

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

April 19, 2023

1:31 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator James Kaufman
Senator Cathy Giessel
Senator Löki Tobin

MEMBERS ABSENT

Senator Jesse Kiehl, Vice Chair

COMMITTEE CALENDAR

SENATE BILL NO. 65

"An Act relating to criminal law and procedure; relating to the crime of stalking; relating to consecutive sentencing for violation of conditions of release; relating to the duty to register as a sex offender; amending the definition of 'sex offense'; amending the definition of 'crime involving domestic violence'; relating to multidisciplinary child protection teams; amending Rule 6(r), Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 70

"An Act relating to coverage for additional insureds under owner and contractor controlled insurance programs; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 65

SHORT TITLE: HARASSMENT; SEX OFFENDERS & OFFENSES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

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| 02/08/23 | (S) | READ THE FIRST TIME - REFERRALS |
| 02/08/23 | (S) | JUD, FIN |
| 04/19/23 | (S) | JUD AT 1:30 PM BUTROVICH 205 |

WITNESS REGISTER

ANGIE KEMP, Director
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Presented SB 65 on behalf of the administration.

KATE TALLMADGE, Legal Intern
Criminal Division
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Presented the sectional analysis for SB 65 on behalf of the administration.

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Giessel, Tobin, Kaufman, and Chair Claman.

SB 65-HARASSMENT; SEX OFFENDERS & OFFENSES

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CHAIR CLAMAN announced the consideration of "An Act relating to criminal law and procedure; relating to the crime of stalking; relating to consecutive sentencing for violation of conditions of release; relating to the duty to register as a sex offender; amending the definition of 'sex offense'; amending the definition of 'crime involving domestic violence'; relating to multidisciplinary child 5 protection teams; amending Rule 6(r), Alaska Rules of Criminal Procedure; and providing for an effective date."

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ANGIE KEMP, Director, Criminal Division, Department of Law, Juneau, Alaska, presented SB 65 on behalf of the administration. She informed the committee that the legislation intends to protect victims and witnesses from having to relive traumatic moments during grand jury proceedings. She stated that the legislation promotes efficiency by reducing the backlog created by the Covid-19 pandemic.

MS. KEMP continued that the legislation will not foreclose the findings or filings of motions to dismiss the indictment. The legislation will not prevent the grand jury from insisting upon the presentation of additional evidence. She continued that the legislation will not alleviate the prosecutor's obligation to introduce exculpatory evidence. The legislation will not undermine the constitution. She added that the legislation will not require the prosecutor to rely on out-of-court statements if they choose not to do so.

MS. KEMP stated that the legislation will prevent Alaska from being used as a haven for individuals who have been convicted in a sister state and move to Alaska to avoid registration requirements. She noted that the legislation will not add punishment to those offenses. The legislation will provide full faith and credit to the sister states' judgments to ensure that those individuals register for the time required by that state. She pointed to changes made in the stalking in the first degree statute, fixing a loophole. The current legislation carves out stalking in the first degree under subsection (a)(1), which can only be a felony if it is in connection to a domestic violence protective order.

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MS. KEMP provided further information about the grand jury process. She explained that the constitutional requirement was established in art. 1, sec. 8, which states that grand jury presentations must occur. The language states, "No person shall be held to answer for a capital, or otherwise infamous crime, unless a presentment or indictment of a grand jury,".

CHAIR CLAMAN asked if she was referencing the US Constitution.

MS. KEMP clarified that she quoted the Constitution of the State of Alaska. She stated that the language was interpreted to mean felony offenses or offenses that carry a punishment of a year or more. She pointed out that the constitution does not discuss the nature of the evidence utilized in the grand jury proceedings. She clarified that when a person is charged with a felony offense, the court has ten days to introduce the case to a grand jury. The ten-day requirement was a rule enacted in the 1970s and if a person is out of custody, the court has 20 days to present the case to the grand jury. If a person is arrested for an offense and remains in custody, the court that amount of time to present the case.

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CHAIR CLAMAN asked how often the defense council waives time giving the prosecution more than ten days to present the case.

MS. KEMP replied that jurisdictions vary. The practice in Anchorage routinely establishes pre-indictment hearings. Many individuals choose to waive that time to negotiate cases. She added that delays do not favor the prosecution. She opined that allowing a waiver is not the best practice unless there is meaningful negotiation between the parties. Delays frequently favor the defense because the state has the burden of proving the case. She stated that if a person is arrested, the case must be presented to the grand jury.

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MS. KEMP provided an example from her experience. She shared a case about a 15-year-old girl who was forcibly abducted from a middle school in Juneau. The girl and her siblings were threatened. She was brutalized in the defendant's home. The facts represented traumatic moments in the young girl's life. The defendant was arrested, and the case was presented to the grand jury within seven days. The procedure required Ms. Kemp to call the young girl into a grand jury hearing to ask questions about the most traumatic moments of her life. She was asked to respond with intimate details about the incident to support the elements of the offense. She stressed that this legislation intends to prevent future victims from reliving traumatic moments during a grand jury proceeding.

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MS. KEMP spoke to concerns that arose last year related to the case law surrounding the legislation. She clarified that SB 65 does not require the prosecutor to introduce or bring a witness to summarize the evidence. She added that the bill does not propose a defense's remedy of an error or motion to dismiss the indictment. She mentioned that an error in the grand jury proceeding would place the process back at square one.

MS. KEMP shared another case. A homicide in Ketchikan led to a reversal in conviction because of an inappropriate closing argument. She explained that inappropriate behavior impacts attorneys, and they have every reason to tread cautiously when presenting evidence or arguments. She mentioned the framework of the constitution, which does not speak to the nature of the evidence that is introduced to the grand jury. The primary issue for the delegate's concern was whether the grand jury presentation was indeed necessary. She spoke about other cases that were relevant to the legislation and noted that 33 other

states permit the introduction of out-of-court statements in their grand jury presentation. Alaska does not currently allow out-of-court grand jury statements.

MS. KEMP noted varying degrees in the 18 states that require an indictment for a felony charge to proceed, and Alaska is among them. She added that Alaska is among two states that do not allow testimony at the grand jury. She stated that the legislature amended the rule to allow for the introduction of Alaska Public Safety Information Network (APSIN) histories. The database where the criminal convictions are stored allowed the introduction of the histories to the grand jury without a corresponding statutory change. She added that HB 105 was another example of a rule change without a corresponding statutory action. The change pertained to evidence rule 404 (b) (1), which changed the rule to one of inclusion.

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CHAIR CLAMAN asked how many times the Criminal Rules Committee made recommendations to the Alaska Supreme Court without legislative action.

MS. KEMP replied that issues are decided by the Criminal Rules Committee and recommended to the Alaska Supreme Court for adoption.

CHAIR CLAMAN asked if Ms. Kemp sits on the Criminal Rules Committee.

MS. KEMP responded that she sits on the Criminal Pattern Jury Instructions Committee.

CHAIR CLAMAN asked how many Department of Law employees sit on the Criminal Rules Committee.

MS. KEMP responded that two Department of Law employees sit on the Criminal Rules Committee.

CHAIR CLAMAN asked which members represented the Criminal Rules Committee.

MS. KEMP replied that several defense attorneys and judges compile the Criminal Rules Committee. Members are appointed to the positions.

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CHAIR CLAMAN asked whether the rule change part of SB 65 was presented to the Criminal Rules Committee.

MS. KEMP responded that she did not know.

CHAIR CLAMAN suggested that the rules discussed in SB 65 are complicated and involve constitutional principles. He wondered why the Criminal Rules Committee did not vet the legislation before it was introduced to the legislature.

MS. KEMP stated that she respects the work the Alaska Supreme Court Advisory Committees perform. She revealed that the rule modification process is slow. She opined that a rule such as the one analyzed in SB 65 might take years to change in the advisory committee process. She commented that a defense attorney's job is to advocate for their client, sometimes to the detriment of other clients. She expected that the committee would disagree with the provision. She suspected significant division of opinion about the nature and scope of the rule.

MS. KEMP relayed that another goal of SB 65 is to address the backlog that the Covid-19 pandemic created. She stated that attorneys in Juneau fight for grand jury time. Witness statements are relied upon and if a critical witness does not show up, the case must be removed from the grand jury schedule, which dismisses the case. Proceeding without a critical witness might lead to a motion to release the indictment. She stressed the critical need to address the backlog of 1200 pending cases on the preindictment hearing status in Anchorage. She mentioned the detrimental impacts of these delays on criminal prosecutions.

CHAIR CLAMAN responded that he respects Ms. Kemp's perspective that the defense attorneys would oppose the rule change, but his experience was that the committees work collaboratively. He questioned reconciling the backlog as a reason to change a court rule. He surmised that the backlog might take years to work through, but a rule change might be in place for 50 years.

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MS. KEMP responded that the backlog is not the primary argument. The administration's primary concern is the desire to prevent a victim or witness from revisiting their traumatic experience during the grand jury proceeding. She explained the intent to rely on the evidence as a summary. The grand jury could insist on the physical presence of the victim if they chose, the rule change simply allows the option. She stated that she would

personally utilize the option judiciously. She mentioned a hypothetical scenario where a witness interviewed in connection with a case provided unclear statements; in that case she may prefer to obtain the statement in person.

MS. KEMP mentioned a past legislative effort providing for one officer to summarize another officer's testimony. The history surrounding that piece of legislation was to ensure efficiency in the judicial system. She provided this summary to exemplify a bill passed by the legislature that bypassed the Criminal Rules Committee with a direct rule change. She shared that even though the legislation now allows her to obtain testimony from another officer, she prefers to obtain testimony from the primary officer who directly interviewed the suspect.

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CHAIR CLAMAN recalled a rule stating the requirement for the recording of in-custody interrogation of suspects. He stated that a verbatim recording of the testimony was admissible under the current court rule. He pointed out the validity of video and audio in-custody interrogations, which have been a constitutional requirement in the courts since the late 1980s.

MS. KEMP responded that in practice, one officer will testify orally about the recorded conversation.

CHAIR CLAMAN countered that either officer can testify to the content of the recording.

MS. KEMP provided an example where a defendant admitted to assaulting a person and immediately thereafter stated that it was in self-defense. If the primary officer did not meaningfully review the recording, she would not want the grand jury to review the information.

CHAIR CLAMAN stated that the conversation highlights the complication of procedural matters. He opined that the rule change should be reviewed by the Criminal Rules Committee.

MS. KEMP appreciated that the issues are complicated. She offered to answer questions about the process and procedural requirements. She agreed that rule changes had a great impact, but the process was not unique.

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MS. KEMP reviewed the changes to the sex offender registry that allow the Department of Law to give full faith and credit to the

judgments of other states. She mentioned a situation where a person was convicted of a sex offense in Washington and then moved to Alaska. She noted that with the proposed legislation the person must register for the amount of time stipulated by Washington.

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MS. KEMP offered to answer questions or provide cases that further illustrate examples the legislation addresses.

CHAIR CLAMAN requested the sectional analysis.

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KATE TALLMADGE, Legal Intern, Criminal Division, Department of Law, Juneau, Alaska, presented the sectional analysis for SB 65.

Section 1. This is a legislative findings and intent section. The section clarifies that evidence the prosecutor believes will be admissible at trial should be admissible at grand jury. The section also overturns the decision in State v. Powell, 487 P. 609 (Alaska App. 2021) to the extent that it held that testimony may not be summarized at grand jury under Alaska Rule of Evidence 801(d)(3).

Section 2. This section amends stalking in the first degree (class C felony) to include situations where an individual continues to stalk someone in violation of a stalking or sexual assault protective order.

Section 3. If a person is being sentenced for a violation of a condition of release under AS 11.56.757, this section requires the court to impose some additional time for the underlying offense and any additional crimes of violation of a condition of release.

Section 4. This section amends AS 12.63.010(b) to require a person who must register as a sex offender to report additional information, such as professional licensing information and passport information, to the Department of Public Safety.

Section 5. This section makes a conforming amendment in AS 12.63.010(d) to account for the changes made in section 6.

Section 6. This section adds two new subsections to AS 12.63.010 that require a person who must register as a sex offender to notify the Department of Public Safety if the person plans to leave the state or is away from any address provided to the department for seven days or more.

Section 7. This section amends AS 12.63.020(a) to clarify the duration of the tolling period for sex offenders who are in noncompliance with the chapter. The tolling will be day for day.

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Section 8. This section corrects a cross reference AS 11.61.123 and makes sexual penetration with a corpse and sex trafficking in the first and second degrees registerable.

Section 9. This section amends the definition of "crime involving domestic violence" to include the crimes of unlawful contact and interfering with a report of a crime of domestic violence.

Section 10. This section amends AS 47.14.300(a) to allow multidisciplinary child protection teams to assist in the evaluation and investigation of cases involving reports of sexual contact and sexual penetration where both the perpetrator and the victim are children under the age of 13. The purpose of this section is to be able to provide both children with the resources necessary to address this type of behavior.

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Section 11. This section makes the applicability section in ch. 4, FSSLA 2019 (HB 49), retroactive as it pertains to the requirement for sex offenders who have to register in another state to also register in Alaska when they are present in Alaska regardless of when they were convicted.

Section 12. This section is a direct court rule amendment allowing witnesses to summaries the testimony of other witnesses before the grand jury if the prosecutor believes that that evidence would be admissible at trial.

Section 13. This section repeals AS 12.40.110, which allows out of court statements provided by children in sex offense cases to be presented to the grand jury. The amendments made in sec. 10 of the bill, alleviate the need for this statute.

Section 14. This section is the applicability section.

Section 15. This section is the conditional effect section for the court rule change.

Section 16. This section makes the bill effective July 1, 2023.

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SENATOR TOBIN articulated reservations about tackling an issue of this magnitude. She asked about Section 12, page 11, line 13. She asked about the legal standard for the word "believes." She suggested that the statement was arbitrary in this context.

MS. KEMP replied that the language was not defined. She provided an example where a witness was interviewed by a law enforcement officer and the intention was to call the individual to trial. She stated that if the hypothetical witness was no longer alive during the grand jury proceeding, there would be no good faith basis to believe that the evidence would be available at trial.

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CHAIR CLAMAN recalled that evidence that is legally admissible at trial shall be admissible before the grand jury. He surmised that if a court is reviewing what was presented under the rules of evidence, the evidence would be admissible at trial. He mentioned the subjective element in which the court would have to decide whether the evidence was admissible at trial. He wondered about the subjective view of the prosecution compared to a routine analysis of the admissibility of evidence.

MS. KEMP stated that she would entertain suggestions for different language that would not require delving into the good faith basis aspect or whether the prosecutor believed something to be true. She noted that the State v. Powell case involved a prosecutor introducing a CAC interview through 801(d)(3).

CHAIR CLAMAN asked for an explanation of a CAC interview through 801(d)(3).

MS. KEMP explained that CAC refers to a child advocacy center where young witnesses are typically taken. She added that Alaska Rules of Evidence, 801(d)(3) involves a direct rule change by the legislature that allowed for the introduction of a CAC interview when certain criteria are met. The criteria have aspects that require judicial findings. She stated that the Powell v. State case involved a prosecutor stating that the evidence would be admissible at trial; it relied upon the same analysis as Alaska rule 801(d)(3). The Alaska Court of Appeals determined that those foundational requirements are predicated and could not be made given the procedural posture of the grand jury proceedings.

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SENATOR TOBIN asked how old the child was in the Powell v. State case.

MS. KEMP replied the child was older than age 10.

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CHAIR CLAMAN recessed the meeting to a call of the chair.

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CHAIR CLAMAN reconvened and held SB 65 in committee.

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There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:26 p.m.