

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

January 30, 2013

1:31 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Fred Dyson  
Senator Donald Olson  
Senator Bill Wielechowski

**MEMBERS ABSENT**

Senator Lesil McGuire, Vice Chair

**COMMITTEE CALENDAR**

OVERVIEW: DEPARTMENT OF LAW

- HEARD

SENATE BILL NO. 22

"An Act relating to the commencement of actions for felony sex trafficking and felony crimes involving child pornography or indecent materials to minors; relating to the human trafficking; relating to the crime of sexual assault; relating to the crime of referral of sexual felonies to a three-judge panel; relating to the definition of 'sexual unlawful contact; relating to forfeiture for certain crimes involving prostitution; relating felony' for sentencing and probation for conviction of certain crimes; relating to the to the time in which to commence certain prosecutions; relating to release for violation definition of "sex offense" regarding sex offender registration; relating to protective of a condition of release in connection with a crime involving domestic violence; relating orders for stalking and sexual assault and for a crime involving domestic violence; to interception of private communications for certain sex trafficking or human relating to the definition of 'victim counseling centers' for disclosure of certain trafficking offenses; relating to use of evidence of sexual conduct concerning victims of communications concerning sexual assault or domestic violence; relating to violent certain crimes; relating to procedures for granting immunity to a witness in a criminal crimes compensation; relating to certain information in retention election of judges proceeding; relating to consideration at sentencing of the effect of a crime on the

victim; concerning sentencing of persons convicted of felonies; relating to remission of sentences relating to the time to make an application for credit for time served in detention in a for certain sexual felony offenders; relating to the subpoena power of the attorney treatment program or while in other custody; relating to suspending imposition of general in cases involving the use of an Internet service account; relating to reasonable sentence for sex trafficking; relating to consecutive sentences for convictions of certain 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, Rule 404(b), Alaska Rules of Evidence, and Rule 216, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 22

SHORT TITLE: CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/16/13	(S)	READ THE FIRST TIME - REFERRALS
01/16/13	(S)	JUD, FIN
01/30/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

MICHAEL C. GERAGHTY, Attorney General  
Department of Law (DOL)  
Anchorage, AK,

**POSITION STATEMENT:** Provided an overview of the Department of Law and commented on SB 22.

RICHARD SVOBODNY, Deputy Attorney General  
Criminal Division  
Department of Law (DOL),

**POSITION STATEMENT:** Provided information during the overview of the Department of Law

JOSEPH MASTERS, Commissioner  
Department of Public Safety (DPS),

**POSITION STATEMENT:** Participated in the introduction of SB 22.

ANNE CARPENETI, Assistant Attorney General  
Criminal Division  
Department of Law (DOL),  
**POSITION STATEMENT:** Provided a sectional analysis of SB 22.

**ACTION NARRATIVE**

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**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Dyson, Olson, Wielechowski, and Chair Coghill.

**OVERVIEW: DEPARTMENT OF LAW**

CO-CHAIR COGHILL announced the first order of business would be an overview of the Department of Law. He asked Attorney General Geraghty to describe the duties of the attorney general for the Close Up class that was visiting from North Pole.

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MICHAEL C. GERAGHTY, Attorney General, Department of Law (DOL), Anchorage, AK, welcomed the class. He explained that under the state constitution the governor appoints the attorney general to be the chief legal officer for the state and executive branch. He oversees the Department of Law, which has a broad spectrum of responsibilities ranging from enforcing child support orders to prosecuting criminals to collecting money owed to the state to engaging in lawsuits to protect the state's interests.

He explained that DOL has four core missions or areas of responsibility. The first is to protect Alaskans. In this endeavor, the criminal division last year handled nearly 40,000 matters including misdemeanor and felony referrals, criminal appeals, juvenile matters, petitions for post-conviction relief, and extraditions. The second core mission is to ensure fiscal integrity, which includes matters related to taxes, royalties, and environmental damage. For example, in 2012 DOL had a protracted proceeding with BP that arose from corrosion spills that occurred in 2006. That proceeding culminated in a successful arbitration of approximately \$255 million. The third core mission is promoting good governance and the fourth is fostering responsible development of the state's natural resources. He noted there were friction issues between the state and federal government regarding natural resource development,

and predicted that trend would continue. However, he said, the picture is nuanced and not always adverse to the state.

ATTORNEY GENERAL GERAGHTY highlighted that the state has sided with the federal government in a surprising number of matters. For example, the state intervened to support the EPA when a number of non-governmental organizations (NGOs) challenged the permit and enjoined the project for the Point McIntyre rail extension. He reported that the injunction was lifted and construction would potentially start this year. In another example, the National Marine Fisheries Service (NMFS) issued Apache Oil incidental harassment authorizations (IHAs) for beluga whales in Cook Inlet, but a number of NGOs filed suit to stop the drilling. Although the state is often adverse to NMFS in Endangered Species Act cases, DOL did intervene to support what the federal agency had done in compliance with the law. That case is pending and DOL is involved. The state also intervened on behalf of the federal government in a case regarding Shell Oil drilling in the Arctic. He said that just today he made a decision to intervene in a challenge brought by the United Cook Inlet Drifters Association and Cook Inlet Fisherman's Fund to support actions by the North Pacific Fisheries Council (NPFC) and NMFS in ceding federal waters to the state for salmon fisheries management in Lower Cook Inlet, off Unimak Island, and the Copper River Flats in Prince William Sound. He reiterated that he sees this trend continuing. Sometimes the state will intervene to side with the federal government and sometimes it will challenge federal actions. Each case is evaluated on its merits.

ATTORNEY GENERAL GERAGHTY concluded his comments saying that the Criminal Division will add prosecutor positions this year in Fairbanks, Bethel and Southeast. He offered to answer questions.

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SENATOR DYSON commended DOL's efforts to prosecute Medicaid and Medicare fraud. He estimated that, based on national statistics, the fraud in Alaska's \$1.4 billion Medicaid budget to be between \$200 million and \$400 [billion]. He suggested that adding staff to investigate this fraud, most of which is on the provider side, would likely pay huge dividends.

ATTORNEY GENERAL GERAGHTY said he shared the concern and supported deterrence, including publicly exposing the perpetrators so others can see the consequences. He noted that part of DOL's Medicare fraud unit is paid for by a federal grant so the federal government is looking for a return on its

investment as well. He confirmed that most of the fraud is provider fraud and most of the resources should be devoted there.

RICHARD SVOBODNY, Deputy Attorney General, Criminal Division, Department of Law (DOL), added that the federal government pays 75 percent and the state pays 25 percent.

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SENATOR OLSON asked how he would choose his battles as resources decline.

ATTORNEY GENERAL GERAGHTY responded that he chooses battles based on merit and because it's the right fight, not because he has the resources to pick a fight. It's not an economic decision and DOL will stretch its resources as needed. The federal issues that DOL has chosen to fight affect the state wrongly. He said that with the exception of the endangered species cases, the matters are handled internally. He mentioned a challenge the state filed to Section 5 of the Voting Rights Act, and stated that even though the situation in 1965 isn't relevant there is an archaic requirement for the state to get Department of Justice approval of election districts. He noted that the challenge was stayed pending a Supreme Court decision. He concluded that these cases actually represent a small percentage of what DOL is involved in, but he understood the point of the question

SENATOR OLSON disagreed that the Voting Rights Act was no longer relevant, because in Alaska the difference between the haves and have-nots hasn't changed much since the 1960s. The voters in places like Shaktoolik and Shishmaref still need federal protection.

ATTORNEY GENERAL GERAGHTY clarified that the challenge was only to Section 5 of the Voting Rights Act. Section 2, which prohibits discrimination, would stay intact, because it's a violation of both state and federal law to disenfranchise voters.

SENATOR OLSON said he'd set up a private meeting to continue the discussion.

ATTORNEY GENERAL GERAGHTY said he'd be happy to do that.

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SENATOR WIELECHOWSKI said he too was disappointed when the administration filed suit to overturn federal oversight. He then pointed out that the oil industry was doing extremely well in Alaska, but that the state wasn't seeing the production it wanted. He asked how many lawsuits DOL had filed to protect Alaska's interests to ensure that it was getting maximum benefit for its oil and gas resources.

ATTORNEY GENERAL GERAGHTY responded that the Point Thomson case was pending when he took the job and that was settled. As a direct consequence, several hundred Alaskans have jobs and several hundred businesses have new business. He maintained that he would investigate any information about dormant or fallow leases, but the law says that the oil companies are required to put the leases in production as a reasonable and prudent operator. They are not required to put the leases into production to maximize the lessors' interest. If the leases are in production, the options to challenge the operator are limited.

SENATOR WIELECHOWSKI pointed out that the second part of the obligation is with due regard to the lessors' rights. He requested a follow up meeting to discuss his concern.

ATTORNEY GENERAL GERAGHTY suggested Senator Wielechowski contact his office.

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CHAIR COGHILL thanked Attorney General Geraghty for the overview.

**SB 22-CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT**

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CO-CHAIR COGHILL announced the consideration of SB 22.

ATTORNEY GENERAL GERAGHTY said the most important theme in SB 22 is to pursue vigorously the Governor's goal of reducing domestic violence, sexual assault, and sexual abuse of children in the state. It's a shameful epidemic in the state and more should be done to prevent it. The bill is another step to strengthen the laws and accomplish this goal.

One of the provisions in the bill relates to a recent decision by the Alaska Court of Appeals, which the administration believes misinterpreted the legislature's intent in adopting increased ranges for persons convicted of sex felonies. The bill

seeks to clarify the law in a manner consistent with the legislative intent. The bill also closes a gap in the sexual assault statutes and prohibits probation and parole officers from having sexual relations with persons on probation and parole. Another provision changes criminal procedure to protect victims of domestic violence, sexual assault, and sexual abuse. For example, requiring a hearing before a judicial officer before releasing a person arrested for a bail violation or domestic violence crime. It also broadens the protection for these victims from the use of evidence of past and future sexual misconduct. The bill also proposes to amend the procedure for addressing a witness's claim of a Fifth Amendment privilege. If immunity is granted by the state, the trial judge is required to assess the credibility of the witness, and the state is allowed to appeal that decision to a trial court.

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JOSEPH MASTERS, Commissioner, Department of Public Safety (DPS), expressed pleasure at the opportunity to help introduce SB 22. He said it was a steadfast commitment of DPS to end the epidemic of domestic violence and sexual assault in the state. This legislation builds on that commitment by strengthening the investigative tools available to law enforcement agencies, and broadening the authority of investigators to intercept communications in sex trafficking cases. It also protects young sex trafficking victims who are often involved in prostitution, and strengthens the penalties on the demand side by requiring a person who preys on these victims to register as a sex offender.

The bill provides additional protections for victims and survivors of domestic violence, sexual assault, and stalking. It allows victims of human trafficking, sex trafficking, and unlawful exploitation of a minor to apply for violent crimes compensation. Finally, SB 22 helps in the investigation of child pornography cases, online enticement of a minor, and unlawful exploitation of a minor by allowing the attorney general to designate another attorney in the office to evaluate applications that Troopers have for administrative subpoenas to obtain business records from ISP providers.

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CHAIR COGHILL reconvened the meeting and asked Ms. Carpeneti to introduce herself.

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law (DOL), introduced herself and said she would provide a sectional summary of the bill.

CHAIR COGHILL informed the committee that he asked Ms. Carpeneti to provide a general overview of the bill to identify the theme-based issues that would be topics of discussion. He requested the members to ask questions to clarify policy areas but hold the discussions for a future meeting.

MS. CARPENETI said she identified three themes in the bill: the Governor's pursuit of some improvement in the rates of sexual assault, sexual abuse, and domestic violence in the state; supporting victims' rights; and making the criminal justice procedure more efficient.

Sections 1, 20, and 21 are designed to overturn the majority decision of the court of appeals in *Collins v. State*, 287 P. 3d 791 (Alaska App.2012). *Collins* mistakenly interpreted legislative intent in 2006 legislation, and adopted lower standards for referring sex offenders to a three-judge sentencing panel.

CHAIR COGHILL noted that the letter of intent from the 2006 legislature was included in the packets.

MS. CARPENETI offered to discuss the details, and Chair Coghill deferred the discussion until the committee had an opportunity to debate the issue.

Section 2 eliminates the statute of limitations for a victim of sex trafficking or human trafficking to bring a civil action for damages against the perpetrator.

Sections 3, 4, 5, and 6 fill an unintended gap in the sexual assault statutes. The effect would be to make it a class C felony for a probation or parole officer to engage in sexual penetration with a person on probation or parole or a class A misdemeanor for a probation or parole officer to engage in sexual contact with a person on probation or parole. The definition of "probation officer" is sufficiently broad to include an individual who might not be appointed by the commissioner of corrections. This is in response to a recent situation in Anchorage involving an employee of the Alcohol Safety Action Program (ASAP) under contract with the court to provide supervisory services to people who participate in therapeutic courts.

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SENATOR WIELECHOWSKI asked if this applied only to someone under the direct supervision of a probation or parole officer.

MS. CARPENETI clarified that it would apply to any person that the probation or parole officer knew or was reckless with regard to that person being on probation or parole.

SENATOR WIELECHOWSKI observed that this would make it a crime for a probation officer to engage in sexual penetration or sexual contact with a spouse who is on parole.

MS. CARPENETI acknowledged that the exception of marriage in that circumstance was not part of Alaska law, but it probably should be addressed and excepted.

CHAIR COGHILL asked if the prohibition would extend to third-party custodians.

MS. CARPENETI said no; it applies to probation and parole officers and defines that as somebody who occupies the role of a probation officer, even though he or she might not be appointed by the commissioner of corrections.

Section 7 fills an unintended gap in the law that prohibits a person ordered by a court not to contact a victim or witness as part of a sentence or condition of release. It prohibits a defendant who has been ordered by the court not to contact a victim or witness, but who has not been released from jail, to refrain from contacting the victim or witness. This conduct is a class A misdemeanor. She noted that in several of these cases the defendant couldn't meet bail and from jail made repeated calls to the victim or witness. In one case, the defendant made dozens of calls directing the victim to undermine the prosecution of the underlying case.

Section 8 addresses the Governor's goal to diminish the demand side of prostitution offenses. This section allows the state to forfeit property of a patron of a prostitute if the property was used to institute, aid, or facilitate prostitution, or was received or derived from prostitution. Under current law, property used in sex trafficking offenses is subject to forfeiture, and a person who commits felony level prostitution (being a patron of a child who is a prostitute) can have their property seized. This would expand that to all patrons of a prostitute.

SENATOR WIELECHOWSKI observed that the potential ramifications of this section were that a patron who drove a prostitute to his multimillion dollar home could be charged with a class B misdemeanor and required to forfeit both his car and home.

MS. CARPENETI agreed that potentially could happen.

CHAIR COGHILL expressed reservations about the scope of that provision.

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SENATOR DYSON questioned what might happen if the patron used a borrowed car.

MS. CARPENETI said the procedure is called remission. A person with an ownership position in an automobile that the state wants to forfeit can explain the situation to the judge.

Section 9 removes the statute of limitations for criminal prosecution of people who have committed sex trafficking, human trafficking, and distribution of child pornography.

Sections 10, 24, 25, and 26 would allow a court discretion, in releasing on bail a person in connection with a crime involving domestic violence or civil protective orders, to require the defendant to carry GPS monitoring according to guidelines adopted by the Department of Public Safety (DPS). She noted that this had not been done and the guidelines had not been considered.

CHAIR COGHILL opined that the debate on this provision would center on the cost and accountability.

SENATOR WIELECHOWSKI asked Ms. Carpeneti to talk about intent and the fiscal note. It would cost more for active GPS monitoring but it would be preferable if the intent is to keep someone away from a person they've abused.

MS. CARPENETI said DOL would have better information after DPS looks at procedures and adopts guidelines. She offered her understanding that the monitoring would have to be active if the intent was to protect a victim 24/7.

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Section 11 requires a person arrested for a violation of a bail condition connected to a domestic violence crime to appear

before a judge in person or by telephone before release from custody. This is an expansion of the current law, which requires a person charged with a domestic violence crime to appear in person or by telephone in front of a judicial officer before he or she can be released on bail.

SENATOR WIELECHOWSKI asked if the intent was to capture even technical violations of parole or probation.

MS. CARPENETI opined that most of these violations would be a lot more than a technical violation. The idea is that a judicial officer should personally look at why the person violated a condition of bail, whether there is more danger to the victim, and whether other conditions might be appropriate under the circumstances.

CHAIR COGHILL commented that he had difficulty transitioning from Section 10 to Section 11; the monitoring issues were similar but one was a civil matter and the other was a criminal matter.

MS. CARPENETI explained that it was unwise to release a person under a bail schedule when he or she had been arrested for violating a condition of bail on a domestic violence crime. Before a subsequent release, a judicial officer should look personally at both the person and the violation.

Section 12 expands the crimes subject to a wiretap to include sex trafficking in the first or second degree and human trafficking in the first degree. The specific procedure the attorney general must follow to obtain permission from a court does not change. Perpetrators of these types of crime communicate and cooperate and, under the correct circumstances, interception of those communications might provide valuable evidence.

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Section 13 expands the current rape shield protection for victims of sexual assault, sexual abuse, and unlawful exploitation of a minor by excluding evidence of a victim's sexual conduct both before and after the person was victimized. Section 13 also requires a defendant to make application for use of such evidence at least five days before the trial unless the defendant did not know about it. She noted that DOL had discussed this with the public defender.

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SENATOR DYSON questioned how the law deals with false accusations. He expressed concern that a child's pattern of false accusations could not be used as evidence for the defense.

MS. CARPENETI said this only requires the judge to weigh the relevance and probative value of the evidence outside the presence of the jury. This gives some protection to the victim, but would not prevent introduction of relevant evidence.

SENATOR WIELECHOWSKI expressed concern about the five-day requirement and potential consequences to a defendant.

MS. CARPENETI acknowledged the concern and that there was room to balance the needs of both sides.

Sections 14, 15, 43, and 44 strengthen the procedure for a judge to determine whether a witness who claims a Fifth Amendment protection against testifying is entitled to a grant of immunity from prosecution for their testimony. Because Alaska has transactional immunity, a witness who is granted immunity cannot be prosecuted for whatever he or she says regardless of the evidence from another source. Sections 14 and 15 require a court to interview the witness in a closed hearing.

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SENATOR WIELECHOWSKI asked if this would require a person who claimed a Fifth Amendment protection to testify in a judge's chambers.

MS. CARPENETI explained that under current law there is an in camera proceeding with only the witness who is claiming the privilege, the witness's attorney, and the judge. No other parties are part of the procedure.

SENATOR WIELECHOWSKI asked if she agreed that the attorney makes the proffer as opposed to the witness having to violate his or her Fifth Amendment right and testify.

MS. CARPENETI said that's the problem; if the witness claiming the Fifth Amendment privilege doesn't participate in any way other than to have his or her attorney make the proffer, the judge isn't in a good position to evaluate the credibility of that witness.

SENATOR WIELECHOWSKI asked if this had been upheld in any other jurisdiction because it appeared to be a violation of both the

Fifth Amendment of the U.S. Constitution and Chapter 1 Section 9 of the Alaska Constitution.

MS. CARPENETI agreed that people should not be compelled to incriminate themselves. However, when a person is asking for immunity in a criminal prosecution of another person, it's important for the judge to have some opportunity to evaluate the credibility of the witness asking for immunity. She agreed to look at what other jurisdictions do in this regard.

CHAIR COGHILL said that as the discussion goes forward he would be looking at what the government can force the individual to answer as opposed to what the individual cannot get the government to answer.

MS. CARPENETI said that Sections 43 and 44 amend Rule 216(a) and (b) to allow the state to take an interlocutory appeal of the trial court's decision in that regard.

Section 16 requires a defendant who has participated in a treatment program as a condition of bail release and is planning to claim credit for that treatment to raise the issue 10 days before the sentencing proceeding.

Section 17 requires a defendant who is claiming credit for time spent in a treatment program as a condition of probation or a condition of bail release in connection with a petition to revoke probation to file notice of the request 10 days before the disposition hearing on the petition. The notice must include the number of requested days of credit and may not be made after the disposition hearing.

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Section 18 provides that a judge may not impose a suspended imposition of sentence for a person convicted of human trafficking.

Section 19 provides that if a defendant is being sentenced for two or more convictions of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors, the judge must impose some consecutive time for each crime or attempted or solicited crime for which the defendant is being sentenced.

SENATOR WIELECHOWSKI posed a hypothetical example of a person who is found to have 100 pictures of child pornography in their

possession. He asked if current law considers each picture a violation and if the bill would stack the charges.

MS. CARPENETI replied it's possible that each possession could be a separate charge. However, they're generally charged in groups and people are not charged with 100 counts of possession of child pornography.

CHAIR COGHILL asked if a person might be convicted on several different counts.

MS. CARPENETI answered yes.

CHAIR COGHILL asked if Section 19 requires that some sentence structure be given for each count.

MS. CARPENETI said yes; this just asks the judge to recognize that there have been several convictions and at least one day should be imposed consecutively for each conviction.

She noted that Sections 20 and 21 were previously discussed in connection to the *Collins* case.

Section 22 adds sex trafficking in the first degree and online enticement of a minor to the definition of sex felony in Title 12. This corrects the error made in 2006 when the legislature increased the ranges for sex felonies.

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Section 23 requires a patron of a child who has been prostituted to register as a sex offender.

Sections 24, 25, and 26 were discussed previously.

Section 27 makes a conforming amendment to the warning on domestic violence protective orders to reflect that the maximum fine for a misdemeanor was increased from \$5,000 to \$10,000.

Section 28 expands the privilege of confidential communications between counselors of domestic violence cases and sexual assault cases to include counselors that work on military bases.

SENATOR WIELECHOWSKI asked if the definition of "victim counseling centers" would be tightened.

MS. CARPENETI answered yes; it doesn't have a definition and it probably should.

Section 29 allows a victim of sex trafficking, human trafficking, or unlawful exploitation of a minor to apply for violent crimes compensation benefits.

Sections 30, 40, and 41 address the goal of making the system more responsive to the rights of victims. If the presentence report does not include a victim impact statement, it requires the court to ask why one wasn't provided. They also expand the places where a judge can consider the victim impact statement in sentencing a person. Section 30 would ask the Alaska Judicial Council to evaluate whether or not a judge has complied with the law in terms of victims' rights when the judge comes up for judicial retention election, and include that evaluation in the report on the judge's performance.

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SENATOR DYSON asked Ms. Carpeneti to review whether the language on page 2, lines 24-25 and page 3, lines 1-2 were redundant.

MS. CARPENETI agreed to look.

Section 31 provides that a person who has been convicted of an unclassified sexual felony or class A sexual felony does not qualify for mandatory or "good time" parole.

Sections 32, 33, 34, and 35 are the provisions that would allow another lawyer in the Department of Law, in addition to the attorney general, to evaluate applications from law enforcement for administrative subpoenas.

SENATOR WIELECHOWSKI highlighted his serious, continuing concern with that provision.

MS. CARPENETI said the rationale is that the attorney general is sometimes unavailable and the issues need to be addressed quickly. It would be very helpful to law enforcement if another lawyer was trained to evaluate these petitions.

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Section 36 adds to those circumstances that allow a court to decide that reasonable efforts by the Office of Children's Services to reunite a child who is in an out-of-home placement with his or her family are not required. It provides that the court may make this determination if it finds by clear and convincing evidence that the parent or guardian has committed sexual abuse against the child or another child of the parent or

guardian, or that the parent or guardian is registered or required to register as a sex offender.

Sections 37 and 38 add athletic coaches to those persons who are required by law to report to authorities if there is reasonable cause to believe that a child is being abused or neglected. It defines athletic coach to include both paid and volunteer coaches.

Section 39 adopts a court rule that limits the publication of child pornography that is required during the discovery process in a prosecution for unlawful exploitation of a minor. This requires all parties to view the material at the source. It also allows the court to adopt procedures to get the material to an out-of-state expert witness.

CHAIR COGHILL summarized that this ensures that the pornography isn't redistributed and it protects the right of counsel to get the information.

MS. CARPENETI said the defendants have an obvious right to look at the material, but copying the material should be limited because every time it's copied it revictimizes the person in the photograph.

Section 42 amends Rule 404(b)(2)(i), Alaska Rules of Evidence. Under Rule 404, evidence of a defendant's prior bad acts is generally not admissible in a criminal prosecution. There are several exceptions to this rule. Evidence in the prosecution of a physical or sexual assault or abuse of a minor that describes other similar acts by the defendant toward the same victim or other similar victims may be admissible. Current law, however, limits the admissible evidence to acts committed within 10 years preceding the date of the currently charged crime. Section 42 removes this time limitation. Other exceptions to the general rule, for example, sexual assault and domestic violence prosecutions, do not limit the use of prior acts to those committed within 10 years of the current offense. Further, the 10-year limit is problematic because a person convicted of a crime against a child may have been incarcerated for a significant period for the previous offense. The question of whether the prior act occurred too far in the past is left to the judge to determine under the circumstances of the case.

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SENATOR WIELECHOWSKI asked if there was a 10-year look-back for prior bad acts in any other offense.

MS. CARPENETI said prior bad acts generally cannot be used, but the legislature has adopted the aforementioned exceptions.

SENATOR WIELECHOWSKI asked which cases cannot use prior bad acts.

MS. CARPENETI cited cases of theft and drunk driving.

SENATOR WIELECHOWSKI asked if she thought that was a good policy.

MS. CARPENETI responded that another exception is to convince the court that there are other reasons to use prior bad acts. She continued that there was good reason for the general rule and, with some exceptions, a person should be convicted for what they've done this time, not what they've done in the past.

CHAIR COGHILL commented that the double jeopardy question rises.

MS. CARPENETI said one of the rationales for the rule is that the person has paid their debt to society. She continued that the remaining sections had already been discussed in connection with other sections.

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CHAIR COGHILL stated that during the next hearing he would take public testimony and address the questions that were raised today.

MS. CARPENETI thanked the committee.

CHAIR COGHILL remarked that accountability measures are part of changing the culture in Alaska.

SENATOR WIELECHOWSKI asked if DOL planned to bring a committee substitute (CS).

MS. CARPENETI said she would defer to the Chair.

CHAIR COGHILL said there would be no surprises.

[SB 22 was held in committee.]

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There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:58 p.m.