ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 11, 2013
1:34 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Fred Dyson
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Lesil McGuire, Vice Chair
Senator Donald Olson

COMMITTEE CALENDAR

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)
01/30/13	(S)	Heard & Held
01/30/13	(S)	MINUTE(JUD)
02/04/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/04/13	(S)	Heard & Held
02/04/13	(S)	MINUTE(JUD)
02/11/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Legal Services Section
Department of Law (DOL)
Juneau, AK
POSITION STATEMENT: Reviewed proposed changes to SB 22.

QUINLAN STEINER, Director
Public Defender Agency
Department of Administration (DOA)
POSITION STATEMENT: Outlined concerns related to SB 22.

ACTION NARRATIVE

1:34:40 PM
CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Dyson, Wielechowski, and Chair Coghill.

SB 22-CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

1:35:08 PM
CHAIR COGHILL announced the consideration of SB 22 and informed the committee that the Department of Law would review potential changes to the bill.

SENATOR DYSON asked if the committee would consider any of the issues raised by the ACLU of Alaska, because some had merit.

CHAIR COGHILL said that he had not spoken to Mr. Mittman personally, but would consider his written testimony.

1:38:56 PM
ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law (DOL), explained that the suggestions contained in the informal draft were made after talking to the public defender and listening to public testimony in the judiciary committees from both bodies.

She said the first change appears on page 5, line 29, and is in the context of making it a crime for a probation officer or parole officer to engage in sexual contact with a person on probation or parole. The informal draft adds this offense to the other sexual assault offenses for which there is a marriage defense.

CHAIR COGHILL informed the committee that Tom Stenson with the ACLU of Alaska and Kathy Monfreda with the Department of Corrections (DOC) were available for questions.

1:42:05 PM
SENATOR WIELECHOWSKI observed that this provision still criminalizes the sexual relationship between a probation or parole officer and a boyfriend or girlfriend who is on probation or parole.

MS. CARPENETI confirmed that the marriage defense does not apply to a relationship outside the confines of marriage. She noted that this is the same for police officers and correctional officers; the marriage defense does not extend to a relationship

between two parties. The justification in both situations is that there is potential for coercion.

SENATOR WIELECHOWSKI suggested amending the language to say someone under the authority of a probation or parole officer. He stated support for the intent, because the current language may inadvertently criminalize a relationship where there is no authority.

MS. CARPENETI said she was willing to continue the discussion with the public defender, but coercion was a problem. A probation or parole officer has power over a person on probation or parole even if the probationer/parolee isn't under the officer's supervision.

SENATOR WIELECHOWSKI asked how long probation or parole typically lasts.

MS. CARPENETI replied that it depends on the crime; it can last up to 25 years for a felony sex offence and up to 10 years for a non-sex felony offense. She offered to follow up with other numbers.

She directed attention to the next change proposed by the informal draft on page 6, lines 5-18. It clarifies when a defendant is ordered to have no contact with a victim or witness as part of a sentence or as a condition of probation or bail, that the order comes from the court. It further clarifies that the Parole Board issues no contact orders for parolees.

CHAIR COGHILL asked if without this provision the Parole Board has that authority.

MS. CARPENETI confirmed that the Parole Board has that authority. The substantive change is to clarify that when the court orders a defendant to have no contact with a victim or witness as a condition of bail, that order applies both when the defendant meets bail and when the defendant does not meet bail and returns to jail. She relayed that this issue arose when a judge in Fairbanks said that the order does not apply when a defendant doesn't meet bail and returns to jail. She noted that there were cases of an inmate calling a witness numerous times to exert influence.

She said the next change proposed by the informal draft occurs on page 6, lines 22-23. It relates to forfeiture of property in cases of prostitution. Current law says that the property of sex

traffickers and patrons of prostitutes - where the offense is a felony - shall be forfeited if it is used to further the crime. The bill proposes that the forfeiture apply to any patron of a prostitute, whereas the informal draft makes the forfeiture discretionary with the court and requires that the defendant be convicted before forfeiture may be ordered. She noted that forfeiture proceedings generally do not require a conviction because they are considered a civil action. She cited fish and game forfeiture proceedings as an example.

SENATOR DYSON asked if it was DOL's position that patrons of an adult prostitute would be subject to forfeiture proceedings, and relayed that he was uncomfortable with that.

MS. CARPENETI confirmed that the bill currently provides that. She added that part of the Governor's goal to reduce sexual assault and sexual abuse in the state includes making it as difficult as possible for the patron or "demand side" of prostitution.

SENATOR DYSON asked which property of the patron would be subject to forfeiture.

MS. CARPENETI replied it would be the property that is used to institute, aid, or facilitate prostitution.

SENATOR DYSON said, "Not his home, but his car."

MS. CARPENETI clarified that it would depend on the circumstance.

1:50:52 PM
CHAIR COGHILL stated agreement with the concept and support for the requirement that the defendant be convicted before the forfeiture could be ordered. He asked for confirmation that the forfeiture would be discretionary and that under current law it was mandatory.

MS. CARPENETI confirmed that the informal draft changes the term "shall" to "may" so the forfeiture would be discretionary. She highlighted that the Department of Law (DOL) has to ask for forfeiture, and that doesn't happen very often.

SENATOR DYSON asked when forfeiture of property would become a possibility.

MS. CARPENETI explained that the informal draft would allow the court to consider a request to forfeit property for all levels of sex trafficking, for being the patron of a prostitute at the felony level..

SENATOR DYSON asked if forfeiture procedures would include misdemeanor offenses.

1:52:33 PM
MS. CARPENETI confirmed that forfeiture would apply to the misdemeanor offense of being a patron of a prostitute.

She directed attention to the next change proposed by the informal draft on page 7, lines 28-31 through page 8, lines 1-15. It relates to participation in a global positioning system (GPS) monitoring program as a condition of bail.

The original bill allows the court discretion, in releasing on bail a person in connection with a crime involving domestic violence, to require the defendant to participate in electronic monitoring by a global positioning system (GPS) device. The informal draft removes it from the civil arena of protective orders and adds it as a possibility for a court to order GPS monitoring as a condition of bail for a stalking crime or a crime involving domestic violence.

SENATOR DYSON asked if that includes the misdemeanor classification.

MS. CARPENETI confirmed that some crimes involving domestic violence are misdemeanors. For example, stalking in the first degree is a class A misdemeanor and assault in the fourth degree, which can be a domestic violence crime, is a class A misdemeanor.

CHAIR COGHILL summarized that the informal draft places GPS monitoring in the criminal code.

MS. CARPENETI agreed and added that the court arguably already has this authority because it has the general power in the bail statutes to order conditions on a defendant that are necessary or reasonable to protect the victim, the victim's family, and the community. She highlighted that the GPS monitoring program has to meet guidelines adopted by the Department of Corrections in consultation with the Department of Public Safety.

She said the next change proposed by the informal draft occurs on page 9, lines 17-18. It relates to expanding the rape shield law. The bill provides in cases of sex assault, sex abuse, or unlawful exploitation of a minor that before a defendant could introduce evidence about the sexual conduct of the victim, it must first be raised in camera in the court. This gives the court the opportunity to weigh the relevance of the evidence against the prejudice and invasion of privacy of the complaining witness. The defendant must also raise the issue five days before trial.

The informal draft gives the defendant the opportunity to request that the evidence about the complaining witness's sexual conduct be admissible after the deadline of five days before trial if the evidence is discovered after the deadline.

SENATOR DYSON asked if this applies to both minors and adults.

1:56:52 PM
MS. CARPENETI answered yes.

SENATOR WIELECHOWSKI asked if this satisfies the public defender's concerns.

MS. CARPENETI responded that Mr. Steiner said it's a good compromise but he would suggest using the term "information learned" as opposed to "evidence discovered," because the latter has term of art concerns. She said she had no objection to changing the term.

1:58:10 PM
SENATOR WIELECHOWSKI said he wanted to think about Section 15 a little more because the language likely had constitutional issues.

MS. CARPENETI suggested that the best practice would be to raise the evidence to the court and reserve the decision about whether to introduce it or not.

1:59:38 PM
SENATOR WIELECHOWSKI said he didn't dispute that it's the best practice, but it probably wouldn't meet a constitutional challenge.

2:00:05 PM
MS. CARPENETI directed attention to the next changes proposed by the informal draft on page 10, lines 18-31 and page 11, lines 1-

13. These relate to claiming credit for time spent in a treatment program under certain circumstances. The informal draft allows the defendant to request the credit up to 90 days after the hearing. The new subsection (l) on page 10 was a suggestion of the public defender. For those cases that are on appeal, it requires a person to request credit, if it hasn't already been given, within 90 days of the case being returned to the trial court.

2:01:55 PM
SENATOR DYSON asked if it was reasonable to assume that the credit would not apply if a person goes through a treatment program and has a subsequent violation.

MS. CARPENETI explained that if a person participates and follows the rules of a treatment program that is similar to the constrictions of serving time in jail, that person has a right to credit whether they finish the program or not.

SENATOR DYSON opined that the court should not give credit if it has demonstrable evidence that the treatment did not work.

2:03:11 PM
MS. CARPENETI responded that current law provides credit if the person participated and followed the rules of the treatment program, regardless of subsequent conduct.

SENATOR DYSON asked if in her professional judgment, she thought that was wise.

MS. CARPENETI offered her belief that it is worth the effort to go through a treatment programs even though it may not be successful the first time.

2:04:02 PM
CHAIR COGHILL recapped that the new subsection gives a new procedure a tighter timeline than under current law.

MS. CARPENETI agreed.

SENATOR WIELECHOWSKI asked if there was new subsection.

MS. CARPENETI clarified that the informal draft adds a new subsection (l).

SENATOR WIELECHOWSKI asked if the informal draft adds procedures that a defendant must follow in order to get the credit.

MS. CARPENETI said she imagines there would be a letter saying that the defendant participated in the treatment program and followed the rules. That information should be raised at the next hearing so that it could be awarded in a timely manner and not forgotten or confused.

SENATOR WIELECHOWSKI asked about the underlying policy thought. He opined that it's a bureaucratic hurdle to make someone file with the court when the person isn't versed in the procedures.

MS. CARPENETI responded that making the decision early rather than later would save time and effort in the long term. In the *Walker* case, for example, the court was trying to figure out whether the defendant got credit for the time he spent in treatment back in the early part of the century. It would have been much easier if the issue had been resolved at the time of sentencing or disposition on the probation violation.

2:07:37 PM
SENATOR WIELECHOWSKI said it seems that someone who earned the credit potentially would have to spend more time in jail simply because he or she missed the 90-day deadline. He posed the hypothetical situation of someone who files on day 91.

MS. CARPENETI responded that she had enough faith in the justice system to think that the court would consider that circumstance.

SENATOR WIELECHOWSKI pointed out that this specifically says the court may not consider a request after the deadline.

2:08:42 PM
MS. CARPENETI offered to work with him on acceptable language to establish a meaningful deadline.

CHAIR COGHILL said he was thinking about whether there was a practical reason that somebody in jail or under probation could not meet this deadline.

2:09:53 PM
MS. CARPENETI said [Sec. 19] deals with the situation where the person has been in treatment as a condition of bail release in connection with a petition to revoke probation or as a condition of probation.

CHAIR COGHILL summarized that it's the same fundamental requirement under three circumstances.

MS. CARPENETI agreed; it's to make it clear that application for credit should be made as soon as possible.

2:11:04 PM
SENATOR WIELECHOWSKI suggested [on page 10, line 26, of the informal draft] inserting "except for good cause" following the phrase "a court may not" to accommodate a legitimate reason for not filing within 90 days.

MS. CARPENETI agreed to work on satisfactory language.

CHAIR COGHILL suggested inserting that language in all three subsections.

2:12:01 PM
MS. CARPENETI said the next changes proposed by the informal draft occur in Sections 22 and 23. These address the majority decision in *Collins v. State*, 287 P.3d 791 (Alaska APP. 2012) that addressed the standards a sentencing court considers in deciding whether a person qualifies for referral to a three-judge sentencing panel. The bill describes the defendant in two separate paragraphs as being "a youthful offender" and the informal draft removes that factor.

She explained that the *Yako Collins* decision looked at the legislative intent in 2006 when the legislature passed Senate Bill 218, which raised the sentencing ranges for people convicted of sex felonies. That legislature adopted a Letter of Intent that stated the purposes and rationale underlying the sentencing increases and recognized that people who commit sex felonies are more likely to reoffend and are more difficult to rehabilitate.

CHAIR COGHILL noted that both the *Collins* decision and Letter of Intent were in members packets.

MS. CARPENETI continued to explain that the majority decision in *Collins* found that because the sentencing ranges for sex felonies were being raised, the legislature in 2006 also must have intended to create new mitigating factors for referring sex felons to a three-judge panel. The Department of Law disagrees with the 2012 court of appeals' interpretation of that Letter of Intent and these sections are intended to reverse that decision.

SENATOR DYSON asked for an explanation of the role of the three-judge panel.

2:15:28 PM
MS. CARPENETI explained that in the early 1980s the legislature adopting a presumptive sentencing scheme that allowed the application of either aggravating or mitigating factors in order to avoid manifestly unjust sentences. The legislature also created a three-judge panel to which the sentencing court could refer a defendant. It has more discretion in sentencing a defendant if manifest injustice would result from imposition of the presumptive term.

2:17:06 PM
MS. CARPENETI relayed that in both *Blakely v. Washington* and *Apprendi v. New Jersey* the U.S. Supreme Court held that presumptive sentencing schemes - like Alaska had at the time, violated the constitution unless a jury decided by proof beyond a reasonable doubt that the aggravating factors were present in the case, with some exceptions.

CHAIR COGHILL commented that it relates to the "youthful offender" language in both sections.

MS. CARPENETI responded that both paragraphs that referred to that factor were removed because that aspect was not directly addressed in *Yako Collins v. State.* The main factors are "prospects for rehabilitation that are less than extraordinary" and "no history of unprosecuted, undocumented, or undetected sexual offenses."

Following the *Blakely* decision, the legislature in 2004 adopted sentencing ranges and in 2006 raised the ranges for sex felonies based on findings that sex felons reoffend four times more often than other felons and are difficult to treat.

CHAIR COGHILL noted that Quinlan Steiner was available for questions.

SENATOR DYSON asked if the judge or three-judge panel is able to consider as a mitigater the efforts the defendant has made to restore the victim.

MS. CARPENETI confirmed that that one consideration for referring a case to a three-judge panel is the defendant's conduct after the trial. She cited the McKinley case where the court concluded that the defendant's subsequent conduct was exemplary and it was something a three-judge panel could consider.

CHAIR COGHILL noted that under the *Collins* case, the standard for behavior was reduced from good to excellent.

MS. CARPENETI clarified that the *Collins* case decided that another factor that allowed a sentencing court to send a case to a three-judge panel was that the defendant had "extraordinary prospects" for rehabilitation. The court of appeals in *Collins* held that the legislative intent was to refer sex felons to a three-judge panel if they have less than extraordinary prospects for rehabilitation.

CHAIR COGHILL noted that the bill puts the standard at "extraordinary."

MS. CARPENETI confirmed that the intent of the bill was to return to pre-Collins.

She said the next change proposed by the informal draft tightens the definition of a military organization that is a victim counseling center. This occurs on page 14, line 12, and specifies that it is "an organization operated by or contracted by a branch of the United States military."

2:22:50 PM
SENATOR DYSON asked if a sex crime would be tried in state or military court if the offense occurred in Alaska and both the victim and defendant were members of the military.

MS. CARPENETI responded that if it occurred in Alaska a state court would prosecute the offense.

SENATOR DYSON asked how the state would get involved in a sexual assault case that occurred on a base and wasn't reported to state authorities. He mentioned a hypothetical situation of a sex assault report to a military officer that went no further.

MS. CARPENETI offered to follow up with more information, but her understanding was that if it weren't reported to state authorities, the state wouldn't know about it and therefore wouldn't investigate. She assumed that the police would investigate if the incident was reported.

SENATOR DYSON said the inference is that in the hypothetical situation there is no automatic process for a report to go to public safety.

MS. CARPENETI offered to follow up because she wasn't familiar with the process.

CHAIR COGHILL suggested it was a question for public safety.

2:24:54 PM
SENATOR WIELECHOWSKI returned attention to the section that was removed that would eliminate the possibility of a court requiring a respondent in a civil matter to participate in a GPS monitoring program. Notwithstanding the compelling testimony, he said he continued to believe that in some cases it could be very beneficial to have court-ordered GPS monitoring. He suggested that the better policy would be to give the court that discretion.

MS. CARPENETI said her conclusion was that it's best to start a GPS monitoring program in the criminal context because probable cause has established that a crime has been committed, the person has appeared in court, and the judge has evaluated the situation. She added that it doesn't mean that the question shouldn't be reconsidered in the future.

2:26:26 PM
MS. CARPENETI continued that the next change proposed by the informal draft occurs on page 15, line 24, and relates to evaluation of judges. The bill refers to the judicial council collecting information that includes data on a judge's compliance when imposing sentence on persons convicted of a felony offense. The informal draft removes the reference to data so the judicial council will collect information.

SENATOR WIELECHOWSKI expressed interest in hearing from the court about whether this solves their concerns.

MS. CARPENETI continued that the next change proposed by the informal draft occurs on page 17, lines 7-9. It defines the attorney general's designee in connection with issuing administrative subpoenas to an Internet service provider as the deputy attorneys general for either the criminal or the civil divisions. She noted this change addressed Senator Wielechowski's concerns.

She said the final change proposed by the informal draft relates to a Court Rule amendment found on page 20, lines 1-18, intends to limit the publication of child pornography that is attendant on the criminal discovery process. It clarifies that this rule

applies to material that is prohibited by Alaska law or defined as child pornography under federal law.

CHAIR COGHILL noted that the members of the Children's Justice Task Force expressed concern on this topic and the potential for revictimization.

MS. CARPENETI said she believes that every time this material is copied or viewed, it revictimizes the child.

CHAIR COGHILL asked Mr. Steiner to comment and offer suggestions on the informal draft.

2:30:16 PM
QUINLAN STEINER, Director, Public Defender Agency, Department of Administration (DOA), said the change regarding *Collins* that eliminates the consideration of someone's status as a youthful offender is an improvement, because that question is traditionally before the court in making a decision about referral to a three-judge panel. However, there is still some ambiguity and the language could possibly be interpreted to eliminate from consideration the fact that somebody has no prior criminal history. He noted that he discussed clarifying language with the Department of Law for this section to go no further than to reverse *Collins*.

He said the changes to Section 8 appear to address the concerns regarding unlawful contact. It clarifies that the order should come from the court.

He expressed continuing concern with Section 15 about making application five days before trial to admit evidence about the sexual conduct of the victim prior to or subsequent to the charged offense. That concern is mitigated by the changes in the bill, although the language on page 9, line 18, refers to "evidence discovered" and those are terms of art that could be misinterpreted. He opined that the intent of the language is to be much broader regarding any information learned. A remaining concern is about strategic decisions that occur after trial for things that happened during trial.

CHAIR COGHILL asked about the strategy.

MR. STEINER responded that it's good practice to make decisions on evidence ahead of time, but there may be reasons to change course or strategy mid trial. He said there would be a due

process concern if new evidence was discovered and the defense could not change strategy.

CHAIR COGHILL asked about the significance of the time limit and the preliminary hearing.

MR. STEINER responded that the time limit of not later than five days still applies. The change that helped was removal of the phrase "evidence admitted at trial," because it was too narrow. He suggested amending the language further to say "information learned by the defense," because "evidence discovered" could be viewed as a term of art. It would have to be actual evidence that was discovered through the discovery process rather than something the defense learned from another source.

2:37:45 PM
SENATOR DYSON asked if it was a concern that either side might withhold evidence for tactical reasons.

MR. STEINER responded that with few exceptions, the defense generally has no obligation to disclose its strategy or witnesses before trial. He continued to say that the notice wasn't as much a concern as any bar to later seeking application to admit evidence. If the bar is absolute, that raises due process issues.

SENATOR DYSON asked if the judge makes the decision about the admissibility of new information.

MR. STEINER responded that the current draft says the judge determines whether to admit previously inadmissible evidence. The problem with the current language is that it does not explicitly permit application after the deadline in a sufficient number of situations.

CHAIR COGHILL asked if the time limit would outweigh the factors of undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness.

MR. STEINER said he wasn't sure how a judge would weigh that, but good cause language when something is barred helps to prevent due process violations and gives the judge latitude to weigh all concerns and make a decision.

2:41:28 PM
SENATOR WIELECHOWSKI asked if the provision as currently drafted would lead to more applications by defendants, more in camera

proceedings, and more time spent by the court evaluating the situation.

MR. STEINER said he shared that concern. He then expressed continuing concern with Sections 3 and 7 of the informal draft that relate to a probation or parole officer having sexual contact with somebody who is on probation or parole. The problem is that the marriage defense would not absolve someone of criminal liability if that person were in a long-term relationship. Individuals would have a constitutional claim against the statute in that circumstance and for individuals who are barred from marrying because of the constitutional definition of marriage as between a man and a woman.

CHAIR COGHILL asked if there was a marriage defense.

MR. STEINER clarified that he was not referring to evidentiary privileges, but to the fact that there is no exception under the statue for a probation officer who is in a long-term, committed relationship. He added that this could include something like unsupervised misdemeanor probation for a DUI.

CHAIR COGHILL summarized that the intent was to keep somebody who has authority from exerting undue pressure over another person, and asked about looking for a different standard.

2:46:17 PM
MR. STEINER said it would be easy to draft the provision to criminalize the conduct of a probation officer who was either supervising or using their position of authority to induce sexual contact. Narrowly tailoring the statute to address specific conduct would eliminate the need for exceptions.

MR. STEINER informed the committee that his remaining comments would apply to the original bill, version A. He directed attention to Section 31 that eliminates good time credit (mandatory parole) for individuals convicted of sexual offenses that are class A and unclassified felonies. He said the one concern is that it would potentially eliminate the incentive for a person to participate in these treatment programs while incarcerated.

MR. STEINER returned attention to Section 18 of the DOL informal draft that relates to claiming good time credit for time spent in a treatment program as a condition of bail. He said his continuing concern is that resolving the question ahead of time and giving correct notice about the number of days somebody is

seeking credit could create unnecessary work that delays sentencings and dispositions. He opined that inserting the 90-day resolution [after the sentencing hearing] is an improvement but there were potential constitutional concerns if the court were to bar someone from seeking credit after 90 days. He acknowledged that the courts had not established the constitutional basis for Nygren but that conceivable would happen.

CHAIR COGHILL asked if he heard Senator Wielechowski's suggestion to insert on page 10, line 26, following "request" the phrase "except for good cause" so that would be part of the consideration.

MR. STEINER agreed that would largely satisfy his concern.

SENATOR WIELECHOWSKI pointed out that it only addresses the 90-day concern, not the 10-day concern.

2:52:36 PM
CHAIR COGHILL asked if it was a workable timeframe to keep the 90-day requirement and remove the 10-day notification.

MR. STEINER said 90 days would be a workable timeframe provided there was a good cause section.

CHAIR COGHILL asked if the 10-day notification would then be unnecessary.

MR. STEINER said that's correct.

2:53:22 PM
MR. STEINER directed attention to the original bill, version A, Section 39. The language permits the court to mail evidence to an out-of-state expert, but not to an in-state expert. He suggested treating both the same in order to minimize the costs of having cases handled by an in-state expert. The second concern relates to the language on page 21, lines 22-23. It doesn't specify that the material could be made available somewhere in the Department of Corrections (DOC) and therefore may require moving a criminal defendant to the facility where the evidence is stored. He suggested deleting the language about a law enforcement or prosecution facility and leaving the management of the viewing to the discretion of the court and prosecution.

SENATOR WIELECHOWSKI asked if it was his experience that some Alaska villages do not have law enforcement or prosecution facilities.

MR. STEINER surmised that the evidence would not be held in a small village. The concern is not being able to move the evidence to the jail for viewing, and that it might be difficult to move the defendant to the evidence.

SENATOR WIELECHOWSKI suggested the better practice would be to make the evidence available where the defendant is located.

CHAIR COGHILL asked if his concern related to specifying locations.

MR. STEINER said yes, because the court could potentially interpret the list as exclusive.

CHAIR COGHILL asked Mr. Steiner if he had any last thoughts.

2:59:20 PM
MR. STEINER noted that he expected to continue working with the Department of Law on language that would resolve his concerns.

CHAIR COGHILL announced he would hold SB 22 in committee.

3:00:23 PM
There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:00 p.m.