

MINUTES
SENATE FINANCE COMMITTEE
February 2, 2006
9:05 a.m.

CALL TO ORDER

Co-Chair Lyda Green convened the meeting at approximately [9:05:05 AM](#).

PRESENT

Senator Lyda Green, Co-Chair
Senator Gary Wilken, Co-Chair
Senator Con Bunde, Vice Chair
Senator Fred Dyson
Senator Bert Stedman
Senator Donny Olson

Also Attending: SENATOR GRETCHEN GUESS; PORTIA PARKER, Deputy Commissioner, Department of Corrections; DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence and Sexual Assault; DAN FAUSKE, Chief Executive Officer, Alaska Housing Finance Corporation, Department of Revenue; JOE DUBLER, Finance Director, Alaska Housing Finance Corporation, Department of Revenue

Attending via Teleconference: From an Offnet Site: WALT MONEGAN, Chief of Police, Municipality of Anchorage; From Anchorage: SIDNEY BILLINGSLEA, Attorney; MICHAEL MOTERLY, Attorney; BLAIR MCCUNE, Attorney; CARA MCNAMARA, Attorney; DAN LIBBEY, Attorney; KEVIN FITZGERALD, Attorney; MARJORIE ALLARD, Attorney; BRADLEY HIEBERT-TRENER, College Student

SUMMARY INFORMATION

HB 217-FULL & TRUE VALUE OF TAXABLE MUNI PROP.

The bill reported from Committee.

SB 218-CRIMINAL SENTENCING AND POLYGRAPHS

The Committee heard from the bill's sponsor, the Department of Corrections, the Department of Law, and took public testimony. A committee substitute was adopted and the bill was held in

Committee.

SB 236-AK HOUSING FINANCE CORP DIVIDEND

The Committee heard from the Alaska Housing Finance Corporation.
The bill reported from Committee.

#hb217

HOUSE BILL NO. 217(title am)

"An Act relating to the determination of full and true value of taxable municipal property for purposes of providing planning assistance to the Department of Education and Early Development and the legislature, calculating funding for education, calculating school district participating shares for school construction grants, and calculating tax resource equalization payments and excluding from that determination the value of property in certain areas detached from a municipality and the value of certain property involved with oil and gas that is not taxed by a municipality."

This was the third hearing for this bill in the Senate Finance Committee.

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Co-Chair Green stated that the bill had been held in Committee in order to allow Members further time to review it.

Co-Chair Wilken noted that Senator Olson had discussed the bill with his constituents and no further concerns were raised.

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Co-Chair Wilken moved to report the bill from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, SCS HB 217(FIN) was REPORTED from Committee with a new \$98,500 fiscal note dated January 31, 2006 from the Department of Commerce, Community and Economic Development.

[9:06:23 AM](#)

#sb218

CS FOR SENATE BILL NO. 218(JUD)

"An Act relating to sex offenders; relating to reporting of sex offenders and child kidnappers; relating to periodic polygraph examinations for sex offenders released on probation or parole; relating to sexual abuse of a minor; relating to sentencing for sex offenders and habitual criminals; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

Senator Bunde, the bill's sponsor, stated that while some might argue that there is no sexual offense problem in Alaska, he was of a different mindset. The inclusion of three separate sex offense articles in a recent edition of an [unspecified] Alaska newspaper would underscore how "typical" the problem is in the State.

Senator Bunde shared Federal Bureau of Investigations (FBI) statistics that specify Alaska as having "the highest per capita rate of reported rapes" in the nation. It's number of reported rapes is 71 percent higher than that of the next highest state, and the number of reported rapes "is just the tip of the iceberg", as police officers would attest that a rapist would have assaulted "a great number of victims" before finally being caught.

Senator Bunde informed there are currently 4,300 registered sex offenders in the State "and sexual abuse continues to be a problem."

[9:09:39 AM](#)

Senator Bunde stated this bill would accomplish two things: it would substantially increase prison sentences for those convicted of sexual crimes, specially those involving the sexual abuse of a minor; and it would require that sexual offenders on probation and parole must submit to a polygraph examination.

Senator Bunde noted that these provisions are included in a proposed committee substitute.

Senator Bunde offered a motion to adopt CS SB 218, 24-LS1307/X, as a working document.

There being no objection, the committee substitute, Version "X", was ADOPTED as the working document.

Senator Bunde stated that research indicates there is a significant increase in compliance for people on probation and parole when they

are subjected to polygraph testing, even though those tests would be inadmissible in court. "It is easy for people who are involved in deviant behavior to also be pretty skillful liars". They would not be so successful in luring victims without that ability.

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Senator Bunde stated that when people on parole or probation are subjected to polygraph testing, "the truthfulness" of their compliance increases by up to 70 percent. Anecdotal testimony has indicated that some offenders want to relocate to Alaska because there are no polygraph requirements. A polygraph would be an asset in addressing habituated behavior. "Someone who is a sexual abuser of either adults or children" is unlikely "to change their basic behavior". While rehabilitation efforts have been conducted, evidence would indicate that treatment does not have a significant effect on the recidivism rate of such offenders. Therefore, "the only way to prevent the creation of future victims is simply long prison sentences."

Senator Bunde stressed, "it would be incumbent upon society to say what our standards are." Alaska's high rate of sexual abuse and assault is not representative of the goal. While long prison sentences would be expensive, allowing these perpetrators to continue their activities would negatively affect the public "quality of life" and society would suffer expenses relating to victims of these crimes. There would be a fiscal impact regardless. This legislation "would be an investment" that should seriously be considered.

Senator Bunde acknowledged the assistance provided by Senator Gretchen Guess, Senator Dyson, Co-Chair Green, the Department of Corrections, and the Department of Law in the effort "to solve this unfortunate problem for Alaska".

Senator Bunde requested Senator Gretchen Guess assist in explaining the bill.

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SENATOR GRETCHEN GUESS, Senate District J, thanked Senator Bunde for sponsoring this bill. Existing activities are "out of balance" with the values of Alaskans and how they view these crimes.

Senator Guess communicated that there are five differences between the Version "X" committee substitute and the Senate Judiciary version of the bill. The first change is located in Sec. 2(b) on page 3 line 2 as follows.

(b) Failure to report a sex offender or child kidnapper is a class A misdemeanor.

Senator Guess stated that this would be a new provision to State law. The penalty for this was originally proposed as a felony; however, after consultant with the Department of Law, the penalty for a first time occurrence was changed to a misdemeanor due to the fact that an offender could only be charged with a misdemeanor the first time they failed to register.

Senator Guess stated the next change is located in Sec. 4(i)(3)(A) page five line two. The length of incarceration for a first time felony conviction would be increased to "five to 15 years" rather than "ten to 15 years" as depicted in the Senate Judiciary committee substitute. This determination was based on "the breadth of crimes" that are included in second-degree offenses. This would also assist in "overcoming some of the Court hurdles" that are anticipated. She noted that the members of the Senate Judiciary Committee are comfortable with the range proposed in Version "X".

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Senator Guess stated that the next change is located in Sec. 7(o) page 6 line 31 through page 7 line 8. Since the incarceration range for second-degree offenses was broadened, it was determined that the length of probation should be increased. Therefore, while a person might receive "a lesser sentence, they would be on probation" for a longer period of time. An unclassified felony would require 15 years of probation, a Class A or B felony, would require a ten-year probation, and a Class C felony would require a five-year probation period. Input from the Department of Law and the Department of Corrections was received in this regard.

Senator Guess stated that two new provisions were incorporated into Version "X" as the result of two amendments offered by Committee Members. These are incorporated into the bill on page eight. She deferred to Senator Dyson who had offered the language depicted in Sec. 9 page 8 lines 19 through 23.

Sec. 9. AS 47.17.068 is amended to read:

Sec. 47.17.068. Penalty for failure to report. A person who fails to comply with the provisions of AS 47.17.020 or 47.17.023 and who knew or should have known that the circumstances gave rise to the need for a report, is guilty of a class A [CLASS B] misdemeanor.

New text underlined. DELETED TEXT BRACKETED.

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Senator Dyson explained that this provision had been included in separate legislation, SB 47-FAILURE TO REPORT CHILD ABUSE/NEGLECT, he had sponsored "to emphasize the importance of mandatory reporting" of statutory rape. It would appear that these offenses are being "grossly" under-reported; specifically in regards to very young girls "who are being exploited by older folks."

Senator Dyson continued that such things as policy, training, and manuals implemented by the Murkowski Administration have served to "profoundly increase the awareness amongst the mandatory reporters"; government employees in particular. After six years of meeting with people in mandatory reporting positions, such as public health nurses, he has determined that the emphasis on such reporting is important. National statistics indicate that in excess of 70 percent of offenses perpetrated against 11, 12, and 13-year old girls, the male involved is over the age of 21. National statistics also indicate that those men would each have an average of seven victims.

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Senator Dyson concluded that apprehending these offenders sooner would limit the number of victims being exploited. He reported an instance in which a woman, posing as a 13-year old, telephoned Alaskan clinics seeking pregnancy testing and contraceptives. The woman told health care providers she was in a consensual relationship with a 27-year old male. She was advised to lie about her partner's age; otherwise he would get "busted."

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Senator Dyson stressed that a "clear message" must be sent that "mandatory reporters have a duty and a professional responsibility to report." It has been determined that those 15 years of age or younger could not consent to sexual activity. While most mandatory reporters understand their responsibility, the hope is that increasing the penalty for non-reporting would clarify the message.

Senator Dyson continued that the reporter would not be required to investigate or "assure themselves" of the age differences, their responsibility would be to presume that a sexually active 15-year old is "a victim of statutory rape".

Senator Dyson voiced appreciation for this provision being incorporated into this bill.

Senator Dyson noted that in addition to polygraph testing assisting in making offenders comply with the conditions of their probation, it has also "proven to be very helpful" with their treatment as it inhibits their ability to lie and rationalize their crimes.

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Senator Guess stated that the final change incorporated into Version "X" is the inclusion of Sec. 11 on page 8, line 25 through page 9, line 4. This language would allow the Department of Public Safety to distribute information to the public via such means as the sexual offender Internet registry.

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Senator Bunde referred the Committee to the "Draft 'White Paper'" titled "The Purposes and Rationale Underlying the Increase in Sentencing Ranges for Felony Sex Crimes in Alaska" [copy on file] he and Senator Guess had compiled to address the fact that the bill would implement substantial increases in sentencing time. A person committing a Class A or Unclassified felony sex crime against a minor would be subject to incarceration for 25 years. A three-time sexual offender would be sentenced to 99 years in jail as "there is no other way to protect the public".

Senator Bunde continued that in addition to the extending the length of time an offender would spend in jail, there is also consideration of how the sentences handed to sexual offenders would compare to the sentences for other types of crimes. Thus, Legislative findings about "standards of our society" were also included into the draft white paper. The white paper would continue to be in draft form in order to allow other Committee concerns to be incorporated.

Senator Bunde asked that the bill be held in Committee, as additional amendments were being drafted.

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Senator Bunde stated that he would await direction from Co-Chair Green as to whether the forthcoming amendments should be introduced to Version "X" or incorporated into a new committee substitute.

[9:25:37 AM](#)

Senator Olson asked how the sentences proposed in this bill would compare with other felony crimes such as manslaughter.

[9:25:54 AM](#)

Senator Bunde opined that the life of someone who had been sexually abused and who themselves "might become an abuser, could possibly be even worse than death".

Senator Bunde deferred to the Department of Corrections to respond to the sentencing comparisons.

Co-Chair Green asked that the Department also explain its fiscal notes.

Senator Bunde informed that the forthcoming amendments would specify who would be required to register on the Sex Offender Registry. The amendments would also address the conflict between the requirement to report a sexual offense and the confidentiality duties of an attorney, and would address the applicability clause of the bill.

Co-Chair Green affirmed that those issues would be addressed at a later time.

[9:27:43 AM](#)

PORTIA PARKER, Deputy Commissioner, Department of Corrections, voiced that the Department of Law might be better prepared to respond to Senator Olson's question. Nonetheless, she characterized the as valid. The intent of this bill is to justify the number of victims and the type of crimes committed, especially against children. Sexual assault is predominately a crime against children. The emotional, physical, and psychological affects of a sexual assault crime "last for years and years". As more research is conducted, it has become obvious that there are more victims than the criminal justice system is aware of.

Ms. Parker noted that such realizations are included in the white paper. "The belief is that these sentences" should be long as a matter of public safety and to protect children.

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Ms. Parker stated "the message is that this is an appropriate sentence for this crime." It might not be appropriate to compare it to other crimes. Determining appropriate sentences should be a Legislative determination.

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Senator Guess noted that the numerous factors that could cause a death make comparison of sentences for murder to the sentences proposed in this legislation difficult. The sentence for murder in the first degree is 20 to 99 years; murder in the second degree is ten to 99 years. While the sentencing ranges for sexual assault have been increased in this bill, the ranges are narrower than those provided for murder.

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Senator Guess explained sentences for murder could be less in some instances than the sentences for crimes committed under the provisions of this bill; however, the maximum sentences for murder would remain higher than the maximum allowable sentence for sex offences. Thus, the Court would have more discretion in a murder case than this legislation would allow for cases involving the sexual abuse of a minor.

Co-Chair Green noted that the Department of Law would be available to respond to Senator Olson's question.

Senator Olson requested that his concern not be misinterpreted. His goal was to negate Court challenges on the basis of things such as cruel and unusual punishment.

Senator Bunde stated that this concern had been discussed at great length with the Department of Law. Court challenges would be guaranteed in this regard. Thus, another reason for the "Draft 'White Paper'". A Legislature record must be established as to what is viewed as "the impact of sexual assault on society and why we feel this is so important, and thereby worthy of these major changes in sentencing."

Ms. Parker stated that three Department of Corrections fiscal notes accompany this bill: one pertaining to Statewide probation and parole; one pertaining to offender rehabilitation programs including the addition of the polygraph examination and community treatment as part "of the Containment Model for all sex offenders releasing after July 1, 2007"; and the third pertaining to institutions. The fiscal impact resulting from polygraph examinations would occur in FY 2008. The impact on correctional institutions, while reflected as zero for FY 2007, FY 2008 and FY 2009, would be indeterminate in future years.

Ms. Parker stated that the Department would be required to hire two probation/parole officers in FY 2008 and two more in FY 2009 "to handle the increase in workload associated with such things as the

polygraph and the offender treatment programs. There are currently 934 sex offenders on parole in the State. The fiscal note is based on an average of 900 sex offenders under parole supervision. "This method offers the best practice in the field of sex offender management and supervision anywhere at this time." The additional workload would assist in capping probation officer's case workloads specific to sex offenders at 50 per officer. The national caseload recommendation is 35 to 40 per officer.

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Ms. Parker stated that the fiscal note regarding offender rehabilitation would address the addition of the polygraph as a "tool" in sex offender treatment and supervision. An anticipated 800 additional sex offenders would participate in this program after July 1, 2007. An estimated 50 percent of sex offenders would pay for their treatment and cost of the polygraphs they submit to. Alaska and other states currently require offenders to pay for their treatment after they are released and begin work. Such things as income and ability to work are factors in determining the percent of the program costs that the offender must pay. This would be "the most cost effective way to manage and supervise offenders in the community where they are getting the most assistance and the most help to" successfully complete probation and parole, while providing "the greatest protection to public and to victims."

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Co-Chair Wilken referenced the Department of Corrections fiscal note dated 2/1/2006 relating to the polygraph and rehabilitation programs required for offenders on probation or parole; specifically the reference to "Total Polygraph & Community Treatment (State Cost Only): FY 2008 \$622,252 FY 2009 \$1,124,504 FY 2010 \$1,641,976". He questioned whether there might also be costs to communities.

Ms. Parker stated that the purpose of the information in the fiscal note's analysis would be to reflect the portion that the offenders must pay. There would be no expense to communities.

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Senator Bunde asked Ms. Parker to share her experience regarding the effectiveness of polygraph testing; specifically to explain the term "flat-lining and why some offenders might choose to do that."

Ms. Parker stressed that the amount of information that would be provided by the polygraph examination to "the supervising parole

officer and treatment provider in helping supervise the offender" is very beneficial. In addition, the polygraph examination is helpful in that "it breaks down the offender's denial", and thus the offender becomes "more receptive to treatment and change". In order to avoid undergoing a polygraph examination, some offenders opt to forgo mandatory parole or probation and remain incarcerated for the duration of their sentence. That is the reason for the inclusion of Section 7, which would require an offender to undergo "a period of probation" even if they were to refuse mandatory parole. This would also apply to repeat offenders who would not be subject to mandatory parole. "That would guarantee that the offender will be on supervision for at least some period of time, they will be in treatment, and they will be polygraphed. That is by far the best way to help them be more successful as they reintegrate."

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WALT MONEGAN, Police Chief, Municipality of Anchorage, testified via teleconference from an offnet site in support of the bill. "Despite all of the research and efforts in this one area, there is no proven treatment or cure for sexual predation." He categorized all rapists as being serial rapists. He supported increased sentencing terms, as there had been a decrease in sexual assaults when the State implemented a presumptive eight-year sentence for sex offenders. He also spoke in support of requiring polygraphs for offenders on probation or parole, as it would act as a safety net for communities.

Chief Monegan was "impressed" with the results experienced by the State of Colorado Department of Corrections pertaining to their use of the polygraph for sexual offenders. Thus, he supported the implementation of this practice in Alaska, as "there is no cure nor treatment as effective as that fear of being caught again."

Chief Monegan, responding to Senator Olson's sentencing comparison question, stated crimes such as manslaughter are usually a one-time occurrence, whereas sexual offenders have numerous victims. Inmate statistics indicate a cyclical relationship between sexual offence victims and offenders, as many of those incarcerated for sexual offences were themselves abused or assaulted as children.

Chief Monegan thanked the Committee for addressing this important issue.

Co-Chair Wilken assumed Chair of the Committee.

In response to a question from Senator Bunde, Chief Monegan stated

that he had been in law enforcement for approximately 32 years.

Senator Bunde, recognizing the Chief as an expert, asked his experience in regards to the opinion that, "there isn't a high rate of re-offending and recidivism amongst sex offenders."

Mr. Monegan disagreed: the rate of "recidivism of sex offenders is very very high". Sex offender registries are indicative of this. Despite efforts to work with sex offender inmates to stop them from re-offending, the reality is that "they will. In essence, they're wired wrong. The best deterrence is not to get caught." Incarcerating those who have failed treatment "is the safest thing for the community."

Senator Bunde stated that there is also a contention that the number of sexual assaults has not increased. Referencing the aforementioned newspaper articles, he noted that two of the three articles were offenses against minors. To this point, he asked whether there might simply be more reporting of the crime as opposed to there being an increase of the crime.

Co-Chair Green resumed Chair.

Mr. Monegan believed the answer is "both". More crimes are being reported as more people realize that this is an issue, and efforts "to hide it behind closed doors" are reduced.

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Mr. Monegan shared the belief that "for all the sexual offenses that occur in a community, only about ten percent would be reported to the police department". In Anchorage, the counselors of an organization called "Standing Together Against Rape" (STAR) receive more "victimization" contact than the Anchorage Police Department does. Increases in the crime would be expected to accompany increases in population. However, this would be accompanied by "heightened community awareness and people more willing to report" were law enforcement officers provided the tools to work with.

Chief Monegan concluded his testimony.

Co-Chair Green noted that public testimony would be halted for the moment in order to allow the Department of Law to respond to Senator Olson's earlier question.

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Senator Olson restated the question as how the "significant

changes" proposed for sexual offender sentences would "compare to other egregious crimes" such as manslaughter and murder sentencing. The basis for the question is to determine whether the proposed sentencing "would be consistent with what we want to do for the criminal justice system to make sure that there's not a challenge" from somebody, such as a sex offender, based on this being interpreted as cruel and unusual punishment.

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DEAN GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law, characterized the proposed "level of sentences" in this bill as being a "big increase from current law". The question could "be legitimately asked why are we treating someone who commits manslaughter less harshly than someone who attempts to rape someone and doesn't complete that rape."

Mr. Guaneli recognized "these as being largely policy calls by the Legislature". A manslaughter offense is not a "crime of intent; it's a crime of recklessness". Many people consider crimes such as "negligence or recklessness or crimes that are fueled or even caused by alcohol" as being difficult to deter. In contrast, many view sexual offenses as being intentional and often involve planning and manipulation; therefore, "stiff sentences" could deter the behavior.

Mr. Guaneli remarked that this could "raise difficult policy questions for the Legislature; and they are going to raise some concerns by members of the judiciary". The Legislature must clarify that it has thoroughly reviewed the issue; it has looked at the affects that these crimes have on victims and society, and has made a determination that the proposed sentences "are justified in light of all of those considerations."

Mr. Guaneli stated that while opponents might be unable to prevail on the claim of cruel and unusual punishment, "they might claim that this is a violation of equal protection because someone else who's committed what could be labeled a more serious crime was getting a lesser punishment...Equal protection claims don't really require that you have similarly situated defendants." The Legislature would be justified in requiring "harsh punishment" due to the intent that's involved and the affects that sexual offense crimes have on society. The hope is that "the threat of harsh punishment" would be a deterrent to sex offenders.

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Senator Olson inquired to the number of sexual offenders who are found guilty of the charge.

Mr. Guaneli replied that there are approximately 200 to 300 felony sex offense convictions per year in the State.

Senator Olson asked what percentage this would be of the cases that are tried.

Mr. Guaneli ascertained that approximately 40 to 50 percent of cases that are "reviewed end up with some conviction". He pointed out that a significantly larger number of offenses are reported, however, as a result of law enforcement investigations, not all of them result in prosecutable charges.

Senator Olson viewed sexual assault and abuse as being serious crimes. Continuing, he asked what protection might be available to a person "charged with sexual assault mainly because they had consensual sex with somebody and then it turned into a lover's triangle where she says its rape and he says no it wasn't."

Mr. Guaneli affirmed that such cases do occur. In a case where there might be either a long or "short term consensual relationship between adults, absent factors such as violence or drugs being involved, juries find it very hard to see that that consensual relationship all of a sudden turns non-consensual." Juries are particularly suspicious when there is a charge after a breakup in a relationship. Prosecutors "are reluctant to take those cases to a jury." The fact that experience has shown that such cases "do not often succeed", is a consideration when determining whether a such a case would be pursued.

Senator Olson asked whether a husband has ever been charged with sexual assault of his wife.

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Mr. Guaneli believed that "husbands have been charged with raping wives." The most common scenario would be a case in which the couple were separated and the husband went "back to the house and maybe there's some violence involved." Usually something else is involved that would indicate "the nonconsensual or forcible nature of it."

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Senator Bunde asked whether the conviction rate discussed earlier, included crimes that "were pled out".

Mr. Guaneli clarified that the statistics would include crimes in which there was a plea. The reality is that "very few cases go to trial". While the vast majority of sexual crimes cases result in plea agreements that could include such things as reduced offenses, the consent of the victim must be sought.

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Senator Bunde asked Mr. Guaneli to speak to the issues that would be addressed in forthcoming amendments: specifically whether the applicability clause, which would be "a reach-back" for people sentenced prior to the effective date of this bill, would be in violation of the State's Constitution.

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Mr. Guaneli stated that due to evidence supporting the polygraph examination as being "a good tool in controlling the behavior of sex offenders", imposing "that condition on people who have been convicted in the past is appropriate from a policy standpoint". The question is whether that "would be Constitutional from a legal standpoint". While the sentencing of a person previously convicted of a crime could not be increased after being imposed, "supervisory remedial measures", such as the sex offender registry, could be imposed as such an issue had prevailed in a legal challenge before the United States Supreme Court. Polygraph examinations would be viewed in the same light. Nonetheless, he suggested language be included in the bill's Applicability Section to specify "to the extent permitted by the Constitution". This, combined with Department of Corrections efforts to carefully choose which past offenders would be subjected to the polygraph and the acquiring of approval by that person's sentencing judge, would allow the procedures to be upheld. People realize that this "would be an appropriate measure through which to help the offender stay out of trouble but to protect the public."

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Senator Dyson asked whether a mechanism is currently in place through which to notify a licensing entity were one of their mandatory reporters convicted of failure to report.

Mr. Guaneli responded that he was unaware of there being any automatic notification mechanism. He noted that there are a number of different licensing agencies, and he was unsure as to how such a conviction would be addressed by the different entities.

There being no further questions for the Department of Law, Co-Chair Green announced that public testimony would resume. She asked testifiers to adhere to a three-minute timeline.

[10:01:38 AM](#)

SIDNEY BILLINGSLEA, Criminal Defense Attorney, testified via teleconference from Anchorage in opposition to the sentencing portion of the bill. Legislation enacted last year increased the sentencing levels for sex offenses that State judges could apply. People have not complained that the sentences contained in that legislation were not harsh enough. That legislation was the product of a collaboration of national district attorneys, defense attorneys, and attorney generals. There is no indication that "the sex offender law is broken and needs fixing."

Ms. Billingslea stated that the Legislature has also addressed the issue of sex offender treatment. As a result, a report called the "Sex Offender Treatment Program Initial Recidivism Study" was developed. The Legislature's conclusion that treatment did not diminish the recidivism rate of sex offenders differed from the determinations of the report. As a result, treatment was discontinued for incarcerated sex offenders; however, sex offenders were required to receive treatment at their own expense when they were released. She opined that treatment would be beneficial.

Ms. Billingslea stated that the information in the aforementioned report that was the most startling was that more than two-thirds of sex offenders were substance abusers. A high percentage of those offenders are Alaska Natives. One of "the unintended bad consequences of this bill, is that the people who commit these offenses are, for the most part, heavily intoxicated when the offenses are committed. They are for the most part Rural Alaskans and in particular, Alaska Natives." Therefore, "people for whom alcohol treatment would be a successful deterrent of a one-time bad sexual offense would be incarcerated for an unimaginable amount of time, and the impact would be on Rural Alaskans."

[10:06:20 AM](#)

MICHAEL MOTERLY, Attorney, testified via teleconference from Anchorage and spoke in opposition to the bill. He voiced concern regarding the mandatory reporting requirements specified in the bill, as they would place "a burden on people" whom have no reporting requirements under State law. Most of these requirements would accompany professionals as part of their licensing conditions. However, even were the reporting provisions restricted to licensed professionals, it would pose a conflict with their

ethical obligations, such as the attorney/client privilege and confidentiality. It might also intrude into other areas that are statutorily recognized with confidential relationships.

Mr. Moterly stated that, as written, the reporting requirement would apply to all citizens: most people would be unaware that non-reporting would be a crime. He was unaware of any other provision in law that would pose such a burden on lay people. State Statutes currently exist that require reporting of violent crimes against a child. The question could be whether the creation of new laws might be redundant or might "be hindering the prosecution" of others.

Mr. Moterly agreed with many of Ms. Billingslea's concerns and voiced that it was unfortunate that the Department of Corrections had not addressed "what possible disparate treatment this might have on incarcerated people in the Department of Corrections" in regards to the percentages of Rural verses Urban or various ethnic groups. He also questioned whether "there might be community and cultural considerations that ought to be considered " rather than imposing one uniform standard across the State. Like Ms. Billingslea, he noted that statutory changes increasing sentences were adopted in both 2003 and 2005. In consideration of the fact that no data about those changes has of yet been forthcoming, this bill might be premature both as a deterrent and in regards to the fiscal impact. The desired effects might already be occurring due to that 2003 and 2005 legislation.

Mr. Moterly stressed that some of the provisions that accompany the proposed sentencing are already in existence as a result of the 2003 and 2005 changes, such as the fact that "Good Time" was removed for second offenders.

Mr. Moterly noted his concern in regards to the disproportionately of the proposed sentencing when compared to other crimes. While murder and manslaughter have been discussed, the discussion should include "benign conduct" such as when "someone in a relationship goes to second base with their significant other without the go-ahead". That person could be charged with assault in the second degree. Sexual contact "even over a sweater of a female breast would carry a sentence of five to 15 years" whereas a person committing assault in the first degree such as shooting or stabbing someone, "would be looking at five to eight" years.

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Senator Dyson stated that the Legislature established a law approximately five years prior that pertained to "misprision of a child." That bill reestablished the "common law concept that all

adults have the duty to go to the rescue of a child that is being assaulted, kidnapped, or molested". Were the adult unable to go to the rescue, they would be required to report the crime. Therefore the concept that Mr. Moterly raised has been in law for some time.

[10:12:37 AM](#)

Mr. Moterly responded that such a "concept has been with us as a moral obligation for hundreds of thousands of years." A person living in a community would naturally respond. While people would have both a moral and statutory obligation to report a child being victimized, reporting someone who fails to register as a sex offender would not "fall within that same moral category".

Senator Dyson concurred, but noted that he would argue "that no profession, including attorneys and physicians" should be exempted from that moral and statutory obligation.

[10:13:51 AM](#)

BLAIR MCCUNE, Attorney, testified via teleconference from Anchorage in opposition to the bill; particularly the fact that no fiscal exact dollar amounts were attached to the bill. While estimating fiscal costs is difficult, testimony has attested that this would be an expensive bill. The Department of Corrections could provide a breakout of the number of people incarcerated for each category of assault and a multiplying factor could be utilized in order to provide a "conservative estimate of what the costs are going to be".

Mr. McCune noted that newspaper articles have been published about the current overcrowding in the State's jails. The Department should provide more information to the Finance Committee. Information about the costs to the Alaska Court System should also be considered, as the increased penalties would result in more trials. Other agencies such as the Department of Law, the Public Defender Agency, and the Office of Public Advocacy would also be impacted.

Mr. McCune suggested that Mr. Guaneli "misspoke" when he said that sexual assault was a crime of intent. "The mental state required to prove sexual assault is a knowing conduct or a reckless disregard for lack of consent". The true focus of the comments should be sexual predators. Those are a small percentage of "all the sexual offenders who come before the Courts in the State".

Mr. McCune recalled an older bill regarding "civil commitment of sexual predators". Efforts should be made "to separate the wheat

from the chafe and identify those who are truly dangerous based on a pre-deposition, untreatable almost, pre-deposition for sexual offenses, and to find them civilly." That bill was not enacted due to civil liberties concerns and its fiscal impact. This legislation might try to accomplish the same thing "in a more ineffective way because it does not separate the wheat from the chafe and the expenses of this type of bill have not been documented".

[10:17:31 AM](#)

CARA MCNAMARA, Attorney, testified via teleconference from Anchorage in opposition to the bill. The proposed sentencing ranges are based on a "national hysteria on sex offenders that are not supported by studies". The "all rapist are serial rapists" remarks of the Anchorage Police Chief reflect that hysteria. National studies would indicate that the remarks are not true; however, "it is a common myth". She urged the Committee to refer to the various studies denoted in the material [copy on file] she had submitted. The conclusion of the studies on this issue would indicate sexual offenders, as a group, have a much lower recidivism rate than the general prison population. This should be a consideration, particularly in regards to the sentences of those convicted of lower level sexual assault crimes. Some sex offense sentences have increased four-fold.

Senator Bunde pointed out that this legislation was being developed long before the national hysteria resulted from such things as Jessica's Law. The public is often slow to react but after prompting, they do react. However, this issue should not be characterized as national hysteria.

[10:20:40 AM](#)

DAN LIBBEY, Attorney, testified via teleconference from Anchorage in opposition to the bill. He questioned the need for the "drastic changes" proposed in this legislation, as there is no evidence on record that something has changed since the sexual offender laws were changed in legislation in 2005. The hysteria surrounding sexual offenders has existed for some time, and was considered during the development of the legislation enacted last year.

Mr. Libbey stressed that an insufficient amount of time has passed since the enactment of that legislation; therefore it is too early to determine whether it has had any affect; specifically whether or not it has reached "the objectives it was designed to reach".

Mr. Libbey declared that there would be issues such as "disparity of treatment with Rural Alaskans, Native Alaskans who certainly do

have a heavy consumption of alcohol ... and other substance abuse issues that would come with that. There would be a disproportionate impact on those offenders and on those charges that are levied against Rural Alaskans. That's a very extreme infirmity. It's a very grave concern with this legislation."

Mr. Libbey addressed the issue of benign behavior such as a young man in college at a party who "happened to touch a female breast and suddenly is facing a five year mandatory minimum" sentence. This conduct "is very benign" in comparison to "aggravated assault and manslaughter. The disproportionate sentencing scheme as it relates to those two crimes leaves this bill in question." This would indicate a "weakness in the design of the bill, and in the legislative record, and justification for the bill."

Mr. Libbey addressed the fiscal impact of this bill and its anticipated impact on the Alaska Court System and the Department of Law. He also pointed out that the fiscal impact on the Department of Corrections is unspecified. The information about the bill's fiscal impact is "severely lacking".

Mr. Libbey urged the Legislature to revise this legislation. As is, it would be "prone to many attacks" and, due to the lack of evidence and the weaknesses contained in the bill, the efforts being exerted would be for naught.

Co-Chair Green informed the testifier that he might not have had an opportunity to receive the new Department of Corrections fiscal notes that "better reflect" the Department's anticipated expenses.

[10:25:09 AM](#)

KEVIN FITZGERALD, Attorney and former State Prosecutor, Sex Crime Unit, Department of Law, testified via teleconference from Anchorage in opposition to "the presumptive sentencing scheme" proposed in the bill. "It is out of whack"; no justification for the increased sentencing has been provided that would suggest that the recently imposed sex offense sentencing "is not meeting the sentencing criteria that the Constitution requires" in this regard. The presumptive terms in the bill would substantially increase the presumptive sentencing over the existing terms. This bill would incur "enormous costs", including an increase in the number of trials that would transpire, as defense attorneys and defendants would not choose "to plea" to terms such as 25 to 30 year presumptive terms.

Mr. Fitzgerald declared that this legislation is indicative of the Legislature's view of the judiciary system. In his experience, he

could not accept the argument that there is not the range of conduct in sex offense crimes as there is in murder and manslaughter cases. In response to Senator Dyson's earlier remarks about proportionality, he shared that the presumptive term for manslaughter is five or seven years depending on the circumstances. While voicing respect for Mr. Guaneli, he was not convinced by Mr. Guaneli's comments regarding people's "mental state".

Mr. Fitzgerald concluded by reiterating the fact that a manslaughter charge might have a five to seven year presumptive sentence whereas a sexual assault in the second-degree offense, such as touching a female breast through clothing, would carry a substantially longer presumptive term. The Courts would not be provided the discretion to sentence according to the breath and range of the circumstance.

[10:31:18 AM](#)

MARJORIE ALLARD, Attorney, testified via teleconference from Anchorage in opposition to the bill based on "the issue of proportionality". It would appear that there is "a disconnect" between the people that would be targeted by this bill and the purpose of the bill. While serial rapists and repeat pedophiles are a concern, they would only comprise "a tiny percentage" of those who might be convicted of sex offenses in this State. There is a broad range of sex offenses and offenders in this State. Many offenders suffer from such things as alcohol and substance abuse. The five-year minimum sentence that a judge would be required to impose on a college man at the fraternity party who touched a woman's breast or perhaps the 19-year old boy who might be touching his 14-year old girlfriend in a sexual way is quite different from current sentencing range. Current law would provide a judge some discretion in his sentencing. The judge should be able to evaluate who the offender is, "and who is truly a risk to society and who is not." The question of who are we trying to protect ourselves from is paramount in this issue. Consideration should also be given to the expense associated with this bill. The "money should be directed properly and efficiently" toward the people who would pose the greatest harm rather against "a large range of people who are being characterized in a particular way that is both unfair and unjust."

[10:33:30 AM](#)

Senator Olson, referencing the "Myths and Facts about Sex Offenders" handout [copy on file] that Ms. Allard had provided, asked about the paper's conclusion that the majority of the people who commit a sex offense would not re-offend. This is contrary to

other information that the Committee has been provided.

[10:34:08 AM](#)

Ms. Allard stated that "it would be interesting to see the sources" of some of the findings that have been provided to the Committee. Her conclusions were based on a broad range of studies that were conducted in the United States and internationally. The "consistent" conclusion was "the people that we are talking about in terms of dangerous sexual predators who are repeat offenders and consistent repeat offenders is a very small percentage and that the vast majority of people who are convicted of a sexual offense are not going to re-offend." "That seems to be the universal conclusion of most of the social science studies." She urged the Committee to review the studies cited in the handout. These properly conducted studies also conclude that "first time offenders are low risk and that in general, sex offenders are not a homogenous group and that it is a small percentage of the people convicted of a sexual crime who end up being these very scary...sexual predators" of whom "warehousing isolation" might be the appropriate action.

Ms. Allard stated that the problem with this bill is that it would treat everyone in the same manner. There are questions as to whom the bill should be addressing, what the real risks are, and the amount of money that would be spent.

[10:35:43 AM](#)

BRADLEY HIEBERT-TRENER, College Student, testified via teleconference from Anchorage and requested the Committee to consider a situation in which an 18-year old boy's hand might "slip" and touch the clothing over a woman's breast during a slow dance at a high school function. He would be subject to a five-year jail sentence for that offense.

Mr. Hiebert-Trener stated that "warehousing" good people in this manner would not be the desired affect of the bill. The effort to "crack down" on non-reporting might have the effect of deterring people who might have been offended from seeking help, as they might not want the person who assaulted them to go to jail for five years.

[10:37:55 AM](#)

PEGGY BROWN, Executive Director, Alaska Network on Domestic Violence and Sexual Assault, testified in Juneau that the Network is comprised of 20 organizations throughout the State "that provide direct services to victims of domestic violence and sexual

assault." She supported the comments of Walt Monegan of the Anchorage Police Department. "There is not a national hysteria." Sexual offenses against young people in Alaska are six times the national average. Alaska's rates are number one in nation for forcible rape and domestic violence related homicide.

Ms. Brown stated that one of the reasons that the Network supports this bill is because of the polygraph component. Given the State's statistics in this matter, the State should "take a very strong stand in what we are willing to accommodate in the State with sexual offending, sexual predation." The fact that the sentence for a first offense is lower than those for subsequent offenses would address concerns.

Ms. Brown stated that sex offense behavior should not be tolerated. Faith should be provided to the Court system to distinguish the difficult situations of young people who may have had sexual contact with another young person. Those are not the people whom the bill is targeting.

Ms. Brown voiced appreciation to the efforts exerted by Senator Bunde, Senator Dyson, and Senator Guess on this issue.

[10:40:46 AM](#)

Co-Chair Green noted that the bill would be held in Committee in order to allow Senator Bunde to develop the aforementioned amendments or a committee substitute.

Senator Bunde affirmed.

Senator Bunde responded to comments from those in opposition to the bill; those "who make their living defending criminals". While efforts "have been made to address this outrageous problem in Alaska", the attempts that have been made could be viewed as "half" rather than "full measures". No testimony has challenged the fact that the State's sexual assault per capita rate is 71 percent higher than the next highest state. To address the challenge to the validity of the studies supporting the State's position, he referred the Committee to the "2005 SOTEP Report" referenced in the "Draft 'White Paper'" which attests that "treatment has little if any affect on recidivism." "'Warehousing' of the most serious cases is probably the only treatment that is going to protect our citizens."

Senator Bunde hoped that the comments about how alcohol and other substance abuse might affect this problem were not meant to imply "that being drunk is an excuse to be a predator or to attack"

children and women. While alcohol might reduce inhibitions, "the primary motivation to attack" women and children must be present prior to that. Continuing, he hoped that the comments regarding Rural Alaska were not meant to imply that women and children residing in Rural Alaska "were less deserving of protection from sexual assault" than those living elsewhere.

Senator Bunde stated that "geography and substance abuse is not an excuse for being a sexual predator."

Senator Dyson stated that he had carefully considered and appreciated today's testimony. Continuing, he voiced disagreement with comments in the sponsor statement that treatment does not appear to work, as there is evidence that treatment, specifically that conducted by the State, has worked. "Alcohol and other mind altering substances do reduce inhibitions." While this is not an excuse, there is the opinion that a significant percentage of incarcerated perpetrators suffer from prenatal alcohol issues. Studies have shown that those who experienced fetal alcohol affects have neurological disorders and "have great difficulty reasoning between cause and affect. They also have a reduced capacity for empathy." Their behavior could be likened to the characteristics of a sociopath. They would have a "very disproportionate" propensity to become perpetrators and victims. "The mental health model does not work for those folks." While this does not excuse the conduct, it is an issue that must be taken into account when counseling, sentencing, and releasing such individuals. These people would have a propensity to re-offend. Therefore, contrary to the position of the sponsor, he is of the position that efforts must be taken against "lumping all sexual perpetrators in exactly the same categories." The studies he has reviewed show that "those who continually molest children have arrested psychological maturation processes". Due to "arrested development", they "are less likely to be helped".

Senator Dyson stated that "long sentences" would be beneficial in the case of incest perpetrators because that would provide time for their children to grow up. Those people are "less likely to go after others" who were not vulnerable family members.

[10:46:42 AM](#)

Senator Dyson shared that statistics regarding same sex perpetrators who assault young boys reflect a disproportionately high rate of recidivism. Judges should pay specific attention to such data.

Senator Dyson observed that people are inclined to view crimes that

combine "violence and force as being worse." However, the fact that many child victims were seduced rather than beaten into submission has instilled "a lifetime sentence of shame" in them, as they feel that they were partly to blame.

Senator Dyson stated that the concern that someone might not report an assault out of fear that it "would ruin the life of someone is off-target." He supported the decision that "a child under the age of 15 is incapable of making the really very important decisions about sexual activity." Those that prey on them should "be busted."

[10:48:40 AM](#)

Senator Dyson understood that 85 to 90 percent of young women in middle school and above have reported being "the victim of unwanted touching". While the sentencing for unwanted touching through clothing might be disproportionate when compared to cases involving manslaughter, it should be recognized that there is a huge amount of victimization. "People have a right to their own boundaries" and should not be assaulted "even in those ways." While these provisions might require modification, unwanted touching is an assault on people's privacy and their boundaries.

Co-Chair Green ordered the bill HELD in Committee.

#sb236

[10:50:24 AM](#)

SENATE BILL NO. 236

"An Act relating to the dividend paid to the state by the Alaska Housing Finance Corporation; and providing for an effective date."

This was the first hearing for this bill in the Senate Finance Committee.

DAN FAUSKE, Chief Executive Officer, Alaska Housing Finance Corporation, Department of Revenue informed the Committee that actions made by the national Governmental Accounting Standards Board (GASB) affected the accounting procedures of the Corporation. Therefore, this legislation is required in order to modify financial terms so that the Corporation would remain in compliance with State law dictating the annual transfer of funds from the Corporation to the State. One specific term that would be changed is the term "net income". That term would be replaced with new GASB

term "net assets".

Mr. Fauske explained that a new GASB ruling, GASB-34, would affect the annual dividend the Corporation provides to the State. The amount of the Dividend pre-GASB-34 would have been \$40,000,000; under GASB-34, the Dividend would be \$80,000,000. "This is a good thing."

JOE DUBLER, Finance Director, Alaska Housing Finance Corporation, Department of Revenue stated this bill would change three elements in current State Statute, including replacing the term "net income" with "net assets". This change would align the Corporation's accounting procedures with those of GASB.

Mr. Dubler explained that, in FY 2002, the Corporation had adopted GASB-34, and that a Transfer Plan was developed to implement the provisions of that ruling in FY 2007. The Transfer Plan required that, in FY 2007, the Corporation's dividend to the State would be the lesser of \$103,000,000 or 75 percent of the Corporation's "net income". [NOTE: the testifier inadvertently stated the percentage as 95 percent.] That term must be changed to "adjusted change in net assets." The inclusion of the term "adjusted" would reflect "an additional change" required by the adoption of GASB-34, which "no longer allows the Corporation to take certain returns of capital to the State through our balance sheet."

[10:53:41 AM](#)

Mr. Dubler continued that the balance sheet had previously contained a line item called "contributing capital, which is a similar term" to that used in for-profit entities. In the process of returning "capital to the State of Alaska through debt payments, through cash transfers, we would reduce that amount. In our balance sheet, it did not impact the Corporation's net income. In other words, our net income was higher in those years before GASB-34. Since GASB-34's been implemented, all of those payments that we make to the State are required to come through our statement of changes in net assets, which is the new name for an income statement. That has reduced the Corporation's bottom line. Matter of fact in 2005, it was negative after all those payments were made, because we paid out more ... on behalf of the State than the Corporation earned in net income." This proposed definition of "adjusted change in net income" would correct that by allowing the Corporation "to comply with the intent of the original legislation" by allowing "the current change in net asset number to [be] a more comparable number to our prior net income." In summary, the effort would allow the Corporation "to get back to where we were ...before the change".

Co-Chair Green understood therefore that the adoption of this bill would not implement any substantive changes; it would simply change terminology.

Mr. Dubler concurred.

Mr. Dubler stated that the third change included in this legislation is depicted in Section 1 page one line nine: the inclusion of the phrase "or other capital projects" would expand the types of projects that subsidiaries created by the Corporation could fund with Tobacco Settlement bond money.

[10:56:09 AM](#)

Senator Bunde asked whether any specific capital projects have been identified.

Mr. Dubler responded that he was unaware of any specific capital project list being developed. This change would allow the Governor or the Legislature to expand the existing list beyond the current three categories identified in Statute.

Mr. Fauske noted that, were this component of the bill approved, it could be utilized to fund projects that are being advanced in separate legislation.

Co-Chair Green recapped the changes in the bill.

AT EASE [10:57:39 AM](#) / [10:58:54 AM](#)

Co-Chair Green noted that the discussion had pertained to committee substitute, Version 24-GS2058\G.

Senator Stedman moved to adopt Version "G" as the working document.

There being no objection, the Version "G" committee substitute was ADOPTED.

Senator Bunde moved to report the committee substitute from Committee with individual recommendations and accompanying fiscal notes.

There being no objection, SC SB 236(FIN) was REPORTED from Committee with new zero fiscal note dated February 1, 2006 from the Alaska Housing Finance Corporation, Department of Revenue.

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[10:58:59 AM](#)

ADJOURNMENT

Co-Chair Lyda Green adjourned the meeting at [11:01:47 AM](#).