

HOUSE FINANCE COMMITTEE
February 16, 2005
1:41 p.m.

CALL TO ORDER

Co-Chair Meyer called the House Finance Committee meeting to order at [1:41:14 PM](#).

MEMBERS PRESENT

Representative Mike Chenault, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Bill Stoltze, Vice-Chair
Representative Eric Croft
Representative Richard Foster
Representative Mike Hawker
Representative Jim Holm
Representative Mike Kelly
Representative Carl Moses
Representative Bruce Weyhrauch

MEMBERS ABSENT

Representative Reggie Joule

ALSO PRESENT

Representative Ralph Samuels; Heather Brakes, Staff, Senator Gene Therriault; Susan Parks, Deputy Attorney General, Criminal Division, Department of Law; Doug Wooliver, Administrative Attorney, Alaska Court System; Portia Parker, Deputy Commissioner, Department of Corrections

SUMMARY

CS SB 56(JUD) An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date.

HCS CS SB 56 (FIN) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Law, zero note #4 by the Department of Public Safety, two new zero notes by the Department of Corrections and two new indeterminate notes by the Department of Administration.

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#SB56

HOUSE CS FOR CS FOR SENATE BILL NO. 56(JUD)

An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date.

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Co-Chair Meyer MOVED to ADOPT Amendment #1, 24-LS0308\S.13, Luckhaupt, 2/14/05. (Copy on File). Co-Chair Chenault OBJECTED for the purpose of discussion.

SUSAN PARKS, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, advised that Amendment #1 was written to correct a drafting oversight. In the House Judiciary Committee, amendments were drafted to insure that judges could still give suspended imposition of sentences for first time offenders convicted of a "B or C" felony offense. That option allows the sentence to be taken off their record if all court orders are complied with. The manner in which the original bill was drafted, it appeared fixed, however, Mr. Luckhaupt from Legislative Legal discovered some language problems. The amendment insures that current practice will continue with the legislation. Ms. Parks urged support of Amendment #1.

Co-Chair Chenault WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment #1 was adopted.

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Co-Chair Meyer MOVED to ADOPT Amendment #2, 24-LS0308\S.4, Luckhaupt, 2/15/05. (Copy on File). Co-Chair Chenault OBJECTED.

DOUG WOOLIVER, ADMINISTRATIVE ATTORNEY, ALASKA COURT SYSTEM, stated that the Alaska Court System supports Amendment #2 as it places the position for review back into the Court of Appeals. It is that Court that resolves all other issues associated with criminal appeals. He pointed out that adoption of the amendment would turn the fiscal impact into an indeterminate note.

Co-Chair Chenault WITHDREW his OBJECTION. There being NO further OBJECTIONS, Amendment #2 was adopted.

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AT EASE: [1:47:27 PM](#)
RECONVENE: [1:48:25 PM](#)

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Vice-Chair Stoltze MOVED to ADOPT Amendment #3, 24-LS0308\S.10, Luckhaupt, 2/16/05. (Copy on File). Representative Weyhrauch OBJECTED.

Vice-Chair Stoltze stated that it was his intent to reflect a more appropriate sentence for the habitual and repeating sex offender. He thought that the "Three Strikes Your Out" bill would have covered the concern; however, sentencing information demonstrates that sentencing is more complicated than imagined. He requested that the Department of Law discuss the impact of Amendment #3.

Ms. Parks advised that Amendment #3 would raise the maximum sentence for an unclassified sex offense from 40 years to 99 years. She explained that the amendment would change the second piece of the current range for someone who was convicted of an unclassified sex offense, sexual assault of the 1st degree, or sexual abuse of a minor in the 1st degree to 99-years. Amendment #3 would make it a "mandatory 99-year sentence" and that the judge would have not any discretion.

Ms. Parks pointed out that the 3-strike provision referenced by Vice Chair Stoltze is limited. What it says is that if someone is convicted of an unclassified felony offense and if they have been previously convicted of two or more serious felonies, the range then becomes between 40 to 99 years. The difference between what Vice Chair Stoltze is proposing is that a prior sex felony could be classified as a B or C felony offense. Essentially, someone who commits an unclassified offense and has a previous B or C felony record offense would not be subject to the 3 strikes provision but rather to the 30 - 40 years. The amendment catches those people whose prior offense might have been a lower range.

Representative Croft pointed out that the amendment would set the maximum at 99 years. He had expected that the second part would have been 30 to 99 years and asked if it was the intent to set an absolute top. Vice-Chair Stoltze replied that it was.

Representative Hawker understood that the original intent of the bill was that the range needed fixing from actions taken by the Supreme Court. He believed that the proposed change would result in constitutional problems.

Ms. Parks responded that if the sentence was set at the maximum, it could not be aggregated. She voiced concern and caution in setting the 99-year maximum, as a policy call. It should be clearly stated why the change is being made as it is the maximum penalty afforded anyone. It would only apply to murder in the 1st degree of if there were a finding that the victim has been tortured. She stressed that it

must be made clear that the sentence is the result of prior sex history warranting that sentence.

Representative Hawker asked if the 99-year maximum sentence would withstand the courts own scrutiny. Ms. Parks advised that the Department has not had a lot of time to research the amendment, but she thought that there are other states that have those kinds of sentences for sexual predators. She thought that if it was a legislative call, it could be upheld.

Representative Kelly believed that the Judiciary committees should handle those types of changes. Co-Chair Meyer agreed.

Representative Kelly asked if it were a range, would the same record be made. Ms. Parks noted that a range would be easier to justify, as it would give the judge some discretion in exceptional cases.

Representative Kelly maintained that he would be more comfortable maintaining the current range or sending the bill back to the House Judiciary Committee.

Co-Chair Meyer acknowledged that these kinds of crimes are some of the worst crimes that happen and that the 99-year sentence would be a very stiff penalty. He thought that the increased jail time would increase the fiscal note.

Ms. Parks stated that the Department of Law was attempting to research the numbers associated with the bill. Both the Department of Corrections and the Department of Law are tracking it and that the number should not be huge. The Department will have to process whatever the potential penalty is. She did not see a fiscal impact on the Department of Law.

Vice-Chair Stoltze stated that it was not his intent to block passage of the legislation. He acknowledged that it is an important bill and that he did not want to set it back. He pointed out the inconsistencies with thresholds that are too low. He agreed that the matter is very serious and that he is awkward in his attempt and that he did not want to be inappropriate. Vice Chair Stoltze asked the sponsor what would be a reasonable number.

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HEATHER BRAKES, STAFF, SENATOR GENE THERRRIAULT, asked to defer to the Department of Law.

Vice-Chair Stoltze asked to defer to the sponsor.

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REPRESENTATIVE RALPH SAMUELS, SPONSOR OF THE HOUSE BILL, suggested that a little more thought and research should go into the amendment. He pointed out that Amendment #4 appeared more reasonable.

Vice-Chair Stoltze WITHDREW Amendment #3.

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Vice-Chair Stoltze MOVED to ADOPT Amendment #4, 24-LS0308\S.12, Luckhaupt, 2/16/05. (Copy on File). Co-Chair OBJECTED.

Representative Croft acknowledged that Amendment #4 accomplished what Vice Chair Stoltze intended. He questioned why the change to "99-years" on Page 6, Line 12 when it previously was maxed out at "50-years". Vice-Chair Stoltze explained that "99-years" was the largest possible sentence.

Representative Croft did not know if the courts had the power to go to a "99-year" sentence even in the most extreme cases; under the amendment it would stay between "35-50" years. Ms. Parks stated that the maximum could be sent at 99 years and still have the range be 35-50 years. If it was an extremely aggravated case for someone that already had other multiple felonies and a criminal history over vulnerable victims, the situation could have the judge/jury recognize a maximum sentence.

Representative Croft questioned why in the original bill, had it been set at "40-years". Ms. Parks advised that it currently is set at 40 and that the bill had not been drafted to increase any of the maximums already established in statute.

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Representative Hawker indicated for the record that it would be difficult for him to take a position on the amendment, noting that he was not an attorney. He maintained that he would not impede passage of the amendment but was "troubled" passing an amendment producing such strong consequences without a lot of research.

Co-Chair Meyer acknowledged that was valid. Representative Samuels commented that he was "okay" with Amendment #4, which would address discretion necessary for the few number of felons that fall into that "box". He noted the he preferred Amendment #4 to #3.

Ms. Brakes stated that she had not had an opportunity to discuss the policy of the amendment with Senator Therriault. She requested to defer to Representative Samuel's comments.

Representative Hawker inquired if the proposed change were made, would there be criminal statute system consequences. Ms. Parks did not think so but offered to provide a research on that.

Co-Chair Meyer WITHDREW his OBJECTION to Amendment #4.

Representative Weyhrauch OBJECTED to Amendment #4.

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Representative Weyhrauch stated that there was too much "feeling" associated with the proposed amendment and that there should be more legal analysis. He also questioned the fiscal impact to the bill.

AT EAST: [2:10:31 PM](#)

RECONVENE: [2:14:41 PM](#)

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Vice-Chair Stoltze MOVED to WITHDRAW Amendment #4. There being NO OBJECTION, it was WITHDRAWN.

Vice-Chair Stoltze MOVED to ADOPT Amendment #5, 24-LS0308\S.11, Luckhaupt, 2/16/05. (Copy on File). Co-Chair Meyer OBJECTED for purposes of discussion.

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Vice-Chair Stoltze pointed out that the group of felons who the amendment affects is narrow. Representative Samuels voiced support for Amendment #5, which would maintain the 30-40 year range as in the original bill for any felon with two prior sex felony convictions, however, would allow the State to go up from the 40-year sentence for the more serious convicted felons. He maintained that such a sentence would be for that "rare and bad person" and would provide the State a little more sentencing power.

Ms. Parks noted that the Department of Law supports the amendment, require the finding of aggregators and would provide the judge an opportunity to go up to the 99-years.

Co-Chair Meyer WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment #5 was adopted.

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Representative Croft MOVED to ADOPT Amendment #6, 24-S0308\S.9, Luckhaupt, 2/16/05. (Copy on File). Co-Chair Meyer OBJECTED.

Representative Croft commented that the amendment was brought forward to help determine the jurisdiction of and the discretion in the trial court, when the appellate court reviews going beyond the aggravated sentencing. He acknowledged the improvements made by the bill, however, he thought that the victim should have some say in objecting to a sentence that it too low or one that goes beyond the range.

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Representative Croft continued, the amendment would provide a check or a "worry" for the prosecutors and the judges. There are now certain statutes in places that encourage the prosecutors to work with the victims. Representative Croft claimed that it is not as successful to "mandate things, as it is to make consequences for actions". He saw the amendment providing a practical effect for encouraging the prosecutors and the judges to stay involved. He asked if there were "serious" problems with that idea.

Ms. Parks remarked that Representative Croft's amendment would be giving a right without a remedy. There is an Alaska Supreme case law, which states that if a defendant is sentenced and the sentence is final, and if the defendant does not appeal that sentence, the sentence cannot be reduced. Basically, giving victims the right to appeal will not have an affect on the sentence. It cannot be increased for victims. The only time that could happen is if there was an illegal sentence or the defendant appealed. Ms. Parks voiced concern about the amount of resources that it would cost the victims for the "false hope".

Ms. Parks reiterated that the amendment would only accomplish additional work for the Court System and the Department of Law.

Mr. Wooliver remarked that regarding the fiscal impact, he had no idea how many cases would result in that scenario and did not know the number of petitions for review that the courts would likely see.

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Mr. Wooliver advised that would determine whether there would be fiscal impact resulting from the bill.

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Representative Croft commented that "who defends" is an interesting concept and thought that there could be a practical affect. He believed that there could be a better motivation. Representative Croft pointed out that another bill, HB 55, addresses victim's issues. He pointed out that no one was against victim's rights but that "practical difficulties" are always brought up. He thought that the amendment could provide the victim the check. He asked if it would be more comfortable for the Committee to defer this discussion.

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Representative Samuels said he agreed with the sentiment behind the bill. Historically, he pointed out there have been access issues of victims to the courts. Arguments have always been brought forward and yet they have not been practical. The State of Alaska continues to move forward on these issues. He stressed that the Legislature must work with the Department of Law, the public defender and the Court System to make sure that more problems will not be caused by the legislation. He voiced his appreciation for the insights that Representative Croft had brought to the bill.

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Representative Croft noted that he would work on the concept of the amendment and bring it forward at a later date.

Representative Croft WITHDREW Amendment #6.

Representative Foster MOVED to report HCS CS SB 56 (FIN) out of Committee with individual recommendations. There being NO OBJECTION, it was so ordered.

HCS CS SB 56 (FIN) was reported out of Committee with a "do pass" recommendation and with zero note #1 by the Department of Law, zero note #4 by the Department of Public Safety, two new zero notes by the Department of Corrections and two new indeterminate notes by the Department of Administration.

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ADJOURNMENT

The meeting was adjourned at 2:32 P.M.