

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

May 3, 2023

1:31 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator James Kaufman
Senator Löki Tobin

MEMBERS ABSENT

Senator Cathy Giessel
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

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 75(L&C)

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

- BILL HEARING CANCELED

PREVIOUS COMMITTEE ACTION

BILL: SB 65

SHORT TITLE: HARASSMENT; SEX OFFENDERS & OFFENSES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

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

04/19/23 (S) Heard & Held
04/19/23 (S) MINUTE (JUD)
05/03/23 (S) JUD AT 1:30 PM BUTROVICH 205

WITNESS REGISTER

BRENDA STANFILL, Executive Director
Alaska Network on Domestic Violence and Sexual Assault
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of SB 65.

KIM GUAY, Director
Office of Children's Services
Department of Family and Community Services; Member
Children's Justice Task Force
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of SB 65.

KRISTEN BENGE, Investigator
Alaska State Troopers
Department of Public Safety
Wasilla, Alaska

POSITION STATEMENT: Provided invited testimony in support of SB 65.

BARRY WILSON, Board Member
Standing Together Against Rape (STAR)
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of SB 65.

SAMANTHA MINTZ-GENTZ, Direct Service Provider
Standing Together Against Rape (STAR)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 65.

KEELEY OLSON, Executive Director
Standing Together Against Rape (STAR)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 65.

AMBER CHUNG, representing self
Bethel, Alaska

POSITION STATEMENT: Testified in support of SB 65.

DEVEN CUNNINGHAM, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 65.

VIKKI JO KENNEDY, representing self
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 65.

SUKI MILLER, Executive Director
Victims for Justice
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 65.

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

POSITION STATEMENT: Responded to questions about SB 65.

ACTION NARRATIVE

[1:31:14 PM](#)

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 Kaufman, Tobin, and Chair Claman.

SB 65-HARASSMENT; SEX OFFENDERS & OFFENSES

[1:31:52 PM](#)

CHAIR CLAMAN announced the consideration of 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."

[1:32:14 PM](#)

CHAIR CLAMAN moved to invited testimony.

[1:32:26 PM](#)

BRENDA STANFILL, Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), Anchorage, Alaska, stated that much of SB 65 updates or fixes gaps in the law. She said ANDVSA supports the provisions that somebody who violates a

stalking order could be charged with stalking in the first degree; somebody who violates their conditions of release could be subject to additional jail time; and persons required to register as sex offenders have to give more information and notify the Department of Public Safety (DPS) if they are leaving the state or will be gone for longer than seven days. ANDVSA also supports the expansion of the crime of domestic violence to include unlawful contact and interfering with a report of domestic violence. She stated that the most significant change is to allow witnesses to summarize the testimony of other witnesses before the grand jury if the prosecutor believes that the evidence will be admissible at trial. She relayed that in her experience, the grand jury process is among the most traumatic events a victim experiences after experiencing a violent crime. All felony-level assault and sexual assault cases go through the grand jury process that currently requires a victim to be physically present to testify.

In Alaska, the criminal justice process includes a trauma-informed system to get the information needed for an investigation from the victim with the least additional trauma possible. For child victims of sexual assault, the child advocacy center provides a trained forensic interviewer with a camera to conduct the interview for the grand jury. For adult victims, a sexual assault response team with an investigator, a forensic nurse, and a victim advocate come together so the victim only has to tell their story once and has access to support services during and after the interview.

MS. STANFILL stated that the system can easily be seen as a system that inflicts trauma on victims. Trauma can shut down episodic memory, fragment the sequence of events, and cause the brain to put together just pieces and parts of the memory. The initial investigation is done when that is the memory but by the time the grand jury meets the victim's memories have come together in a more linear process. The defense often uses the difference in the account between the investigation and the grand jury to say the victim is lying. The grand jury can also be delayed and rescheduled on short notice, which can be harmful to victims. She emphasized that from the victim's perspective, no part of the grand jury process works for victims. She said ANDVSA appreciates that this aspect of the criminal justice system is being reviewed and they look forward to working with the legislature and the court system to develop a more trauma-informed approach to the grand jury.

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KIM GUAY, Director, Office of Children's Services (OCS), Department of Family and Community Services; Member, Children's Justice Task Force, Anchorage, Alaska, articulated support for two provisions in SB 65. The first is the provision relating to the multidisciplinary team response to children who have engaged in sexual behavior with other children under the age of 13. For years OCS has been trying to figure out how to serve this population and SB 65 provides a preventative measure that would allow children to be seen at a child advocacy center and connected to medical or mental health services. She provided an example of an eight-year-old who had sexualized behavior on a six-year-old child.

She stated that the other piece of SB 65 that OCS is particularly interested in is the grand jury proceeding and the services a child advocacy center can provide. Under the current process, these children often do not have any time to engage in any kind of therapeutic services before they go before a grand jury which can create more trauma. People working in a child advocacy center are forensically trained to help children share their stories in a defensive and culturally responsive way. She reiterated particular support for these parts of SB 65.

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KRISTEN BENGE, Investigator, Alaska State Troopers, Department of Public Safety, Wasilla, Alaska, shared that before becoming a Trooper she worked in Tennessee supervising sex offenders. She had to testify frequently and provide sole testimony on offenders' new cases. When she joined AST she initially worked in the Mat-Su Valley and Nome and is now on the Child Abuse Investigation Unit. She works at the Children's Place Child Advocacy Center which has forensically trained interviewers who prepare child victims to give testimony to a grand jury. She described a case and encouraged legislators to view the situation as if it was their child. In that case, a five-year-old girl made a disclosure that prompted a report of harm to OCS and the Child Abuse Investigation Unit. During a forensic interview, she described physical and sexual abuse by her father. Following the disclosure she had a trauma response that affected the entire household. To date, the child has repeated her disclosure three times and she still has to go before the grand jury, which is not set up to accommodate children. She emphasized how important it is to reduce the number of times the child victim has to repeat that narrative.

MS. BENGE stated that this provision allows prosecutors to make logical decisions about the information presented to the grand jury without having a negative impact on the victims.

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SENATOR TOBIN asked for the age of the child in the example.

MS. BENGE replied that the child in the example was five years old but as currently written, any victim would have to come before the grand jury.

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BARRY WILSON, Board Member, Standing Together Against Rape (STAR), Anchorage, Alaska, stated that as a former Alaska State Trooper he had interviewed children and adults who were traumatized by offenders and then re-traumatization by having to retell the events to multiple strangers, sometimes over the course of years. He shared that members of his family have been victims of crime so he's personally acquainted with the victim's side of the process. SB 65 would reduce the number of times a victim has to recount their traumatic story to strangers. He described an exercise he had used to educate students about how victims are re-traumatized by having to retell what happened to them. Alaska has some of the highest rates of sexual assault, child abuse, and domestic violence in the country, yet the current process makes it difficult on victims to indict these cases. Most states don't do this, so Alaska is behind the curve. The costs on law enforcement, the court, the prosecution, and the victims are huge and unnecessary. He concluded that it's time to turn a new page and stop revictimizing victims of crime.

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CHAIR CLAMAN opened public testimony on SB 65.

[1:52:30 PM](#)

SAMANTHA MINTZ-GENTZ, Direct Services Provider, STAR, Anchorage, Alaska, testified on Section 12 of SB 65 relating to admissibility of evidence and the accuracy of children's statements and their wellbeing as a victim witness. She referenced the American Academy of Pediatrics (AAP) that addresses the negative impacts of testimony on child victim witnesses. She said the evidence shows that testifying repeatedly is associated with long term mental health problems, and testifying about severe abuse is associated with higher levels of trauma-related problems. Using a two-way video is less stressful on children and provides more accurate and detailed information than in person testimony in a courtroom. She

disagreed with the notion that juries show a bias when a child witness testifies remotely. She concluded that AAP recommends that only qualified individuals question children. This would exclude grand jury members from directly questioning minors as they are able to do today.

[1:54:45 PM](#)

KEELEY OLSON, Executive Director, STAR, Anchorage, Alaska, testified in support of SB 64, recounting her experience working with a six-year-old boy who was a victim of child sexual abuse. His father caught the offender in the act and beat him up. She described waiting outside the courtroom until it was the child's time to testify before the grand jury and having to explain that his daddy could not testify for him. She said victim advocates have to convince themselves that what they're doing to the child is okay and somehow empowering the child, but it's not. She concluded that STAR supports SB 65 in its entirety, but especially in regard to survivors not having to testify to a grand jury.

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AMBER CHUNG, representing self, Bethel, Alaska, stated that she is a forensic interviewer who works closely with the local Child Advocacy Center. She said she'd like to add her voice in support of SB 65, especially as it pertains to protecting minors from being retraumatized by grand jury testimony, expanding the scope of CACs in providing services to children under age 13 who are engaging in problematic sexual behaviors, and the in-state registration of sex offenders.

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DEVEN CUNNINGHAM, representing self, Anchorage, Alaska, testified in support of SB 65. He stated that he is a retired officer with the Anchorage Police Department who worked in the Crimes Against Children Unit for 17 years. He relayed his experience that children that have to testify are not only terrified but also harmed by the experience. He said the reason Alaska has CACs is to lessen the trauma; interviews are recorded so the grand jury can not only hear the testimony but see the child's body language. He said the dynamics of these situations are far-reaching and he wanted to add his support for the bill.

[2:00:16 PM](#)

VIKKI JO KENNEDY, representing self, Juneau, Alaska, stated support for SB 65 as a victim of abuse who could not deal with the grand jury process. She expressed appreciation for the

people from STAR, the other testifiers, and the committee for hearing the bill.

[2:02:22 PM](#)

SUKI MILLER, Executive Director, Victims for Justice, Anchorage, Alaska, testified in support of SB 65, which will reduce rates of re-traumatization for victims of violent crime. She said it's frustrating that victim rights are addressed in statute and the constitution but offenders only receive a slap on the wrist. She opined that requiring victims of violent crime to testify at grand jury furthers the trauma.

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CHAIR CLAMAN closed public testimony on SB 65.

[2:03:42 PM](#)

CHAIR CLAMAN asked Mr. Skidmore for his perspective on why youth were being asked to testify if there was already a hearsay exception for children under age 10. He also asked whether children older than age ten currently were allowed to provide telephonic testimony.

[2:04:41 PM](#)

JOHN SKIDMORE, Deputy Attorney General, Criminal Division, Department of Law, Anchorage, Alaska, recapped that SB 65 does six things. The first deals with grand jury; the second requires out-of-state sex offenders to register if they move into the state; the third adds a violation of a stalking or sexual assault protective order to stalking in the first degree; the fourth allows CACs to interview children under the age of 13; the fifth requires consecutive sentencing for violation of conditions of release; the sixth amends the definition of domestic violence by adding unlawful contact and interfering with the report of domestic violence to Title 18.

MR. SKIDMORE referenced testimony during the first hearing and clarified that the bill allows the evidence an investigator has gathered to be summarized at the time of grand jury, and that the summary of testimony does not implicate any constitutional rights. He also noted that the rule change was requested for expediency.

CHAIR CLAMAN countered that lawyers sometimes get things done faster than the legislature.

CHAIR KAUFMAN commented that competing against the speed of the legislature wasn't exactly a high-water mark.

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MR. SKIDMORE responded that he appreciated the point, but the Rules Committees associated with the Bar Association typically take 18 months to two years to get anything done on the rules that come before them. He also noted that the change for grand jury was a direct rule change in legislation sponsored by Senator Hollis French that passed unanimously by both bodies in 2005. He referenced *State v. Powell*, 487 P.3d 609 (Alaska Ct. App. 2021) ("Powell") that states that the legislature did not amend this rule. The court of appeals was inviting the legislature to amend the rule if that was the intention. He opined that it was important for this to be addressed.

Responding to Senator Claman's question about individuals under the age of five having to testify, he relayed that Powell has questioned video testimony, even when children are under age 10.

CHAIR CLAMAN interjected that he asked about the existing rule that the bill proposes to delete that says for a child under the age of 10 there are provision for providing hearsay testimony. He referenced the invited and public testimony that talked about child witnesses under the age of 10 who were required to testify. Given the existing rule about hearsay presentation, he asked why that evidence wouldn't be presented by hearsay to avoid traumatizing the victim. He asked when the Powell case occurred.

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MR. SKIDMORE stated that it was in 2019.

CHAIR CLAMAN said the Powell case may change things, but why was a five-year-old girl required to testify live in 2015 instead of it being presented by hearsay.

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MR. SKIDMORE responded that the testimony from Investigator Benge was about a case that occurred after 2019 and that case is currently pending. He added that he didn't know whether the case Keely Olson described was prior to 2005 when a summary of the testimony was allowed to occur.

CHAIR CLAMAN asked if he was saying that the Powell case specifically prohibits the testimony of a child under the age of 10 or that the case simply raised questions about that.

MR. SKIDMORE replied that the Powell case raised significant questions about the testimony of a child under the age of 10; the case itself involved a child over the age of 10. He believed that Powell also raised questions about this particular provision and the intent is to clarify that. He said he would submit that there are many victims over the age of 10, including adults, which are retraumatized by the grand jury process. He said SB 65 goes much further than what was proposed in 2005. It looks at the bigger picture and why citizens are continuing to be traumatized by the way they have to present testimony to the grand jury. He opined that all citizens should have this benefit that is clearly constitutional because it's done by the federal government and 29 states. It makes sense for Alaska to follow suit.

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MR. SKIDMORE responded to the question related to telephonic testimony and having to travel to testify at the grand jury. He confirmed that a court rule provides that someone who lives more than 50 miles away may testify telephonically. He relayed that Dillingham does all grand jury testimony telephonically, and his experience was that telephonic testimony is not easier than in person. He offered his perspective that it is easier to walk a child through the process when you can interact with them and see their body language. He noted that the change proposed in SB 65 is not a mandate; it simply authorizes the summary to occur, but prosecutors may still want to hear directly from witnesses in certain cases. He opined that both victims and grand jurors support this change.

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SENATOR TOBIN recapped that the Powell case involved a 14-year-old victim who submitted hearsay evidence to the grand jury even though Criminal Rule 6(r) indicates that only a child under age 10 has the ability to submit hearsay evidence. She asked what the decision-making process was because it seems that it was done with intent.

MR. SKIDMORE answered that Alaska Evidence Rule 801(d)(3)(B) provides an exception to the hearsay rule and that was used to allow the video interview of the victim. The court of appeals disagreed and held that the rule applied to trials but not grand jury.

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SENATOR TOBIN asked why the bill proposes such a wholesale change in Section 12 to Criminal Rule 6(r), as opposed to

changing the age of a child from under the age of 10 to under the age of 18. In particular the bill eliminates a peace officer from presenting the hearsay evidence even though testimony highlighted the value of a peace officer providing that information. She asked why all of that language was being removed and replaced with a provision that says the prosecutor believes.

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MR. SKIDMORE replied that the language being removed from Section 12 was the various hearsay exceptions that were identified in the rule. He said SB 65 is drafted to be much broader; it says the prosecutor must believe that the information will be admissible at trial. Similar to the federal system, the prosecutor would solicit that information from the law enforcement officer who is summarizing. He acknowledged that the proposed amendment to the rule doesn't specify the law enforcement officer, but he didn't know who other than the officer would be appropriate to summarize the child's testimony. To the specific question about simply changing the age threshold or whatever else the summary should apply to, he acknowledged that it was a policy call.

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SENATOR TOBIN asked why the Department of Law believes the wholesale change to the rule is the best approach.

MR. SKIDMORE replied that the federal government takes this approach with grand juries and it's similar to the way 29 other states approach evidence to grand juries. He opined that this creates efficiency in the system and respects the rights of victims who have been subject to very traumatizing crimes. He provided hypothetical examples.

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SENATOR TOBIN expressed appreciation for his passion but said that it sounded as though the burden of proof was being placed on the accused. Thus her great consternation with such a wholesale change. Her belief was that this should fall within the purview of the courts, particularly relating to Criminal Rule 6(r).

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CHAIR CLAMAN asked whether the department took live videoconference testimony in grand jury during Covid and if that was a permanent or temporary Court Rule change.

MR. SKIDMORE replied that limited exceptions were allowed during Covid for streaming video presentations for the grand jury. None of those exceptions were permanent.

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CHAIR CLAMAN asked whether the simplest way to address the questions raised in the Powell case would be to modify the criminal rule that allows hearsay evidence to be presented to the grand jury the same way that it's admissible at trial.

MR. SKIDMORE replied that part of the analysis for Powell was that a defense attorney can ask questions at trial. Further, other conditions were established for the hearsay exception that the court found did not exist equally at grand jury. He opined that saying evidence that is admissible at grand jury is admissible at trial could still be limiting because of the differences between the two. He said he understood the concept of the simple fix, and it could be done, but the language wouldn't be as simple as the Chair described. He reiterated that more limited changes could be put in place if the committee was uncomfortable with the broad changes the bill proposes.

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CHAIR CLAMAN found no further questions or comments and announced that he would hold 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 2:28 p.m.