

HOUSE FINANCE COMMITTEE
April 3, 2013
1:45 p.m.

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CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 1:45 p.m.

MEMBERS PRESENT

Representative Alan Austerman, Co-Chair
Representative Bill Stoltze, Co-Chair
Representative Mark Neuman, Vice-Chair
Representative Mia Costello
Representative Bryce Edgmon
Representative Les Gara
Representative Lindsey Holmes
Representative Scott Kawasaki, Alternate
Representative Cathy Munoz
Representative Steve Thompson
Representative Tammie Wilson

MEMBERS ABSENT

Representative David Guttenberg

ALSO PRESENT

Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Nancy Meade, General Counsel, Alaska Court System; Leslie Houston, Deputy Commissioner, Department of Corrections

PRESENT VIA TELECONFERENCE

Tracy Wallenberg, Deputy Director, Public Defender's Agency, Anchorage; Laure Morton, Council on Domestic Violence and Sexual Assault, Juneau

SUMMARY

CSSB 22 CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

CSSB 22 was HEARD and HELD in committee for further consideration.

#sb22

CS FOR SENATE BILL NO. 22(FIN)

"An Act relating to the commencement of actions for felony sex trafficking and felony human trafficking; relating to the crime of sexual assault; relating to the crime of unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating to the time in which to commence certain prosecutions; relating to release in a prosecution for stalking or a crime involving domestic violence or for violation of a condition of release in connection with a crime involving domestic violence; relating to interception of private communications for certain sex trafficking or human trafficking offenses; relating to use of evidence of sexual conduct concerning victims of certain crimes; relating to consideration at sentencing of the effect of a crime on the victim; relating to the time to make an application for credit for time served in a treatment program or while in other custody; relating to suspending imposition of sentence for sex trafficking; relating to consecutive sentences for convictions of certain crimes involving child pornography or indecent materials to minors; relating to the referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual felony' for sentencing and probation for conviction of certain crimes; relating to the definition of 'sex offense' regarding sex offender registration; relating to the definition of 'victim counseling centers' for disclosure of certain communications concerning sexual assault or domestic violence; relating to violent crimes compensation; relating to certain information in retention election of judges concerning sentencing of persons convicted of felonies; relating to remission of sentences for certain sexual felony offenders; relating to forms for sexual assault, stalking, and domestic violence protective orders; relating to the subpoena power of the attorney general in cases involving the use of an Internet service account; relating to reasonable efforts in child-in-need-of-aid cases involving sexual abuse or sex offender registration; relating to mandatory reporting by athletic coaches of child abuse

or neglect; making conforming amendments; amending Rules 16, 32.1(b)(1), and 32.2(a), Alaska Rules of Criminal Procedure, and Rules 404(a) and (b), Alaska Rules of Evidence; and providing for an effective date."

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ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW, stated Section 41 was an amendment to evidence rule 404 (b)(2). She explained that under the evidence rule, evidence of the defendants prior bad acts were not generally admissible in the prosecution of the individual; however, some exceptions were set out in court rule. She shared that the three exceptions dealt with prior bad acts of sexual or physical abuse of a child, domestic violence crimes and sexual assault offences. She relayed that prior acts of sexual or physical abuse of a child had a ten-year look back limit on use of prior bad act evidence; the other two did not. She said the reasoning was that in those cases the perpetrator could be in jail for those 10 years, and not in a position to reoffend. She stated that by the time they were released, the department would be unable to use the evidence for prosecution. She reminded the committee that in every case the evidence would be subject to weighing by the judge to determine relevance. She concluded that the section would omit the mandatory 10 year limit.

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Co-Chair Stoltze requested an explanation of the contingency language in Section 42.

Ms. Carpeneti stated that Section 42 noted that the changes in the rape shield provision in AS 124.504(5)(a), which provided a witness in an abuse case protection of their sexual conduct before or after the alleged offense. The change would require a two-thirds vote by the legislature. Additionally, Section 44 noted the required two-thirds vote on the statute, which indirectly affected the court rule, to take effect.

Co-Chair Stoltze probed the conditional affect.

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Ms. Carpeneti stated that the language had been added by Legislative Affairs Agency (LAA), and that she had not seen it before. She thought that the language made the further notation that the statute would not go into effect without the two-thirds vote by the legislature. She noted that adding such language was not the custom for LAA.

Co-Chair Stoltze asked Ms. Carpeneti to report back to the committee as to why LAA had added the language.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, relayed that the court took no issue with the direct court rule changes or the indirect court rule amendments. She said that the changes would be implemented should they receive the required majority vote of the legislature.

Co-Chair Stoltze asked how the court system would proceed if a problem was found with the changes.

Ms. Meade replied that the court system did not make a practice of taking a position on legislation.

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Representative Wilson queried the impetus for the legislation.

Ms. Meade stated that the bill expanded the definition of sexual assault crimes and would extend statutes of limitations.

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Ms. Carpeneti added that the bill did not add substantive criminal laws to statute, except the prohibition of parole officers and probation officers having sex with people on parole or probation. She furthered that the bill dealt primarily with procedure and how the courts would proceed with criminal prosecutions.

Representative Wilson thought that putting a GPS on a person would be a substantial change to the law. She wondered why the statute of limitations needed to be changed. She hoped that there were statistics to back up the concerns addressed in the legislation.

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Representative Wilson expressed deep concern with the legislation.

Ms. Carpeneti discussed the GPS aspect of the bill. She offered that a judge would examine several variables when addressing a person that had been charged with slaking, or a crime involving domestic violence; such as, the danger that the person presented to the victim or their family or the possibility that the accused would not show up for hearings. She contended that the GPS monitoring device would allow the person the freedom from confinement while awaiting trial.

Co-Chair Stoltze stated that the GPS could be considered as adding latitude for the defendant.

Ms. Carpeneti replied that, under the circumstances, it would be less expensive than holding a person in jail.

Co-Chair Stoltze understood that it was not an option already retained by the court.

Ms. Carpeneti touched on the constitutional implications of the GPS. She explained that if a person was charged with a crime, and the judge was not convinced that the conditions of release would keep the community safe, or that the person would show up for hearings, the person would be held in jail.

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Representative Wilson asked if the same procedure would apply for other types of crimes.

Ms. Carpeneti replied no.

Representative Wilson suggested that other crimes were as severe as sexual assault and domestic violence. She stated that she was unwilling to give up her discretion easily.

Representative Gara asked if the GPS could be used as a condition of probation and whether the GPS would apply exclusively to sex trafficking or to all level of sex abuse crimes.

Ms. Carpeneti replied that the bill would allow for GPS in cases charging crimes involving domestic violence in

addition to assault. She believed that in some cases ankle monitoring was used during probationary periods. She referred further details to the Department of Corrections (DOC). She noted that the bill did not address the use of ankle monitoring during probation.

Representative Gara understood that the GPS could be used on convicted rapists.

Ms. Carpeneti replied that under the bill, GPS monitoring could be used provided that the rape was a crime of domestic violence.

Representative Gara asked why the crime would have to fall under the umbrella of domestic violence.

Ms. Carpeneti stated that the fear of the perpetrator knowing where a victim lived was not as immediate in cases of sexual assault by a stranger. She added that because domestic violence and stalking cases often resulted in confrontations after the fact that put the victim at risk, those were the cases to begin the practice of using the relatively new GPS system.

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Representative Gara asked why it would not apply in first degree rape cases. He contested that in small communities attackers could locate their victims easily. He wondered if first degree rape could be added to the bill.

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Ms. Carpeneti stated that the legislation had been drafted considering all opinions. She stated that the drafters had not wanted to cast too wide a net.

Representative Gara asked if the department would have a problem with first degree raped being added to the bill.

Ms. Carpeneti believed that it could be discussed. She added that the bill would require DOC to adopt guidelines for working with the Department of Public Safety (DPS), which lead her to believe that the addition could be considered once guidelines were adopted.

Co-Chair Stoltze suggested that the idea could be further vetted and that a committee substitute could be brought to the table.

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Representative Gara expressed concern that prior bad acts, that were unrelated to the immediate case being tried, could be allowed into evidence.

Ms. Carpeneti stated that the evidentiary rule exception only applied to sexual or physical abuse of a minor and not to sex trafficking. She relayed that the issues were always subject to judicial weighing. If the trial was 20 years after the first offence, then that would be taken into consideration by the presiding judge. She stressed that the bill would allow a judge the ability to weigh evidence over 10 years old.

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Representative Gara understood the courts would weigh the evidence to determine whether it was prohibitive or prejudicial and that the legislation would not change that analysis.

Ms. Carpeneti replied that the weigh in process would not change under the bill.

Representative Holmes asked if there were any constitutional concerns surrounding requiring the GPS for people who had been charged, and then were released on bail awaiting trial.

Ms. Carpeneti stated that the person could be kept in jail, but the GPS would be less burdensome for all involved.

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Representative Munoz thought that the language on Page 19, line 22, which spoke to athletic coaches and paid assistants reporting responsibilities, should be clarified.

Co-Chair Stoltze requested an amendment that spoke to the concerns.

Representative Munoz referred to Page 19, line 17. She queried the definition of the "Fatality Review Team."

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Ms. Carpeneti replied that the Child Fatality Team investigated the cause of death of a child under certain circumstances.

Representative Munoz noted that the vagueness of the language on Section 21, page 11, line 28. She hoped that the language could be made clearer.

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Ms. Carpeneti replied that the language in the bill had been written in response to a court decision that used the same language.

Co-Chair Stoltze noted that this section contained one of the more important provisions in the bill.

Ms. Carpeneti agreed to be in communication with Representative Munoz concerning the language and its clarity.

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Vice-Chair Neuman requested a copy of the legislative findings and intent referred to Section 1. He asked if there had been a change in the requirements for mandatory sexual offender registration.

Ms. Carpeneti stated that the bill would add a provision to the sexual offender registry and would clarify one of the provisions in the sex offender registry requirement. She referred to Page 13, line 9, which was a conforming amendment that dealt with the sex-trafficking of children under the age of 20. She furthered that a requirement the people over the age of 18, or 3 years older than the child, who patronized a child prostitute, would be prosecuted as a Class C felony and would have to register as a sex offender.

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Ms. Carpeneti recalled a court decision had found that people convicted before 1994 did not have to register as sex offenders. She stated that she could provide more information concerning the matter at a later date.

Vice-Chair Neuman hoped to see language that required all felony sexual offenders in the state to register.

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Representative Kawasaki wondered how frequently a GPS would be used in lieu of actual jail time.

Ms. Carpeneti responded that she would need to research the question and would provide an answer at a later date.

Representative Kawasaki understood that the GPS was intended to provide the extra level of safety for victims, but asserted that the most effective way to protect victims would be to keep perpetrators in jail.

Representative Kawasaki asked about Section 15, which discussed authorization to intercept communications. He requested discussion and justification for allowing the interception of communications for sex trafficking and human trafficking cases.

Ms. Carpeneti replied that the Attorney General, or a designee for the Attorney General, could apply to a judge for wiretapping permission. She furthered that it must be limited to time and parties, and was not used very often due to the labor intensive nature of the procedure. She said that the rationale for adding sex and human trafficking to authorized list was because they were crimes that would most likely involve communication among parties perpetrating the offense. She contended that it would be a good way for law enforcement to obtain useful evidence.

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Representative Kawasaki wondered whether the bill broadened the authority of the Attorney General.

Ms. Carpeneti responded that the authority already existed and that the procedure was among the regular procedures already practiced.

Representative Kawasaki stated that imminent danger was a reasonable excuse for the interception of communication, but he requested further justification from law enforcement.

Co-Chair Stoltze asked if the defense could request the GPS.

Ms. Carpeneti stated yes.

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Representative Thompson noted Section 10, page 6. He thought that the forfeiture of property for a misdemeanor crime was too extreme.

Co-Chair Stoltze asked whether there was currently a statute allowing municipalities to seize property for a misdemeanor offense.

Ms. Carpeneti believed so. She added that the state did not seize property for a misdemeanor offense very often. She asserted that the policy call should be decided by the legislature. She shared that originally, the bill allowed the possibility of forfeiture for the patron of the prostitute, as the governor was most interested in focusing on the demand side of prostitution prevention. She furthered that the section in current law required mandatory forfeiture and did not require a conviction. The changes to the bill in the Senate Judiciary Committee resulted in the forfeiture applying to the patron and the prostitute, but only after a conviction.

Representative Costello queried areas where the state sex offender registry was out of compliance with federal requirements, specifically school information. She understood that the state did not require school information as an element subject to public information. She expressed concern that high school students working for credit in college classes could be unknowingly exposed to an offender. She asked if there was anything currently in statute, or the bill, that addressed the issue.

Ms. Carpeneti replied that the issue was not addressed in the legislation. She said that under current Alaska law, juveniles were not required to register. She explained that

children that were convicted of a sex offense in adult court would be required to register.

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Representative Costello clarified that she was inquiring about adult registered offenders who might enroll in college classes. She expressed concern that a minor enrolled in college classes could be exposed to a registered sex offender. She noted that federal law required that the registry include any school that the offender might be enrolled.

Ms. Carpeneti replied that the bill did not speak to the issue.

Co-Chair Stoltze OPENED public testimony.

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TRACY WALLENBERG, DEPUTY DIRECTOR, PUBLIC DEFENDER'S AGENCY, ANCHORAGE (via teleconference), spoke to Section 38, which amended the criminal rules regarding the regulation of discovering child pornography cases. She stated that the provision would only permit legal material to be sent to an expert for analysis if the expert was out-of-state. She furthered that in-state experts retained by the defense would be required to transport their equipment to a law enforcement or prosecution facility where the information would be made available. She expressed concern that the provision would make using an in-state expert either cost prohibitive or impractical for some experts due to the time it would take them to set up their equipment. She added that this would have the unintended consequence of increasing the distribution of materials, because it would have to be sent to an out-of-state expert, or subject the rule Change to a constitutional challenge as the defense would not have access to local expert who could be more qualified. She said that putting the inside and outside experts on equal footing would promote the intent of the rule change, which was to curb the duplication of the discovery materials. She stated that a change had been made in the companion bill, HB 23, to permit sending information to an in-state expert.

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Representative Holmes stated that an amendment on members desks would delete the words "outside the state" from the legislation. She asked if there was further language that the testifier wanted deleted.

Ms. Wallenberg hoped for clarification to the change made on Line 12 of the section that the court could order information to be sent to an expert in or out-of-state and that it would not be sufficient for it to be made available at only a prosecution facility.

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Co-Chair Stoltze CLOSED public testimony.

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Representative Gara queried a provision in the bill that would negate "good time" for high-level offenders. He understood that "good time" was granted to prisoners that the department determined had become non-threatening to society. He asked how "good time" was determined and how the department stood on withholding it from the offenders described in the bill.

LESLIE HOUSTON, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, replied that she could not explain how "good time" was applied or taken away. She said that the department could speak to the issue at a later date. She added that the department was neutral on the provision in the bill that would remove the "good time."

Representative Gara maintained his inquiry.

Ms. Houston shared that Ronald Taylor, Deputy Commissioner, Department of Corrections could be made available for questions at the next hearing of the bill.

Co-Chair Stoltze expressed disappointment that the department was not prepared with an answer.

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Representative Wilson raised the issue of time spent in a treatment center.

Ms. Houston stated that DOL could provide further information on the subject.

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Representative Kawasaki asked about the indeterminate fiscal note. He hoped that there could be a rough estimate given of the number of prisoners who might not be released due to "good time" ineligibility.

Representative Kawasaki questioned the GPS guidelines. He noted that there were two sections of the bill that spoke to guidelines for monitoring that would be adopted by DOC, in consultation with the Department of Public Safety (DPS). He requested an explanation of the current monitoring system.

Ms. Houston responded that the department was not currently using active GPS monitoring. She said that traditional, standard electronic monitoring was used and that the most popular device could detect the scent of alcohol.

Representative Kawasaki understood that the DOC did not track the physical location of offenders.

Ms. Houston replied that the technology was being used in the Lower 48. She said that the department had researched GPS and found that it would be possible to use in the state. She felt that it should be used statewide but that satellites might not be readily available, and that "urban canyons" could be a problem.

Representative Kawasaki asked if the department could comment on GPS monitoring for release on bail.

Ms. Houston replied that the guidelines that would be developed in conjunction with DPS. She thought that not all cases would result in GPS monitoring.

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Representative Kawasaki believed that the policy shift was significant. He wanted to know how many people could be released and whether public safety was being considered at the forefront. He hoped that releasing offenders under GPS monitoring was not being considered as a cost saving measure.

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Representative Gara returned to page 19 and the issue of athletic coaches. He believed that witness of sexual abuse should report abuse. He relayed that many athletic coaches were paid very little and were without training regarding child abuse or neglect. He worried that if an athletic coach did not recognize the abuse was happening they could be subject to incarceration.

Ms. Carpeneti stated that if a person did not notice child abuse or neglect then they were under no obligation to report. She stressed that if the coach was aware of reasonable evidence that a child was being abused, then they were required to report to the authorities. She explained that there was a criminal penalty for a person who was aware of reasonable evidence that a child was being subject to abuse who failed to report. She said that there was only one case in the history of the statute that had been handed to the court, and the prosecution was declined. She stressed that the purpose of the statute was to require people who were faced with the information to report it to people who could help the child.

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Representative Gara argued that the statute was poorly written, lumping volunteer coaches in with trained coaches.

Ms. Carpeneti replied that the bill originally required volunteer coaches to be subject to the mandatory reporting requirements, which was removed, and the current bill would not require a volunteer coach to report.

Co-Chair Stoltze wondered where the idea of volunteer coaches being required to report had originated.

Ms. Carpeneti responded that the issue had been raised by the occurrences at Penn State where athletic coaches had not reported many instances of sexual abuse that they had been witness to, which had allowed for new victims year after year.

Representative Gara rebutted that the Penn State issue involved rape and that what was being discussed in the bill was not rape. He stressed that he was not interested in passing a bill that was going to generate a headline for

something that did not exist. He said if the bill was related to athletic coaches that had observed a rape, he would be on board. He believed that coaches should be required to report high level sexual crimes, but should not be accountable for leaving lesser crimes unnoticed.

Ms. Carpeneti shared that anyone who witnessed certain crimes against children was required to report under Title 11. She explained that the rationale behind the language in the bill was that athletic coaches who were paid spent a lot of time with children, and had the opportunity to observe any potential harm to a child. She stated that it came down to a policy decision; whether the legislature believed it was important enough that coaches be required to report what was reasonably believed to be child abuse or neglect.

Representative Gara understood that the provision was intended for lesser level harm and that the issues surrounding the Penn State case were already covered under state law.

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Ms. Carpeneti thought that it would depend on the circumstances and what were observed. She said that the mandatory reporting provision was meant to encourage people who were in a position to observe harm to children to report it to authorities. She explained that it was a violation not to report a crime against a child, but that that was for a particular incident. She stressed that this provision was meant to encourage people who had a lot of contact with a child to report to someone who could help the child if the child was being abused or neglected.

Ms. Carpeneti stated that the episode at Penn State had generated a lot of conversation throughout the department. She noted that if one were to look at the other people who were required to report, it made sense that an athletic coach that spent a lot of time with would be required to report.

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Representative Costello stated that many different coaches worked with young people, and many times the coaches were parents. She expressed a concern for unintended

consequences that could occur in relation to divorcing parents where one was a coach.

Ms. Carpeneti understood that most parent coaches were not paid.

Representative Costello thought that the provision could discourage people from becoming paid athletic coaches.

Co-Chair Stoltze added that it was not uncommon for children of volunteer coaches to receive free scholarships, which could be viewed as a payment.

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Representative Munoz agreed with the previous comments. She stated that the inclusion in the current statute of school teachers and school administrative staff members of public and private schools would apply to paid school coaches. She thought that the issue might be covered in current statute. She lamented that the language was not clear as to what constituted "payment." She added that the provision could be applied to many sports teams. She echoed the concern that the provision could scare off potential future coaches.

Ms. Carpeneti agreed that the language was broadly written and could be revisited.

Co-Chair Stoltze understood that the Department of Public Safety was the lead agency on the bill.

Ms. Carpeneti responded that DOL and DPS were jointly responsible.

Co-Chair Stoltze stated that the bill was the governor's priority.

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Vice-Chair Neuman wondered why a reasonable person would not report a sexual assault. He thought that singling out athletic coaches was troublesome.

Representative Wilson thought that if there was already a responsibility to report that existed in statute, what

additional protection would result in specifying athletic coaches in the bill.

Ms. Carpeneti thought that the provision in Title 11, that made it a violation not to report a witnessed crime, differed from the provision because it pertained to a crime happening and then being reported in real time, rather than after the fact. She explained that the duty to report in Title 47, was the duty to report abuse that one had reason to believe was happening outside of their presence.

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Representative Wilson maintained her objection that athletic coaches should not be held to a higher reporting standard than Girl Scout leaders, for example.

Co-Chair Stoltze thought that the legislation could create a body of criminal law that could be exploited.

Ms. Carpeneti stated Title, 47, chapter 17, contained an immunity section for people who reported.

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Representative Gara pointed out Page 19, line 8, to the committee. He thought that the language could be changed for clarity to read:

"school teachers and school administrative staff members; including athletic coaches of public and private schools."

Representative Kawasaki asked about Section 022, of title 47, which dealt with who paid for the training to recognize abuse. He believed that active training to be able to identify abuse or neglect was a good idea. He thought that the section dealing with payment of coaches could include payment for training by the state.

Ms. Carpeneti replied that there was training curricula available online that was similar to what was available in schools.

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Ms. Meade noted that currently, in some cases, GPS monitoring was used already for people out on bail. The court did not order people to use ankle monitors, but defense council could request monitoring as an alternative for those who were unable to meet requirements set by the court.

SB 22 was HEARD and HELD in committee for further consideration.

ADJOURNMENT

The meeting was adjourned at 3:06 p.m.