure above changes do not impact court actions or proceedings that began before Section 1 of this Act takes effect.

Section 4. Establishes a retroactivity date of Section 1 of this Act as May 23, 1998.

Section 5. States Section 1 and Section are immediately effective upon passage of this legislation.

[1:53:26 PM](#)

BILL PEARSON, Shareholder, Foley and Pearson, P.C., provided invited testimony in support of SB 11. He offered a brief

biography, including his time as an attorney practicing estate planning. He stated that SB 11 would provide an important technical fix.

[1:54:27 PM](#)

LINDA HULBERT, Registered Representative and Insurance Agent, New York Life, provided invited testimony in support of SB 11. She stated that her support is on behalf of her insurance clients. She shared that she has been in business in Alaska for over 30 years. She stated that the proposed legislation would be of benefit to her clients, as it would affect their wills and trusts.

[1:55:53 PM](#)

MATTHEW BLATTMACHR, President and Chief Executive Officer, Peak Trust Company, provided invited testimony in support of SB 11. He echoed previous testimony and stated that SB 11 would be a technical and clarifying change to the law.

SENATOR BEGICH disclosed that a member of his staff is a client of Ms. Hulbert.

[1:57:25 PM](#)

REPRESENTATIVE VANCE asked why the bill would be retroactive to 1998. She questioned the effects from the intervening time.

SENATOR BEGICH answered that the Alaska Community Property Act became effective on the 1998 date, and there has been an understanding the values of assets would appreciate over time. He stated that a recent court ruling created ambiguity regarding appreciation in the value of assets. He stated that the retroactive date would hold harmless the hundreds of thousands of individuals holding community property trusts, and any pending legal actions would not be affected by the passage of SB 11.

REPRESENTATIVE VANCE referred to an excerpt of the document entitled, "SB 11 Supporting Document - Community Property Trust Act.pdf," [included in the committee packet,] which read as follows [original punctuation provided]:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE,  
INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH  
RESPECT TO CREDITORS AND OTHER THIRD PARTIES,

AND YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE. (c) A community property trust may not adversely affect the right of a child to support.

REPRESENTATIVE VANCE asked for further explanation.

SENATOR BEGICH answered that the language had been included in the original Act. He explained that it had been intended to inform parties of their obligations in entering a community trust.

[2:01:51 PM](#)

REPRESENTATIVE EASTMAN questioned the status of the lawsuit which had prompted the filing of the proposed bill.

SENATOR BEGICH deferred to the invited testifiers to provide a status of the court case. He added that, regardless of the status of the case, the bill was drafted so it would not affect any litigation pending prior to the effective date of the bill.

MR. PEARSON pointed out that Phillips v. Bremner-Phillips, 477 P.3 626 (2020), had had a final judgment issued. He expressed the opinion that the case may have been remanded to the Superior Court of Alaska.

CHAIR CLAMAN confirmed that the case is final, and it had not been remanded to the Superior Court of Alaska.

REPRESENTATIVE EASTMAN asked whether ambiguity as this could be avoided in the future.

SENATOR BEGICH answered that the language in the proposed legislation was developed as a direct result of the ambiguity which prompted the lawsuit. He added that former Representative Joe Ryan had testified that the assets could be sold, with gains realized without paying federal taxes. It was a statement of intent that the gains were intended to be part of appreciation [of assets.]

[2:05:16 PM](#)

SENATOR BEGICH, in response to a question from Representative Kreiss-Tomkins, stated that the passage of the bill would not affect the case. If litigation was taken today, he posited, it would be based on the savings clause in current law. He stated that SB 11 would remove the ambiguity as to whether appreciation would be included. In response to a follow-up question, he stated that should the court case be brought after the passage of the bill, there would be a different outcome.

[2:07:17 PM](#)

REPRESENTATIVE EASTMAN referred to the savings clause and, given the law would be changed, questioned how it would be applied retroactively.

SENATOR BEGICH answered that the two clauses are deliberately drafted to change the law. He stated that, prior to the Phillips v. Bremner-Phillips case, the court had never previously interpreted these matters, and any litigation filed prior to the effective date of SB 11 would not be affected. He stated that the passage of SB 11 would demonstrate this had been the legislature's intent from the start. He added that he was unaware of any active litigation which would be affected by the interpretation of the associated law.

[2:10:37 PM](#)

REPRESENTATIVE EASTMAN asked whether advice given to clients by attorneys based on flawed legislation would put clients at a disadvantage.

SENATOR BEGICH referred to the invited testifier, who had demonstrated the advice given to hundreds of clients had been based on legislative intent, which is offered in SB 11.

[2:13:04 PM](#)

CHAIR CLAMAN announced that SB 11 was held over.

### **HB 325-DOMESTIC VIOLENCE**

[2:13:12 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 325, "An Act relating to domestic violence."

[2:13:47 PM](#)

REPRESENTATIVE SARA RASMUSSEN, Alaska State Legislature, as prime sponsor, presented HB 325. She stated that HB 325 would incorporate image-based sexual abuse, which may be referred to as "revenge porn," into the definition of domestic violence so it could be prosecuted as harassment in the second degree.

[2:14:45 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Sara Rasmussen, Alaska State Legislature, on behalf of Representative Rasmussen, prime sponsor, addressed the proposed HB 325. She pointed out the definition related to explicit images contained in the statute, which defines harassment in the second degree, would be moved into AS 18.66.990 (3), which defines domestic violence and crimes involving domestic violence. She stated that the proposed legislation would not modify the definition as it pertains to explicit images and distributing them. It would only move the definition into the domestic violence statutes so it can be used to protect victims.

[2:16:29 PM](#)

LOREE MORTON, Advocacy Initiatives Director, Alaska Network on Domestic Violence and Sexual Assault, provided invited testimony in support of HB 325. She stated that the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) supports adding to the domestic violence statute this element of harassment in the second degree. She stated that, per the proposed legislation, a crime involving domestic violence would include publishing or distributing electronic or printed photographs, pictures, or films which show the genitals, anus, or female breast(s) of the other person, or show a person engaged in a sexual act. She expressed the opinion that abusers will use any means to control partners and to coerce partners into doing, or not doing, certain things, to benefit the abuser. She stated that the use of the media described could cause ridicule, embarrassment, shame, and degradation. She suggested that this could be used to keep the victim trapped in an abusive situation.

[2:18:31 PM](#)

REPRESENTATIVE SNYDER expressed the understanding that the sharing of such images is already a crime, but it is not considered a crime of domestic violence.

MS. KOENEMAN confirmed this as correct.

REPRESENTATIVE SNYDER questioned whether there would be any changes in penalty or punishment.

REPRESENTATIVE RASMUSSEN answered that the important change would be victims could petition for a restraining order.

2:20:12 PM

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Department of Law, provided invited testimony on HB 325. She stated that the crime of domestic violence is used in several areas of law, including criminal law and the filing of protective orders. She offered an example of an individual who may interfere with the reporting of a crime of domestic violence and, should HB 325 pass, the use of images could be used as evidence of this crime. She stated that the crime would be a Class B misdemeanor, and the sentence would not change. She stated that mandatory minimum sentences for crimes of domestic violence exist, such as those involving assault. She noted that special provisions exist for bail associated with crimes of domestic violence at the time of arraignment.

MS. SCHROEDER, in response to a question from Representative Vance, stated that for a court to issue a protective order, the court would have to find that a crime of domestic violence had occurred, and it would refer to the underlying statute to determine whether the conduct had amounted to domestic violence. In response to a follow-up question regarding how a protective order could add protection against the use of images, she stated that a court could order an individual not to commit a crime against a person, and any continued behavior could result in additional criminal charges. She added that there would likely be a provision of no contact issued.

2:23:29 PM

REPRESENTATIVE EASTMAN questioned the definition of "publishing" or "distributing," as referred to in the proposed legislation.

MS. SCHROEDER answered that the definition of publishing exists on the internet, as it does in other statutes. She added that the Webster's Dictionary is used to define terms which are not already defined in statute.

REPRESENTATIVE EASTMAN asked whether "distribution" would be considered if images are only distributed to one other individual.

MS. SCHROEDER answered that the material would not be required to be widely distributed. She added that "distributes" is defined in 11.61.116, which pertains to distributing an explicit image of a minor. This means to deliver an image by sending the image to another person's computer or telephone.

[2:25:10 PM](#)

REPRESENTATIVE EASTMAN noted that the definition would include both electronic and print [format]. He posited that an individual may attempt to contact a minor's parent to alert the parent to the image being distributed. He expressed concern that this could result in the concerned party having committed a crime.

MS. SCHROEDER clarified that the example pertains to children; therefore, it is associated with a different statute. She added that this would not concern domestic violence. She added, for a crime to have occurred, the perpetrator would have had the intent to harass or annoy the victim. She stated that the previous example could be an indication a crime had occurred, and this would require evidence of the mental state of the individual sharing the explicit image with the parent. She added that an individual sharing an image out of concern would not be an intent to harass or annoy.

REPRESENTATIVE RASMUSSEN added that, in cases of domestic violence, the abuser is often engaged in acts to manipulate or coerce the victim. She offered an example in which a perpetrator threatens to share, or does share, the image with the victim's employer. She reiterated that distributing it solely to one person would meet the definition of harassment.

[2:31:27 PM](#)

REPRESENTATIVE SNYDER, using the hypothetical situation involving an explicit image of a 16-year-old person, questioned whether the definition of domestic violence would be met when the concerned party is not a member of the 16-year-old's household.

MS. SCHROEDER answered that for a crime to be considered "domestic violence," the perpetrator is required to be a member

of the victim's household. She noted that if a 16-year-old person is annoyed because a parent is notified, this would not amount to the intent to harass or annoy the victim.

REPRESENTATIVE EASTMAN expressed the understanding that the proposed definition would exclude a 15-year-old victim. He questioned why it would pertain to a 16-year-old individual.

MS. KOENEMAN answered that any [explicit] images of an individual under the age of 16 would fall under AS 11.61.116, which addresses the explicit images of minors.

REPRESENTATIVE EASTMAN asked whether the sponsor's intent is for crimes associated with a 16-year-old individual be considered domestic violence, while those associated with individuals under the age of 16 not be considered domestic violence.

REPRESENTATIVE RASMUSSEN answered that HB 325 would not address the age of consent in statute, but it would update the associated statute to include the increased prevalence of electronic images and videos and how this distribution would make the victim embarrassed or ashamed.

REPRESENTATIVE EASTMAN restated his question, asking why individuals under the age of 16 would be excluded from the definition of domestic violence [in the proposed bill].

MS. KOENEMAN answered that the distribution of these images is already in statute, and HB 325 would not make changes to this existing statute.

[2:38:17 PM](#)

REPRESENTATIVE VANCE questioned the frequency of this type of behavior, and she questioned whether it occurs enough to establish the proposed bill.

[2:39:06 PM](#)

MICHAEL HENRY, Sargeant, Alaska State Troopers, Department of Public Safety (DPS), provided invited testimony on HB 325. He stated that DPS has conducted an audit to determine statistics related to harassment, and the law contains approximately eight subsections under which there were 180 instances. He cautioned that the information provided was an estimate.

CHAIR CLAMAN asked whether the 180 cases of harassment had included first- and second-degree charges. He questioned the timeframe of the charges.

SERGEANT HENRY answered that the statistics include data from 2012 to the present, with the charges filed under AS 11.61.128 (6). He noted that some of those reported had been improperly coded. He stated that a separate audit has been conducted regarding cases which resulted in charges filed, and this totaled nine incidents. He offered to follow up to the committee with additional research, if needed.

MS. KOENEMAN added that crimes involving domestic violence are severely underreported, as reasons exist for victims to not come forward. She suggested the absence of statistics supporting the need for the bill does not equate to less of a need for the protections in law.

[2:43:12 PM](#)

REPRESENTATIVE VANCE referred to page 1 of a document entitled "HB 325 Supporting Documents 2.17.2022.pdf," [included in the committee packet] which depicts "revenge porn" as illegal, noting, "1 in 3 victims of sextortion in a 2017 online survey said they had never told anyone, largely because of shame or embarrassment." She asked whether there exists a legal loophole and whether this is the reason for the proposed legislation.

MS. KOENEMAN answered that this type of harassment is illegal in Alaska under criminal harassment statute, but it is not included in the domestic violence statute. She stated that, when the court is seeking to determine if a crime of domestic violence between household members has occurred, a domestic violence protective order could be issued based on such conduct.

REPRESENTATIVE SNYDER asked whether the primary purpose of the proposed bill would be to include the publication and distribution of explicit images, so individuals may file for a protective order under the domestic violence statute.

MS. KOENEMAN answered yes, and it would provide victims legal assurance that the conduct qualifies as domestic violence.

REPRESENTATIVE SNYDER, in cases that involve teenagers not sharing a household with the perpetrator, asked whether [an individual between the ages of 16 to 18] would file charges under the harassment in the second-degree statute.

MS. KOENEMAN confirmed that the proposed legislation would apply to victims over the age of 16 and, for those victims under the age of 16, charges would be filed under the child pornography statute.

REPRESENTATIVE SNYDER questioned whether there is a possibility of an individual being granted a protective order under the harassment in the second-degree statute.

MS. SCHROEDER offered that, in cases of harassment charges being filed, the state would request a no-contact order at the time of the bail hearing.

[2:48:04 PM](#)

CHAIR CLAMAN, regarding the requirement of the household member relationship, asked whether a next-door neighbor could be charged with a crime of domestic violence.

MS. SCHROEDER stated that this would not fall under the proposed legislation.

CHAIR CLAMAN posited a couple who had lived together, but since split, and one distributed explicit pictures of the other after the split. He questioned whether the perpetrator could be charged with a crime of domestic violence.

MS. SCHROEDER answered that it could be a crime of domestic violence. She explained that household members include those who live together or those who had lived together.

CHAIR CLAMAN posited a case which involves two 17-year-old individuals in a dating relationship, and one distributed an explicit picture of the other. He questioned whether this individual could be charged with a crime of domestic violence.

MS. SCHROEDER stated that the definition would include those who are dating or who have dated. She emphasized the provision that there would need to exist the intent to harass or annoy [the victim].

CHAIR CLAMAN asked what bail considerations would be for someone charged with harassment under the domestic violence statute, compared to a non-domestic violence harassment charge.

MS. SCHROEDER answered that regarding release on domestic violence cases, under AS 12.30.027, the main consideration is whether conditions of release would allow contact or no contact.

CHAIR CLAMAN asked what typical bail would be set in the case of harassment in the second degree, as a Class B misdemeanor, considering one's criminal history.

MS. SCHROEDER answered that, in a case when the defendant has no criminal history it would likely be an "own recognizance" release and would likely include an order for no contact.

[2:52:22 PM](#)

REPRESENTATIVE EASTMAN expressed the understanding that, under federal law, a misdemeanor crime of domestic violence could result in a loss of access to firearms. He asked whether the proposed bill would result in the same.

MS. SCHROEDER cautioned that she is not familiar with federal law and deferred to DPS.

SERGEANT HENRY offered to follow up to the committee with a confirmed answer.

[2:53:31 PM](#)

KELLY HOWELL, Special Assistant to the Commissioner, Department of Public Safety, provided invited testimony on HB 325. She expressed the belief that, for a crime to amount to an inhibition to possess or purchase firearms or ammunition, a crime involving domestic violence would need to include an element of force. She offered to follow up to the committee with a confirmed answer.

REPRESENTATIVE EASTMAN questioned whether distributing images would ever involve [the use of] force.

MS. HOWELL expressed the belief that it would not. She deferred to the Department of Law to provide a confirmed answer.

REPRESENTATIVE EASTMAN, in subsection (6), paragraph (6) in the proposed legislation, requested clarity on the exception for images which do not involve nudity. In response to Chair Claman, he confirmed that he was referring to the proposed language involving images of a sexual act.

MS. SCHROEDER answered that the term "sexual act" is defined in AS 11.41.470(6), and this is defined as sexual penetration or sexual contact.

[2:57:24 PM](#)

REPRESENTATIVE VANCE questioned whether the accused would be subject to automatic arrest under the domestic violence statute, per the proposed legislation.

MS. HOWELL responded that crimes involving an act of domestic violence within the preceding 12 hours would result in mandatory arrest. She deferred the question to Sergeant Henry.

SERGEANT HENRY explained that after a crime has been reported and an investigation reveals the existence of probable cause, three criteria would need to be met for an arrest. He listed those as the existence of probable cause, the crime occurred between household members, and the crime was within the prior 12 hours. He stated that if all three had been found during the investigation, a mandatory arrest would occur. If the alleged crime had occurred more than 12 hours prior to the report, or it was determined that the definition of household members did not apply, then a mandatory arrest would not occur.

[2:59:32 PM](#)

REPRESENTATIVE CLAMAN announced that HB 325 was held over.

[3:00:23 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:00 p.m.