

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

March 11, 2022

1:34 p.m.

MEMBERS PRESENT

Senator Roger Holland, Chair
Senator Mike Shower, Vice Chair
Senator Shelley Hughes
Senator Robert Myers
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 187

"An Act relating to criminal law and procedure; relating to the crime of harassment; relating to the duty to register as a sex offender; amending the definition of 'sex offense'; relating to lifetime revocation of a teaching certificate for certain offenses; relating to the definition of 'domestic violence'; relating to multidisciplinary child protection teams; relating to arrest authority for pretrial services officers and probation officers; and providing for an effective date."

- MOVED CSSB 187(JUD) OUT OF COMMITTEE

SENATE BILL NO. 189

"An Act relating to sex trafficking; establishing the crime of patron of a victim of sex trafficking; relating to the crime of human trafficking; relating to sentencing for sex trafficking and patron of a victim of sex trafficking; establishing the process for a vacatur of judgment for a conviction of prostitution; and providing for an effective date."

- RESCHEDULED TO 3/14/2022

PREVIOUS COMMITTEE ACTION

BILL: SB 187

SHORT TITLE: HARASSMENT; SEX OFFENDERS & OFFENSES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/15/22	(S)	READ THE FIRST TIME - REFERRALS
02/15/22	(S)	JUD, FIN
02/23/22	(S)	JUD AT 1:30 PM BUTROVICH 205
02/23/22	(S)	Heard & Held
02/23/22	(S)	MINUTE(JUD)
02/25/22	(S)	JUD AT 1:30 PM BUTROVICH 205
02/25/22	(S)	Heard & Held
02/25/22	(S)	MINUTE(JUD)
03/02/22	(S)	JUD AT 1:30 PM BUTROVICH 205
03/02/22	(S)	Scheduled but Not Heard
03/04/22	(S)	JUD AT 1:30 PM BUTROVICH 205
03/04/22	(S)	Heard & Held
03/04/22	(S)	MINUTE(JUD)
03/07/22	(S)	JUD AT 1:30 PM BUTROVICH 205
03/07/22	(S)	Heard & Held
03/07/22	(S)	MINUTE(JUD)
03/09/22	(S)	JUD AT 1:30 PM BUTROVICH 205
03/09/22	(S)	Heard & Held
03/09/22	(S)	MINUTE(JUD)
03/11/22	(S)	JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

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

POSITION STATEMENT: Answered legal questions and explained Amendment 1 during the hearing on SB 187.

JOHN SKIDMORE, Deputy Attorney General
 Office of the Attorney General
 Criminal Division
 Department of Law
 Anchorage, Alaska

POSITION STATEMENT: Answered legal questions during the hearing on SB 187.

RENEE MCFARLAND, Deputy Public Defender
 Appellate Division
 Public Defender Agency
 Department of Administration
 Anchorage, Alaska

POSITION STATEMENT: Answered questions on the Alaska Sex Offender Registry during the hearing on SB 187.

LISA PURINTON, Chief
Criminal Records and Identification Bureau
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions on the Alaska Sex Offender Registry during the hearing on SB 187.

KELLY HOWELL, Special Assistant
Office of the Commissioner
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Answered questions on sex offender registration requirements during the hearing on SB 187.

ACTION NARRATIVE

[1:34:55 PM](#)

CHAIR ROGER HOLLAND called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Senators Myers, Hughes, Shower, Kiehl, and Chair Holland were present at the call to order.

SB 187-HARASSMENT; SEX OFFENDERS & OFFENSES

[1:35:27 PM](#)

CHAIR HOLLAND announced the consideration of SENATE BILL NO. 187 "An Act relating to criminal law and procedure; relating to the crime of harassment; relating to the duty to register as a sex offender; amending the definition of 'sex offense'; relating to lifetime revocation of a teaching certificate for certain offenses; relating to the definition of 'domestic violence'; relating to multidisciplinary child protection teams; relating to arrest authority for pretrial services officers and probation officers; and providing for an effective date."

He stated that this was the sixth hearing, a committee substitute (CS) was adopted, and there were eight amendments for the committee to consider.

[1:35:46 PM](#)

CHAIR HOLLAND moved to adopt Amendment 1, work order 32-GS2031\G.8. He noted the Department of Law requested this change.

32-GS2031\G.8
Radford
3/10/22

AMENDMENT 1

OFFERED IN THE SENATE BY SENATOR HOLLAND
TO: CSSB 187(JUD), Draft Version "G"

Page 4, lines 15 - 16:
Delete ", including inaction,"

Page 4, line 17, following "resistance":
Insert "and may include inaction"

SENATOR SHOWER objected for discussion purposes.

[1:36:18 PM](#)

KACI SCHROEDER, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law, Juneau, Alaska, explained that Amendment 1 would allow the prosecutor to consider inaction by the victim in the totality of the circumstances analysis in sexual assault cases. Although inaction doesn't mean the victim did not consent, it can be included when the prosecutor evaluates whether the person consented.

[1:36:52 PM](#)

SENATOR HUGHES asked if inaction meant physical inaction, that the victim was not moving.

MS. SCHROEDER answered yes.

[1:37:06 PM](#)

SENATOR KIEHL asked if Amendment 1 was necessary to address the concern that the language in Version G, Sec. 4 "including inaction" was phrased in a manner that could be misunderstood to mean that inaction in sexual assault cases always means a lack of consent.

MS. SCHROEDER answered yes.

[1:37:31 PM](#)

SENATOR SHOWER removed his objection.

[1:37:36 PM](#)

CHAIR HOLLAND found no further objection, and Amendment 1 was adopted.

[1:37:52 PM](#)

SENATOR SHOWER moved to adopt Amendment 2, work order 32-GS2031\G.4.

32-GS2031\G.4
Radford
3/10/22

AMENDMENT 2

OFFERED IN THE SENATE BY SENATOR SHOWER
TO: CSSB 187(JUD), Draft Version "G"

Page 6, line 15:
Delete "or annoy"

Page 6, line 18:
Delete "or annoy"

Page 6, line 21:
Delete "or annoy"

Page 6, line 23:
Delete "or annoy"

Page 6, line 28:
Delete "or annoy"

Page 7, lines 5 - 6:
Delete "or annoy"

CHAIR HOLLAND objected for discussion purposes.

SENATOR SHOWER explained Amendment 2 would delete the language "or annoy" because in this context, "harass or annoy" seemed interchangeable. He stated his preference for "harass" because he was concerned someone may use the word "annoy" in a way that the committee did not intend.

[1:38:42 PM](#)

SENATOR HUGHES asked whether "harass" or "harassment" was defined in statute. She related that annoying a child or

harassing them seemed different, that harassing a person seemed more intense.

MS. SCHROEDER answered that "harass" or "harassment" are not defined in statute. She stated that Webster's Third New International Dictionary definitions for "harass" and "annoy" refer to one another, although each word has multiple meanings. The Department of Law does not believe that Amendment 2 would have a significant legal impact, so the department is neutral on Amendment 2.

[1:39:44 PM](#)

CHAIR HOLLAND removed his objection.

CHAIR HOLLAND found no further objection, and Amendment 2 was adopted.

[1:40:10 PM](#)

SENATOR SHOWER moved to adopt Amendment 3, work order 32-GS2031\G.5.

32-GS2031\G.5
Radford
3/10/22

AMENDMENT 3

OFFERED IN THE SENATE BY SENATOR SHOWER
TO: CSSB 187(JUD), Draft Version "G"

Page 8, lines 10 - 11:

Delete "and any temporary lodging used by the sex offender or child kidnapper"

CHAIR HOLLAND objected for discussion purposes.

SENATOR SHOWER remarked that he introduced Amendment 3 for the committee to consider and discuss, but he may make changes or withdraw it. He stated that he previously held discussions with the Department of Law on travel. Current statutes require sex offenders traveling for seven or more days to report their travel. The bill states that if the sex offender can't report in a timely manner, the determination on whether the excuse was reasonable is discretionary for the parole officer or other department staff. Amendment 3 would remove the language "and any temporary lodging used by the sex offender or child kidnapper."

Although numerous places in statute allow judgments or determinations, this might need to be tightened up a bit. He stated that he received integration training that other members may have also received. This training is designed to assist prisoners in integrating into society after serving their sentence, but it is nearly impossible for some inmates to do so. He wondered if this amendment would make it difficult for someone to have the freedom to live and set them up for failure by piling on more charges. He asked if anyone shared these concerns.

MS. SCHROEDER deferred to Mr. Skidmore.

[1:42:36 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Office of the Attorney General, Criminal Division, Department of Law, Anchorage, Alaska, noted that his initial comments on this bill may have created some confusion about this section. SB 187 would add a new subsection related to travel requirements, but this provision relates to the initial sex offender registration. Under the National Sex Offender Registry requirements, temporary lodging is not meant to apply to travel. Instead, those requirements were meant to apply to sex offenders with a primary residence and a second temporary lodging. He surmised that their temporary lodging might be where they often travel to commit sex crimes away from home. He highlighted that the federal guidelines encourage states to avoid providing sex offenders with an opportunity to stay in temporary lodging where they can commit sex crimes while traveling. Those crimes would likely increase if they were not required to report their whereabouts. Since requirements for sex offender registration do not apply to temporary lodging, so this provision in SB 187 was designed to capture the temporary lodging.

MR. SKIDMORE related that the travel component applies to circumstances when the sex offender travels for seven or more days from their primary residence. In those instances, the sex offender must provide notice that they are traveling and their location while traveling. The affirmative defense for failure to register as a sex offender in AS 11.56.840(b) allows for unforeseen circumstances outside the person's control. It provides the timeframe required to report their travel to the Department of Public Safety. For example, suppose the sex offender was traveling, but the hotel they planned to stay at was full. So long as the sex offender reports their revised travel plans to the Department of Public Safety, they have met their obligation and have committed no crime.

[1:46:03 PM](#)

SENATOR SHOWER remarked that Mr. Skidmore cleared up any confusion. He wondered if the committee was interested in clarifying this language so it is not left up to circumstances, otherwise he would withdraw Amendment 3. He indicated there was no time limit on the affirmative defense for reporting and that it could be subjective, such as within 6, 24, or 48 hours.

SENATOR HUGHES asked if he was suggesting putting in a time limit for the number of hours or days the sex offender would be required to report.

[1:47:28 PM](#)

SENATOR SHOWER indicated he did not have time to prepare an amendment to address this, so he was using Amendment 3 as a vehicle for discussion purposes. He suggested that the committee could conceptually amend it to address the subjective reporting criteria. He expressed concern that since the timeframe is not identified, a sex offender attempting to report the information timely could be dinged if the department decided it was not reported quickly enough.

[1:47:54 PM](#)

SENATOR HUGHES offered her belief that if someone has committed an offense that requires them to be on a sex offender registry, it is the price they must pay. She emphasized the importance of knowing the location of sex offenders. She related a personal experience when she rented a place and was informed that the person next door was on the registry. Suppose the sex offender considered that residence their temporary residence, so they did not report it, but they stayed there for two or three years. She related her understanding that the law provides allowances for unforeseen circumstances to be reported. She asked for Mr. Skidmore's view on adding a specific timeframe for reporting.

SENATOR SHOWER clarified that sex offenders have a requirement to report for seven or more days for travel. He said his concern relates to travel since Mr. Skidmore answered the other questions. He agreed with Senator Hughes that this is the price they must pay, but he believed that the criteria should have a timeframe so it won't be subjective.

[1:49:34 PM](#)

SENATOR HUGHES pointed out that Mr. Skidmore advised that this provision relates to the initial sex offender registration. She wondered if the committee should consider Amendment 3 first

since it does not pertain to travel. She questioned whether Senator Shower's concern would be an amendment to Amendment 3.

[1:50:09 PM](#)

CHAIR HOLLAND related his understanding that Senator Shower's intention was to withdraw Amendment 3.

SENATOR SHOWER reiterated that Amendment 3 was just for discussion purposes.

CHAIR HOLLAND related his understanding that the language related to temporary lodging was rooted in federal policy.

[1:50:36 PM](#)

MR. SKIDMORE responded that the language requiring federal registration was in federal law and in the guidance provided by the Department of Justice. He noted that the sheet of information he previously referred to contains the federal guidance related to the meaning of the term "temporary lodging."

[1:51:03 PM](#)

SENATOR SHOWER offered to withdraw Amendment 3 and make a conceptual amendment for the time limit later.

[1:51:14 PM](#)

CHAIR HOLLAND withdrew his objection.

[1:51:18 PM](#)

SENATOR SHOWER withdrew Amendment 3.

[1:51:41 PM](#)

SENATOR KIEHL moved to adopt Amendment 4, work order 32-GS2031\G.1.

32-GS2031\G.1
Radford
3/10/22

AMENDMENT 4

OFFERED IN THE SENATE BY SENATOR KIEHL
TO: CSSB 187(JUD), Draft Version "G"

Page 15, lines 20 - 27:
Delete all material.

Renumber the following bill sections accordingly.

Page 16, line 8:
Delete "sec. 22"
Insert "sec. 21"

CHAIR HOLLAND objected for discussion purposes.

[1:51:47 PM](#)

SENATOR KIEHL explained that Amendment 4 would remove Section 21 related to registering as a sex offender for crimes under AS 12.63. As previously discussed, this relates to sex offender crimes that are not registerable sex offenses in Alaska. Although that requirement exists today, this section would make it retroactive. He recalled the previous committee discussion with the Department of Law about ex post facto. He related that Senator Hughes stated that being on a sex offender registry is part of the price a sex offender pays for their crime, as part of the criminal punishment. However, the Alaska and US constitutions do not allow for ex post facto punishment. As previously discussed, the Alaska Supreme Court ruled that sex offender registration was a different matter, that it was part punishment and part regulation. The state doesn't have a regulatory interest in enforcing sex offender crimes that are not registerable sex offenses in Alaska. He stated that instituting this punishment makes it unconstitutional.

[1:53:56 PM](#)

CHAIR HOLLAND asked Mr. Skidmore for the department's position on Amendment 4.

[1:54:03 PM](#)

MR. SKIDMORE referred to the requirement to register in Alaska based on a sex crime committed in another state. When this was originally proposed, it was not simply to address conduct which the sex offender committed that did not require the offender to register on the Alaska Sex Offender Registry. Prior to enacting House Bill 49 in 2019, the state addressed these issues by saying that the sex offender only had to register in Alaska if the crime they committed had similar elements to the crime that Alaska requires sex offenders to register for. The problem that arose stemmed from the analysis of whether the elements were the same. The elements could be different even if the conduct that occurred would have required them to register in Alaska.

MR. SKIDMORE characterized it as a complex legal problem. In some instances, Alaska may not have considered whether to

require registration for a crime that the sex offender committed in another state. This led to sex offenders contacting Alaska to determine whether they would need to register in Alaska as sex offenders if they moved here. The Department of Law found that Alaska was attracting sex offenders from other states who were avoiding registration requirements.

[1:56:04 PM](#)

MR.SKIDMORE stated that the law now states that if a sex offender was convicted of a crime that requires registry in another state, they must register on the Alaska Sex Offender Registry. This provides clear guidance to any sex offender that Alaska would require registration and ensures that Alaska is not creating a place that sex offenders would want to move to in order to avoid registration.

[1:56:30 PM](#)

MR. SKIDMORE agreed the courts had deemed some portion of Alaska's registration as punishment. However, in a more recent decision in 2019, the Alaska Supreme Court found that if a sex offender must register in another state, that person can be required to register in Alaska. Further, those circumstances are not considered punitive but regulatory. First, the state has a legitimate public safety concern in requiring out-of-state offenders who now reside in the state to register. Second, the court found no concern that the sex offender's conduct resulted from a criminal conviction. This means it is not a question of whether the state is imposing new punishments since the sex offender was convicted, and Alaska requires them to register. Third, the court said that being registered in multiple jurisdictions for the same offense is not like assessing multiple money judgments for the same conduct.

MR. SKIDMORE explained that the court referred to an argument that a defendant made that somehow this violated ex post facto, that the person cannot be punished after the fact. Again, in 2019, the court decided the requirement to register out-of-state offenders in Alaska does not violate ex post facto. The department believes there is an appropriate regulatory and policy determination that this body can make to avoid making Alaska a haven for sex offenders. Registration allows the state to know where the sex offender resides to ensure that they are not living next to a school, youth facility, playground, or elsewhere that children might frequent.

[2:00:18 PM](#)

SENATOR MYERS wondered why this bill does not have any provision to make those crimes registerable in Alaska since the state is concerned about registering sex offenders in Alaska.

MR. SKIDMORE responded that to do so would require an exhaustive review of every other state's registerable crimes on an ongoing basis. Instead of tracking what other states are doing, this approach says that if a sex offender committed a crime that requires them to register in another state, the offender must register in Alaska, which many other states have done. He highlighted that it is a separate policy call to decide whether the state wants to criminalize the same conduct that required the sex offender to register in their state.

[2:01:45 PM](#)

SENATOR HUGHES acknowledged that it was helpful to understand that the 2019 Alaska Supreme Court case made the determination that it was a regulatory rather than punitive action. She asked whether a regulatory action would be knowledge that the sex offender was following the rules, for example, not living near a school.

MR. SKIDMORE answered yes.

SENATOR HUGHES asked whether other states that have enacted similar laws have seen a reduction in cases or if the sex offenses seem to be holding steady.

MR. SKIDMORE explained the difficulty was that most other states don't find registration punitive in any way, shape, or form. He highlighted that the US Supreme Court found in 1997, 2001, and 2003, in *Kansas v. Hendricks*, *Ceiling v. Young*, and *Smith v. Doe*, respectively, that the sex offender registries were not punitive and only regulatory. In 2008, the Alaska Supreme Court found that there was a punitive aspect. The court expressly looked at the provision when Alaska's sex offender registry was enacted in 1994, requiring sex offenders to register for offenses they were convicted of before the enactment of the registry. In that circumstance, and that circumstance only, the court found it was punitive. He highlighted that the 2019 decision distinguishes between those two circumstances: the requirement to register from out-of-state convictions and the ramifications of the 2008 case. Although he was not completely certain of other states' actions, he was unaware that any state concluded it was punitive and would violate ex post facto considerations.

[2:04:19 PM](#)

SENATOR SHOWER asked how many people this would affect. He wondered whether the committee could hear from the public defender to gain another perspective.

MR. SKIDMORE answered that he does not have any figures, but he would check with the Department of Public Safety (DPS). He noted that he was unsure whether the department was asked to compile those figures.

[2:04:55 PM](#)

CHAIR HOLLAND asked Ms. McFarland to weigh in.

[2:05:07 PM](#)

RENEE MCFARLAND, Deputy Public Defender, Appellate Division, Public Defender Agency, Department of Administration, Anchorage, Alaska, said she had not had an opportunity to thoroughly review the amendment. She offered her view that Mr. Skidmore correctly paraphrased the court's decision in State v. Doe. However, she said she hadn't studied that decision recently, so she was hesitant to fully state the agency's position without reviewing it more closely. She agreed that Alaska found registration to be punitive in a way that other courts have not. She was unsure whether the state was unique in its findings. She noted that some states require registration for acts that Alaska does not, including public urination and other misdemeanor offenses. She stated that it raises some concerns given the effect the sex offender registry can have on people reintegrating into society for non-criminal matters. She noted that nothing Mr. Skidmore stated raised any disagreements, but she offered to report any additional concerns to the committee.

[2:06:57 PM](#)

SENATOR SHOWER asked how many people this amendment would affect.

[2:07:24 PM](#)

LISA PURINTON, Chief, Criminal Records and Identification Bureau, Department of Public Safety (DPS), Anchorage, Alaska, responded that she did not have those figures. She offered to compile the information and report back to the committee. She stated that the department has consistently added two new registrants for out-of-state offenses each week.

[2:07:53 PM](#)

SENATOR MYERS recalled that the registry requires sex offenders to register for a certain period of time. He wondered if this

relates only to people who moved to the state prior to 2019 and if this issue would resolve itself over time.

MR. SKIDMORE answered that he could not provide a definitive answer on the length of time this would take to resolve itself. He recalled that the federal guidelines have three tiers. He was unsure but he believed some sex offenders had to register for life, some for 15 years, and others for 5 years.

[2:09:11 PM](#)

SENATOR HUGHES recalled that over 100 sex offenders moved to Alaska, potentially to avoid registration, and that sex offenders were calling to find out if they needed to register in Alaska. She wondered if the department has seen more offenders moving to Alaska because they don't have to register here.

MS. PURINTON explained the process. When sex offenders who are required to register in another state move to Alaska, the department first researches the criminal history records to determine the conduct required for the registration. As Mr. Skidmore indicated, the Department of Law conducts a legal analysis on the elements of the crime comparable to state law. Since House Bill 49 passed, requiring sex offenders moving to Alaska to register, a fair number of them were deemed not registerable in Alaska. Thus, it could be challenging to provide specific numbers.

[2:11:19 PM](#)

SENATOR MYERS asked if the bill passes, whether some sex offenders in Alaska who are required to register would also need to move from their current location, thereby losing their housing.

MR. SKIDMORE answered he was unaware of any provision that would cause someone to lose their housing, but the sex offender must register where they live.

[2:11:57 PM](#)

SENATOR MYERS recalled that sex offenders could not live near certain locations, including near a school. He wondered if a sex offender would need to move now if they had moved to Alaska in 2015, found a house or apartment near a school, but is now required to register as a sex offender.

MR. SKIDMORE deferred to Kelly Howell.

[2:13:05 PM](#)

KELLY HOWELL, Special Assistant, Office of the Commissioner, Department of Public Safety, Anchorage, Alaska, stated that current law for sex offender registration does not have any proximity limitations on where sex offenders may reside unless the Department of Corrections imposes limitations on the sex offenders.

[2:13:36 PM](#)

CHAIR HOLLAND asked Ms. Howell to confirm that she did not envision that someone would be forced to move out of their house because now they have to register.

MS. HOWELL answered that she did not envision that circumstance.

[2:13:50 PM](#)

SENATOR HUGHES asked for another example since the state does not have any regulatory restrictions on sex offenders related to their proximity to a school.

MR. SKIDMORE responded that there are many regulatory reasons, including the one she described, when people are at a property near where any sex offender resides. He explained that the regulatory purpose would not be to punish the sex offender but to identify the sex offender's residence to allow citizens to make informed choices about the activities to engage in and the risks they may take by going to a park, school, or recreational facility in the near proximity to a sex offender's residence.

[2:15:31 PM](#)

SENATOR KIEHL stated that he appreciated that no governmental requirement would force someone to move out of their house, but their landlord might require them to do so. He reminded members that some offenses that are not considered criminal behavior in Alaska are registerable elsewhere. Other states have different definitions of family relationships that are not allowed to have sexual relations or relate to age gaps. Thus, some situations would require a person to register in another state for things that are not crimes in Alaska. Therefore, requiring them to register in Alaska isn't reasonable. The Alaska Supreme Court provides a parallel analysis of punishment and regulation. The 2019 case related to a sexual assault in the first-degree case is not what Amendment 4 addresses. Finally, the process for sex offenders that the Alaska Supreme Court required still doesn't exist.

SENATOR KIEHL offered his belief that this was an overbroad situation with an element of punishment for something that

Alaska does not regulate. He highlighted that a sex offender could be convicted of a sex offense that required registration in the Lower 48 state where they reside, but that crime could be one that was not considered a crime or did not require registration in Alaska. Further, House Bill 49 has yet to be tested in court. He surmised it would probably stand up in court unless the legislature adds in retroactivity, creating an ex post facto element.

[2:19:07 PM](#)

CHAIR HOLLAND maintained his objection.

[2:19:15 PM](#)

A roll call vote was taken. Senators Myers and Kiehl voted in favor of Amendment 4, and Senators Hughes, Shower, and Holland voted against it. Therefore, Amendment 4 failed on a 2:3 vote.

CHAIR HOLLAND stated that the motion to adopt Amendment 4 failed with 2 yeas and 3 nays.

[2:19:55 PM](#)

SENATOR SHOWER asked for confirmation that the Department of Law had not provided a means for sex offenders to be removed from the Alaska Sex Offender Registry; if not, he said that would not sit well with him.

MR. SKIDMORE answered that Senator Kiehl was correct that the statutes have not been amended, but he may not be aware of ongoing litigation on the matter. Still, at least five sex offenders have been removed from the registry because they were found not to be dangerous. He highlighted that additional litigation is filed every day.

SENATOR SHOWER asked if the only way sex offenders can be removed from the registry is through litigation.

MR. SKIDMORE answered that the legislature has not chosen to address the process of removing sex offenders from the registry, so the courts are left to decide on that process.

[2:21:20 PM](#)

SENATOR KIEHL moved to adopt Amendment 5, work order 32-GS2031\G.9.

32-GS2031\G.9
Radford
3/10/22

AMENDMENT 5

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: CSSB 187(JUD), Draft Version "G"

Page 4, lines 18 - 19:

Delete "or the manner of dress of"

Insert "between the defendant and"

CHAIR HOLLAND objected for discussion purposes.

[2:21:26 PM](#)

SENATOR KIEHL explained that Amendment 5 would provide new language related to whether there was a lack of consent by the victim. The bill reads, "a current or previous dating, social, or sexual relationship or the manner of dress of the person involved with the defendant and the conduct at issue may not by itself constitute consent;" He emphasized that he had a strong reaction to including "manner of dress" in the bill. He recalled discussions with the Department of Law about prohibiting "manner of dress" from being one of those elements. The department argued that there might be rare instances where it would be appropriate to consider as part of the totality of the circumstances. The department also expressed concern that if the legislature prohibits considering it, the courts may strike this provision as overbroad. He said he did not want to risk that happening.

[2:22:45 PM](#)

SENATOR KIEHL explained that Amendment 5 would delete any mention of the "manner of dress," so the law would not specifically allow "manner of dress" as a factor that could be considered in sexual assault cases. He surmised that juries would reject most arguments about the "manner of dress." However, this amendment would allow for the rare situation where a defense attorney made a powerful case. He stated that deleting "manner of dress" does not give special permission to count it as one of the factors in every instance but using "manner of dress" wouldn't be prohibited.

[2:23:43 PM](#)

MS. SCHROEDER agreed with Senator Kiehl's characterization of the committee's robust discussion about the "manner of dress." She said she hoped the committee would take away from that discussion that the legislature could decide whether to include

"manner of dress" in the totality of the circumstances. She highlighted that the Department of Law cautioned against an absolute bar to allow that language to be used for the rare instances where it may be relevant to consider "manner of dress" in the totality of the circumstances when deciding whether the defendant acted recklessly.

[2:24:39 PM](#)

CHAIR HOLLAND removed his objection.

[2:24:45 PM](#)

SENATOR HUGHES objected to ask if the effect of Amendment 5 would be that the "manner of dress" could not be considered as one of the multiple factors in a case.

MS. SCHROEDER answered no. She elaborated that the language previously drafted would have barred it from ever being used. The department cautioned against that language at the last hearing, and [the committee substitute (CS), Version G, changed that language]. If the committee were to adopt Amendment 5, the law would remain as it is in current law, and it will be up to the defendant to argue the relevance.

SENATOR HUGHES said she was confused. She asked if Amendment 5 passes, if the clothing worn by the victim could be considered in the totality of the circumstances.

MS. SCHROEDER answered that the defendant could make an argument in the totality of the circumstances analysis.

SENATOR HUGHES offered her belief that it wouldn't matter since the defendant could still make the argument related to the "manner of dress."

MS. SCHROEDER replied that the language in Version G is softened and is not an absolute bar. She reiterated that it was up to the legislature to decide. She offered her view that it may not make a big difference in implementation.

[2:26:29 PM](#)

SENATOR HUGHES asked if she heard her correctly that if the committee adopted Amendment 5, the "manner of dress" could still be considered.

MS. SCHROEDER clarified that Version G states that the "manner of dress" by itself may not be considered, but it could be considered in the totality of the analysis of the circumstances,

and the defendant could argue relevance. If it is removed, it would likely be the state of the law.

SENATOR HUGHES removed her objection.

CHAIR HOLLAND heard no further objection, and Amendment 5 was adopted.

[2:27:33 PM](#)

SENATOR KIEHL moved to adopt Amendment 6, work order 32-GS2031\G.3.

32-GS2031\G.3
Radford
3/10/22

AMENDMENT 6

OFFERED IN THE SENATE BY SENATOR KIEHL
TO: CSSB 187(JUD), Draft Version "G"

Page 4, line 11, following "person":
Insert "; in this paragraph, "sexual contact" does not include an offender knowingly causing a person to come into contact with semen"

Page 6, line 3:
Delete "AS 11.41.434 - 11.41.440,"
Insert "AS 11.41.410 - 11.41.440,"

Page 6, line 5, following "to [":
Insert "AS 11.41.434 - 11.41.440,"

Page 6, line 7:
Delete "[SEMEN,]"
Insert "semen,"

CHAIR HOLLAND objected for discussion purposes.

[2:27:41 PM](#)

SENATOR KIEHL explained that the effect of Amendment 6 would be that any inappropriate contact with semen that was not of a sexual nature would be retained as a class A misdemeanor. He related that several years ago, the committee dealt with a loophole in criminal law in the Schneider case by classifying a

sex act involving exposure to semen and force as a class B felony. Amendment 6 would not change the penalty for that criminal behavior. Further, the crime of contact with semen in a sexual act where the victim is unconscious or unaware is classified as sexual assault in the third degree, a class C felony, and contact with semen in a sexual act without consent is classified as sexual assault in the third degree, a class C felony. If someone masturbates in someone else's presence who does not wish to see it, that is classified as indecent exposure in the first degree, a class C felony.

SENATOR KIEHL stated the intention was not to leave any loopholes for sexualized acts.

2:30:05 PM

SENATOR KIEHL stated that Amendment 6 would classify contact with semen in other situations separated from the sexual act, such as a dirty rag being thrown or fluids being flung, as harassment in the first degree, a class A misdemeanor. He related that it would be similar to other class A misdemeanor crimes, such as contact with feces or urine, when the contact with semen is separated from a sexual act.

MR. SKIDMORE responded that Senator Kiehl's amendment relates to classification, not punishment. He said this does not propose legalizing any conduct but relates to how to punish offenders. Members must decide whether contact with semen should be classified as a sexual assault in the third degree, which is a class C felony punishable by 2-12 years on a first offense as SB 187 classifies it; or if it should be reclassified as harassment, a class A misdemeanor with a penalty of 0-1 years.

MR. SKIDMORE clarified that contact with semen as it applies in SB 187 would fall under the new definition of consent. If there was contact with semen and force or the threat of force was present, it would be classified at the higher level of offense, sexual assault in the second degree. Senator Kiehl's amendment would not change that classification or penalty since it would only adjust where it falls in the new definition of consent in SB 187.

2:32:48 PM

MR. SKIDMORE offered his view that the rationale behind that concept relates to some incarcerated offenders who want to annoy or harass correctional officers. He noted the list of body substances that are secretions, which are flung or thrown at the officers. He highlighted that was why it was initially placed in

the harassment offenses. Amendment 6 attempts to say that it should not be classified as a sex offense. If the committee were to agree, that crime would remain in the harassment statutes as a class A misdemeanor subject to 0-1 year in jail.

[2:33:44 PM](#)

SENATOR HUGHES related her understanding that if force were involved, it would change the crime. For example, suppose an inmate flung semen, a fight occurred, and others had contact with the semen. She said she did not envision that the parties involved would be charged with a sex offense. She asked whether that would be separated.

MR. SKIDMORE answered yes. He explained that the force he was speaking about must be force used to overcome resistance to sexual contact, such as the contact with semen. For example, if it were a situation in which one person was restraining an individual, and someone else was forcibly putting the substance on them, it would be deemed a sex offense.

[2:35:04 PM](#)

SENATOR MYERS asked how the class C felony and class A misdemeanor crimes affect the requirement to be registered on the Sex Offender Registry.

MR. SKIDMORE stated that the registry for sexual assault in the third degree is 15 years, and someone convicted of harassment would not need to be registered.

[2:36:16 PM](#)

CHAIR HOLLAND removed his objection; heard no further objection, and Amendment 6 was adopted.

CHAIR HOLLAND stated he would not offer Amendment 7.

[2:37:12 PM](#)

SENATOR SHOWER moved to adopt Amendment 8, work order 32-GS2031\G.6.

32-GS2031\G.6
Radford
3/11/22

AMENDMENT 8

OFFERED IN THE SENATE

BY SENATOR SHOWER

TO: CSSB 187(JUD), Draft Version "G"

Page 1, line 2, following "coercion;":

Insert "**relating to failure to register as a sex offender;**"

Page 5, following line 22:

Insert new bill sections to read:

*** Sec. 8.** AS 11.56.835 is amended by adding a new subsection to read:

(e) In a prosecution for failure to register as a sex offender or child kidnapper in the first degree under (a) of this section, it is an affirmative defense that the person is a homeless individual with no permanent or temporary address.

*** Sec. 9.** AS 11.56.840 is amended by adding a new subsection to read:

(d) In a prosecution for failure to register as a sex offender or child kidnapper in the second degree under (a) of this section, it is an affirmative defense that the person is a homeless individual with no permanent or temporary address."

Renumber the following bill sections accordingly.

Page 16, line 4:

Following "Act,":

Insert "AS 11.56.835(e), enacted by sec. 8 of this Act, AS 11.56.840(d), enacted by sec. 9 of this Act,"

Delete "sec. 8"

Insert "sec. 10"

Page 16, line 5:

Delete "sec. 9"

Insert "sec. 11"

Page 16, lines 5 - 6:

Delete "sec. 10"

Insert "sec. 12"

Page 16, line 6:

Delete "sec. 17"

Insert "sec. 19"

Page 16, line 7:

Delete "sec. 18"

Insert "sec. 20"
Delete "sec. 19"
Insert "sec. 21"

Page 16, line 8:
Delete "sec. 22"
Insert "sec. 24"

Page 16, line 10:
Delete "sec. 11"
Insert "sec. 13"

Page 16, line 11:
Delete "sec. 12"
Insert "sec. 14"

Page 16, line 12:
Delete "sec. 13"
Insert "sec. 15"

Page 16, line 14:
Delete "sec. 14"
Insert "sec. 16"

Page 16, line 18:
Delete "sec. 14"
Insert "sec. 16"

Page 16, line 21:
Delete "sec. 15"
Insert "sec. 17"

Page 16, line 23:
Delete "sec. 16"
Insert "sec. 18"

SENATOR HOLLAND objected for discussion purposes.

[2:37:17 PM](#)

SENATOR SHOWER stated the goal of Amendment 8 was to address sex offenders who are homeless but are required to register on the Alaska Sex Offender Registry. He pointed out that Sections 8 and 9 address the failure to register as a sex offender in the first degree by allowing an affirmative defense if the person is a homeless individual with no permanent or temporary address. He acknowledged that Alaska has a significant homeless problem, noting Anchorage has numerous homeless camps. He asked how

someone who was transient, perhaps living in various homeless camps, could meet the sex offender registration requirements since they don't reside in permanent or temporary residences. He noted that this population tends to consist of people who barely get by, and he did not want to set them up for failure.

[2:38:38 PM](#)

MR. SKIDMORE responded that the Department of Law and law enforcement share the concern that some sex offenders are homeless. Amendment 8 would say that any sex offender who was homeless would never be required to report or register where they reside. The department requires homeless sex offenders to indicate where they sleep, whether at a homeless shelter or somewhere else. If the individual lives at a physical camp, they must describe the camp's location. The department requires this, so the state will know where they live. He expressed concern that Amendment 8 would allow a sex offender to declare that they do not have a home to avoid registering as a sex offender. He envisioned that a person could live in a recreational vehicle and move from one place to another, perhaps parking next to an elementary or high school, daycare center, or park where parents take their children.

MR. SKIDMORE related that Senator Shower asked him if he had any idea how many homeless people are considered sex offenders and must register on the Alaska Sex Offender Registry. He deferred to Ms. Purinton to respond as he was unsure of the figures.

[2:40:54 PM](#)

SENATOR SHOWER responded that he had not considered that aspect. He asked if the public defender could also respond.

CHAIR HOLLAND asked Mr. Purinton to respond, then Ms. McFarland.

[2:41:11 PM](#)

MS. PURINTON stated that she was not able to review the records to identify the number of sex offenders who would be deemed as homeless. She offered to research this and report the figures to the committee.

CHAIR HOLLAND asked Ms. McFarland if she had comments.

[2:41:48 PM](#)

MS. MCFARLAND responded that she had not seen Amendment 8, so she could not speak to the specifics. However, she noted that registration on the Alaska Sex Offender Registry was problematic. She offered her view that there is a lack of

uniformity in how they register. She acknowledged that some homeless sex offenders are charged with failure to register because of issues related to their location.

[2:42:49 PM](#)

SENATOR SHOWER related that he did not wish to cause issues for law enforcement or the Department of Law. He stated that he does not currently have a solution. He asked the public defender to consider remedies to ensure that dangerous offenders are registered on the Alaska Sex Offender Registry but not to the extent that it "trips them up." He asked Ms. McFarland to report any suggestions to the committee.

SENATOR SHOWER withdrew Amendment 8. He stated that he would consider a floor amendment or seek to amend it in a subsequent committee.

SENATOR SHOWER asked if any members were interested in establishing a better timeline for sex offenders who are traveling.

[2:44:12 PM](#)

SENATOR KIEHL stated his interest in further clarifying sex offender travel. Although the bill addresses timeframes for out-of-state travel, he wondered if it addresses travel within Alaska. He suggested that the state could get better results if the requirements were explicitly listed.

[2:45:00 PM](#)

At ease

[2:45:59 PM](#)

CHAIR HOLLAND reconvened the meeting.

[2:46:11 PM](#)

SENATOR SHOWER asked if the Department of Law suggests codifying a timeline for sex offender travel requirements.

[2:46:41 PM](#)

MR. SKIDMORE responded that attempting to codify requirements about how quickly someone must report to the department creates challenges. He suggested it would be similar to when the committee considers hypothetical situations to ensure the statutory language does not create loopholes. He directed attention to AS 11.56.840(b) and paraphrased the affirmative defense.

(b) In a prosecution for failure to register as a sex offender or child kidnapper in the second degree under (a) of this section, it is an affirmative defense that

(1) unforeseeable circumstances, outside the control of the person, prevented the person from registering under (a)(3)(A) of this section or filing or supplying the written notices, verification, and other information required under (a)(3)(B) – (D) of this section; and

(2) the person contacted the Department of Public Safety orally and in writing immediately upon being able to perform the requirements described in this section.

(c) Failure to register as a sex offender or child kidnapper in the second degree is a class A misdemeanor.

[2:47:50 PM](#)

MR. SKIDMORE indicated that the sex offender must notify the department orally or in writing if their residence changes. He related that if a sex offender fails to do so, the Department of Law would evaluate the circumstances. He said to put it in another way, the defense would attempt to capture what was reasonable and allow the practitioners to sort through whether the sex offender's reason for not reporting was reasonable. He stated that there were several levels to determine this, including what the prosecutor or a jury believes is reasonable. He recommended taking this approach rather than setting a specific timeframe for compliance with travel notice.

[2:49:19 PM](#)

SENATOR SHOWER responded that "affirmative" provides a level of comfort. He asked whether anything addresses travel in or out of state.

[2:49:44 PM](#)

SENATOR KIEHL remarked that he was wrong about travel notices for sex offenders. He referred to page 9, line 17, to the provision that requires a sex offender or child kidnapper to be away from their physical address for seven days or more to notify the department in writing of their address. He noted that he was previously mistaken about that requirement.

MR. SKIDMORE agreed with Senator Kiehl.

[2:50:21 PM](#)

SENATOR MYERS asked whether orally or in writing, includes by telephone or email.

MR. SKIDMORE answered yes.

[2:50:50 PM](#)

SENATOR HUGHES stated that Alaska has the worst sex crime rates in the nation, so policymakers must do what they can to reduce those rates. She related that this bill had taken three or four years to develop. She noted that this is the first sex crime bill being reported out of this committee this legislative session. She expressed gratitude for the substantial work done by the administration and the committee on SB 187. She mentioned that someone suggested that this bill was introduced during an election year for political reasons. However, she hoped that the legislature would not postpone addressing this matter simply because it is an election year. The committee needs to vet all the crime bills and move them this year for Alaskans. She said she is proud to be part of this committee in moving this bill today.

[2:52:38 PM](#)

SENATOR KIEHL agreed with Senator Hughes on the excellent work done by the administration and the committee, including defining consent and identifying what constitutes a sexual act without consent. He offered his belief that this was a big step forward. He recalled testimony, which he interpreted to say that these cases are expensive and complex, so unless they are "slam dunks" they don't go to the jury. He hoped that future administrations would come to the legislature for the necessary resources to allow them to take cases when they believe the victim. He said he would like future legislatures to view any drop-in conviction rates as a sign that prosecutors were taking the tough cases and tackling the problem.

[2:54:30 PM](#)

CHAIR HOLLAND thanked the committee and the administration for their work.

[2:54:48 PM](#)

SENATOR SHOWER moved to report the committee substitute (CS) for SB 187, work order 32-GS2031\G, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR HOLLAND found no objection, and CSSB 187(JUD) was reported from the Senate Judiciary Standing Committee.

2:55:33 PM

There being no further business to come before the committee, Chair Holland adjourned the Senate Judiciary Standing Committee meeting at 2:55 p.m.