ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 22, 2013
1:34 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Lesil McGuire, Vice Chair
Senator Fred Dyson
Senator Donald Olson

MEMBERS ABSENT

Senator Bill Wielechowski

COMMITTEE CALENDAR

SENATE BILL NO. 43
"An Act relating to theft offenses; and providing for an effective date."

- HEARD & HELD

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 43
SHORT TITLE: PROPERTY CRIMES
SPONSOR(s): SENATOR(s) COGHILL

02/04/13	(S)	READ THE FIRST TIME - REFERRALS
02/04/13	(S)	JUD
02/22/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

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)
02/11/13	(S)	Heard & Held
02/11/13	(S)	MINUTE(JUD)
02/15/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

02/15/13	(S)	Heard & Held
02/15/13	(S)	MINUTE(JUD)
02/18/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/18/13	(S)	Heard & Held
02/18/13	(S)	MINUTE(JUD)
02/22/13	(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)
POSITION STATEMENT: Delivered a sectional analysis of SB 22, Version U.

LAUREE MORTON, Executive Director
Council on Domestic Violence and Sexual Assault
Department of Public Safety (DPS)
Juneau, AK
POSITION STATEMENT: Testified on SB 22 to support overturning the *Collins* decision and to prohibit sexual contact with supervisees by probation and parole officers.

TOM STENSON, Prison Rights Attorney
ACLU of Alaska
Anchorage, AK
POSITION STATEMENT: Articulated concerns the ACLU of Alaska had with certain provisions of SB 22.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, AK
POSITION STATEMENT: Testified on SB 22 that the language in Section 29, Version U, was an improvement but not entirely without problem.

ACTION NARRATIVE

1:34:09 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, Olson, and Chair Coghill.

SB 43-PROPERTY CRIMES

1:34:58 PM
CHAIR COGHILL announced the consideration of SB 43 and asked for a motion to adopt the work draft committee substitute (CS).

1:35:30 PM
SENATOR DYSON moved to adopt CS for SB 43, labeled 28-LS0401\U, as the working document. There being no objection, Version U was before the committee.

CHAIR COGHILL, speaking as the sponsor of SB 43, explained that the reason for the sponsor substitute is that the original bill inadvertently omitted the term "property" in the title.

He introduced the bill speaking to the following sponsor statement:

> Senate Bill 43 ("SB") is about smart justice. Justice should not be diminished by inflation.
>
> The current values found in AS 11.46 (Chapter 46. Offenses Against Property) were adopted in 1978. To put that in perspective: In 1978, milk was $1.71 a gallon, gasoline was $0.63 a gallon and a dozen eggs cost $0.82.
>
> What is the net effect of not adjusting the values in the aforementioned statutes?
>
> Right now, a 19-year-old adult charged with stealing a bicycle (valued at $500 or more) faces a class C felony. Upon conviction, this status as a felon has long-term damaging effects which may affect the person's livelihood, integration into society, and overall quality of life. The repercussions and cost to the person's family and society can be very high. This dynamic needs to change.
>
> SB 43 corrects that problem. SB 43 acknowledges that prices are not "as they were" in 1978 and that the values need to be adjusted for inflation. "Valuation updates" in statutes/code for theft and property crimes are common throughout the United States and must be done periodically as goods become more expensive. Alaska is no different.

Make no mistake: Guilty defendants will still face justice. The court, at sentencing, may still require restitution, jail time and fines. Courts, depending on the circumstances, can still aggressively sentence defendants to the furthest extent of the law.

SB 43 merely updates the values to 2013 standards to ensure all parties are given intelligent, appropriate justice.

CHAIR COGHILL warned the committee that testimony from storeowners in particular would probably be that this bill will make it more difficult to prosecute shoplifting or theft crimes. The bill proposes to increase the values in AS 11.46 from $50 to $250 and from $500 to $1,500. He noted that the packets contained information on felony theft thresholds in 11 other states and the year that the values were updated. He reminded the committee that a person who is charged with a theft or property crime would still face a class A or class B misdemeanor, which could result in a year in jail and a $10,000 fine.

SENATOR OLSON commented that the price of gas has gone up exponentially, but the price of a cell phone has dropped just as dramatically.

CHAIR COGHILL agreed that would be part of the balancing discussion of thievery. Comments he heard were that the price of electronics has gone down but stealing them has become easier.

1:38:36 PM
CHAIR COGHILL stated he would hold SB 43 in committee.

SB 22-CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

1:39:53 PM
CHAIR COGHILL announced the consideration of SB 22. [CS for SB 22, Version U, was before the committee.] He asked Ms. Carpeneti to continue the sectional analysis.

1:42:00 PM
ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law (DOL), continued the sectional analysis of the work draft CSSB 22, Version U.

Section 20 clarifies that a person convicted for sex trafficking is not eligible for suspended imposition of sentence (SIS). She confirmed that these are felony offenses.

CHAIR COGHILL asked if suspended imposition of sentence is conditional on the person doing certain things.

MS. CARPENETI said for that and for a young offender or a first time, less serious offender.

CHAIR COGHILL summarized that Section 20 prohibits suspended imposition of sentence for a person convicted of sex trafficking.

MS. CARPENETI agreed and added that it was unlikely that a court would give an SIS for a sex trafficking conviction, but this clarifies that it will not happen.

1:43:26 PM
SENATOR DYSON said that doesn't mean while a person is awaiting an appeal.

MS. CARPENETI responded that a person who has appealed his or her sentence has already been sentenced, although it may be stayed depending on the case and the judge's decision.

Section 21 adds a provision to the consecutive sentencing law that is similar to other provisions in that law. It requires that when a defendant is being sentenced for the crimes of distribution of child pornography, possession of child pornography, or distribution of indecent material to minors the court must impose some (as little as one day) consecutive incarceration to recognize each particular crime.

CHAIR COGHILL asked if this might create technical difficulties in the case.

MS. CARPENETI replied she didn't believe so. This language was similar to existing law and she was unaware of technical problems that had arisen with existing law.

Sections 22 and 23 address the *Collins v. State* decision that this bill intends to overturn.

CHAIR COGHILL asked if she had developed language that would clarify the double negative in these sections.

MS. CARPENETI said no, but she would continue to try.

CHAIR COGHILL pointed out that paragraph (1) is stated in the positive and paragraph (2) is stated in the negative.

MS. CARPENETI agreed and explained that it's because of the language in the decision itself.

1:46:54 PM
CHAIR COGHILL summarized his understanding that to have a case referred to a three-judge panel the first mitigator is an extraordinary chance of rehabilitation, and the other is that the defendant cannot have a history of unprosecuted, undocumented, or undetected sexual offenses. He questioned the use of no history and undetected in the same sentence.

MS. CARPENETI said that was part of the problem. She explained that when the legislature adopted the presumptive sentencing scheme it also adopted aggravators and mitigaters. One of the aggravating factors is that the person has a history of prior bad conduct that may or may not have been prosecuted. However, the lack of prior bad acts was never a mitigating factor; it just failed to be an aggravating factor. The problem with the *Collins* decision is that it allows a defendant to say he does not have any prior bad conduct, and the prosecution is then in the position of having to disprove that negative. The data the legislature had in 2006 when it increased the sentencing ranges for sex felonies was that most sex offenders do have prior offenses and they're generally not caught or reported until they've had a number of victims.

CHAIR COGHILL said this overcomes the presumption of the legislature.

MS. CARPENETI responded that it was DOL's position that the *Collins* decision did that.

1:50:07 PM
SENATOR DYSON worried about the reliability of the evidence when the crimes weren't reported and there was no prosecution.

MS. CARPENETI responded that the reason the legislature made the existence of prior bad acts an aggravator is that they didn't necessarily mean that the lack of evidence or reports should be a mitigator. What the court should consider in those circumstances is that it is a first-time offender.

1:50:32 PM
SENATOR MCGUIRE joined the committee.

SENATOR DYSON commented that part of the awkwardness is that there's no proof.

CHAIR COGHILL stated that he still was not satisfied.

MS. CARPENETI reiterated that she would continue to work on the language.

SENATOR DYSON cautioned that given the awkwardness of the language, this legislature has the responsibility to make its intent very clear.

1:52:52 PM
MS. CARPENETI said that she was told that legislative intent could not be put in the substantive law, but a court that looked at the discussion would probably understand that the administration's intent was to go no further than overturning *Collins.*

CHAIR COGHILL summarized his understanding of Sections 22 and 23.

1:53:52 PM
MS. CARPENETI said Section 24 is a conforming amendment that corrects an error in the definition of sexual felony in Title 12. When the legislature in 2006 enacted heightened penalty ranges for sex felonies, sex trafficking in the first degree and online enticement of a minor were not included. Those terms are used in AS 12.55.125(i) which adopts higher sentencing ranges for most sex felonies, including sex trafficking in the first degree and online enticement of a minor.

CHAIR COGHILL asked if there had been a problem.

MS. CARPENETI said not to her knowledge.

Section 25 is a conforming amendment that deals with people who have to register as a sex offender after conviction for first and second degree sex trafficking. She reminded the committee that in 2012 the legislature changed the age of the victim for first degree sex trafficking, which is an unclassified felony, from 16 or 17 years of age to under 20 years of age. A person who commits this unclassified felony should be required to

register as a sex offender like every other sex trafficker who is convicted of this offense, she said.

SENATOR DYSON questioned why somebody who is convicted of trafficking another person shouldn't always have to register as a sex offender.

MS. CARPENETI responded that under current law, anybody convicted of sex trafficking in the first and second degree does have to register as a sex offender. What this is addressing is that under current law, a person convicted of the unclassified felony of sex trafficking an 18 or 19 year old would not have to register as a sex offender.

Section 25 also adds to the sex offender registry those people who are convicted of felony level prostitution, which is being a patron of a child prostitute.

1:57:22 PM
Section 26 makes a conforming amendment to the warning on domestic violence protective orders to let a person served with an order know that certain violations of that protective order may be a crime. The maximum fine for a class A misdemeanor was raised several years ago from $5,000 to $10,000 and this updates the warning to reflect the maximum fine.

Section 27 adds to the definition of victim counseling centers to include victim counseling centers operated or contracted by a branch of the armed forces of the United States. This expands the evidentiary privilege for communications between a counselor and a victim of domestic violence and sexual assault to include services provided to victims connected with the military.

Section 28 adds the victims of sex trafficking in the first and second degrees, human trafficking, and unlawful exploitation of a minor to the persons who may be eligible to apply for violent crimes compensation.

SENATOR DYSON asked who was responsible for collecting the funds for court ordered restitution.

MS. CARPENETI replied that a victim can either undertake the collection him or herself or ask the Department of Law Collections and Support Section to assume that responsibility.

SENATOR DYSON said he wouldn't want to think that a victim who is under the age of majority would have to undertake collection on his or her own.

MS. CARPENETI offered to follow up to find out the exact procedure, but her recollection was that the victim is given the option of having DOL help with restitution.

2:01:27 PM
SENATOR DYSON reiterated his disapproval of placing the onus of restitution on young victims. He asked if it's a consideration at parole if a person did not pay the court ordered restitution.

MS. CARPENETI said she didn't know. She continued the sectional analysis.

Section 29 would require the Alaska Judicial Council to include information about a judge's compliance with sentencing requirements under AS 12.55.025(a)(5) to recognize a victim's rights and concerns.

CHAIR COGHILL said he liked the idea, but was concerned that the information could be averaged and thus give an ambiguous picture.

MS. CARPENETI said the purpose of this section and the court rule amendments in [Sections 39 and 40] are to strengthen the law that requires the judicial system to recognize the constitutional rights of victims when imposing sentences. [The court is required to include in the sentencing report information about the financial, emotional, and medical effects of the crime on the victim, and the victim's need for restitution.]

CHAIR COGHILL stated support for the idea of compliance to help victims, and reiterated his concern.

MS. CARPENETI said she would work with the court or judicial council to make it more clear or workable.

CHAIR COGHILL highlighted that many laws and health and social service resources are meant to help violators be held accountable and get an opportunity, whereas many victims don't have that opportunity. He reiterated concern that the compliance reports might not show the real picture.

2:05:46 PM

MS. CARPENETI affirmed that was not the intention. She continued the sectional analysis.

Section 30 provides that a person convicted of an unclassified or class A sex felony is not eligible for mandatory parole, also called good time. She provided examples. An unclassified sex felony is sexual assault in the first degree and sexual abuse in the first degree and sex trafficking in the first degree. Class A sex felonies include the second conviction of unlawful exploitation of a minor.

She informed the committee that current law provides that a prisoner is not eligible for a good time deduction if the prisoner has been sentenced to a mandatory 99-year term for murder; or to a definite term on a three-strikes crime under AS 12.55.125(l); or for a sex felony when the prisoner has one or more prior sex felony convictions. This proposal adds a first conviction of an unclassified or a class A sex felony to the list.

Sections 31-35 address the law regarding administrative subpoenas. These amendments allow the attorney general to designate either the head of the criminal division or the head of the civil division to act in his or her place in deciding if it is appropriate to issue an administrative subpoena.

SENATOR DYSON asked where it says the designee is restricted to only the two deputy attorneys general.

MS. CARPENETI directed attention to the definition of "designee" in Section 34 on page 17, lines 12-17.

Section 35 addresses reasonable efforts by the Department of Law (DOL) in reuniting a child in need of aid (CINA) with a parent. This gives the state discretion to ask for an excuse from using reasonable efforts to reunite a child in need of aid with a parent and it gives the court discretion to grant the request when the parent has sexually abused that child or another child of that parent or guardian, or the parent is registered or required to register as a sex offender or child kidnapper.

2:10:05 PM
Section 36 adds athletic coaches to the list of persons who are required to report to authorities if the coach has reasonable cause to believe that a child has suffered harm from child abuse or neglect.

Section 37 defines athletic coach to include both a paid and volunteer leader or assistant in a sports team.

SENATOR MCGUIRE stated absolute support for adding athletic coaches to the list of mandatory reporters, but questioned whether the definition left anything out. She cautioned that this will establish an expectation of safety for parents, so it is imperative that there are no loopholes. Parents will assume that their child's athletic coach will fall under this definition. She asked about nonprofits like the Boys and Girls Club.

MS. CARPENETI said she would give it thought, but there was also concern that the definition was already too broad.

SENATOR MCGUIRE stated support for making the definition as broad as possible, because it affects lives forever.

2:14:28 PM
SENATOR DYSON disagreed with including volunteers in the list of mandatory reporters because they don't have professional training and might not even know what to look for. Nevertheless, they would potentially be subject to legal penalties.

SENATOR MCGUIRE said she would be surprised if the state were to prosecute a volunteer under these circumstances. She opined that it was more about sending a message.

CHAIR COGHILL read AS 47.17.020(a) to confirm that there is a duty to report if there is reasonable cause to suspect abuse. He surmised that this would change the training of volunteer coaches.

SENATOR DYSON commented that there was both an upside and downside to many of these policy calls.

SENATOR MCGUIRE opined that intervening early when a child is being physically, emotionally, or sexually abused is critical to saving a child's sole and ultimately their life. She stated support for expanding mandatory reporting and reiterated that the definition should be as broad as possible because of the expectation of safety.

CHAIR COGHILL said the committee would deal with this section again.

2:19:44 PM

MS. CARPENETI continued the sectional analysis. Section 38 amends Rule 16(b), Alaska Rules of Criminal Procedure. It adopts a court rule that limits the publication of child pornography that is required during the discovery process in a criminal prosecution for unlawful exploitation of a minor. It requires the court to arrange to send this material to an expert witness out of state. She noted Mr. Steiner's suggestion to make the same accommodation for sending the material to an expert witness in the state.

Section 39 amends Rule 32.1(b)(1), Alaska Rules of Criminal Procedure. It requires the court to accept a presentence report only if it includes a victim impact statement or an explanation of why the victim or victim's representative could not be interviewed.

Section 40 amends Rule 32.2(a), Alaska Rules of Criminal Procedure. It requires the court to take the victim impact statement into account when preparing the sentencing report and for other purposes.

Section 41 amends Rule 404(b)(2)(i), Alaska Rules of Evidence. Prior bad acts generally are inadmissible in the prosecution of a case, but there are three particular exceptions. One is for domestic violence cases, one is for sexual assault, and another is for acts of physical or sexual assault or abuse of a minor. For some reason the latter exception has a 10 year look-back limitation that the others do not.

CHAIR COGHILL asked if this had been a problem.

MS. CARPENETI responded that it probably had been because district attorneys brought it forward.

Sections 42 and amend Rule 216(a) and (b), Alaska Rules of Appellate Procedure. It allows the state the right to an interlocutory appeal of a decision to the court of appeals.

CHAIR COGHILL highlighted that court rule changes require a two-thirds vote of the body to pass as opposed to a majority vote to pass the law itself.

MS. CARPENETI informed the committee that the court system has committees made up of judges, prosecutors and defense attorneys that examine proposed rule changes and make recommendations to the supreme court.

2:25:12 PM
CHAIR COGHILL opened public testimony.

LAUREE MORTON, Executive Director, Council on Domestic Violence and Sexual Assault, Department of Public Safety (DPS), Juneau, AK, said her testimony would focus on the three-judge panel in the context of the *Collins case and the legislative intent* in 2006 when the legislature extended the sentences for sex offenders.

MS. MORTON disagreed with previous testimony by the ACLU that sex offenders are the least likely class of offenders to reoffend. She said the ACLU relied on a report from the Alaska Judicial Council that looked at offenders released from custody over a three-year period to determine recidivism rates. That report found that 39 percent of sex offenders reoffend, which was the lowest rate among the types of offenders in that study. The problem is that sex offenders were compared to driving, property, and drug offenders. These crimes generally are committed in public and are easier to detect as opposed to sex offenses that are more likely to be committed in private and are less likely to be reported.

MS. MORTON cited some of the reports that the 24th Legislature relied on when it increased the sentencing ranges for sex felonies. The Alaska Department of Corrections in 2006 reported that national statistics showed that 78.5 percent of sex offenders had at least one prior arrest and averaged 4.5 prior arrests. In Alaska, of the 927 sex offenders in custody in 2006, 93 percent had at least one prior arrest and the average number of arrests per sex offender was 11.75.

2:29:09 PM
SENATOR DYSON asked if the prior arrest was for the same category of crime.

MS. MORTON said yes. She continued that the 24th Legislature also reviewed a study conducted in 2000 that reported that sex offenders average 110 victims and 318 offenses before they enter the system for the first time. Ms. Morton said that when she looked to see if those statistics had changed, she found a study that the National Council of Missing and Exploited Children conducted in 2012, which reported that on average a predator victimizes 117 children before that person enters the system. She said she also found a study from 2004 called "Lifetime Sex Offender Recidivism: A 25-year Follow-Up Study" that found that 3 of 5 sex offenders reoffended.

MS. MORTON asked the committee to weigh heavily, as it looks at whether to overturn Collins as proposed in SB 22, that the legislature in 2006 did a thorough job of looking and found that many [sex] offenses are committed before the offender enters the system.

CHAIR COGHILL asked if she understood that if this legislature overturns *Collins,* it is saying that a factor for referring a defendant to a three-judge panel is that the person has to have an extraordinary chance of rehabilitation. The *Collins* decision changed that to ordinary chance of rehabilitation.

MS. MORTON affirmed that she was speaking in support of overturning *Collins*. She disagreed with the notion that sex offenders don't reoffend or have the lowest recidivism rates.

2:32:04 PM
MS. MORTON stated support for amending the crime of sexual assault in the third degree to prohibit probation and parole officers from engaging in sexual conduct with a person on probation or parole, similar to the prohibition for corrections officers that passed several years ago. She said the concerns that were raised during a previous hearing piqued her interest in ethics standards for probation and parole officers. She found three codes of conduct: [Federal Probation and Pretrial Officers; The American Probation and Parole Association; and Alaska Correctional, Probation and Parole Officer Code of Ethics [in the Alaska Administrative Code]. Each of these codes recognizes that probation and parole officers hold high public trust in ensuring that offenders follow conditions of release and know there are consequences if they reoffend. They also talk about the responsibility to be above reproach in their actions. The Alaska code of ethics for correctional officers even directs probation and parole officers not to have undue familiarity with probationers or parolees. She reiterated support for the provision whenever the officer knows the person is on probation or parole, regardless of whether there is direct supervision or not. It's the position of authority that makes the contact inappropriate.

MS. MORTON related that CDVSA held its quarterly meeting this week and as part of the education component they watched the documentary film "The Invisible War." It is about sexual assault in the U.S. military. It features interviews from men and women who speak about their experiences, the difficulty they have is getting someone to believe them and take their report seriously.

People in positions of authority either ignore the reports or punish the reporter.

She thanked the members for being cognizant of the issues and their efforts to ensure that victims are taken care of as well as possible.

SENATOR OLSON asked if she was concerned in Section 3 that the language on page 4, line 13, talks about a person 18 or 19 years of age as opposed to a specific age.

CHAIR COGHILL added that it was the proposed provision that deals with a juvenile probation officer.

MS. MORTON replied that she was not bothered.

2:40:10 PM

TOM STENSON, Prison Rights Attorney, ACLU of Alaska, Anchorage, AK, described the 2007 Alaska Judicial Council recidivism study and report. The people convicted of felonies were grouped into broad categories of violent offenders, sex offenders, property offenders, drug offenders, and other offenders. The council found that among those categories, sex offenders were the least likely to reoffend. He affirmed that sex offenders were compared to traffic offenders and property offenders, but pointed out that they were also compared to violent offenders. He reasoned that sex offenders were compared to these other categories because there wasn't anybody else to compare them to within the group of people who had committed felonies in Alaska. He commented on the studies that Ms. Morton cited and maintained that it was well documented that the recidivism rate among sex offenders is lower than other groups. That was the only point the ACLU was trying to make, he said.

MR. STENSON cited a 2011 Department of Justice study entitled "Final Report on Sex Offenders, Recidivism and Collateral Consequences." He read the following:

> Sex offenders, the seemingly worst of worst among criminal offenders today, are commonly albeit incorrectly, assumed to be highly recidivistic, as well as specialists, engaged in sex offending only. Despite the fact that our legal responses to sex offenders, primarily sex offender registration and notification (SORN), are based on assumptions that those who commit sex crimes have no control over their sexual impulses and will repeat their crimes again,

relatively little research has found support for such beliefs.

He highlighted that the study found comparable levels of reoffending among sex offenders in the New Jersey cohort as the judicial council found among the Alaska cohort. He opined that, taken as a whole, sex offenders are less likely to reoffend than other offenders. However, it is important to understand that recidivism rates are generally high among people who have committed serious felony crimes. He offered to provide more citations.

SENATOR COGHILL asked Mr. Stenson and Ms. Morton to supply the citations in writing.

2:44:28 PM
MR. STENSON addressed Sections 14 and 15 relating to examining a witness in camera when there is a question of self-incrimination. He reviewed the process the court follows and highlighted that the bill does not state who is within the sealing order. He observed that the bill seems to presuppose that the DOL is going to be able to read the witness's incriminating statement, which is not consonant with the way that any recognized privilege is preserved.

CHAIR COGHILL asked if he agreed that the intention is only to determine the credibility of the witness.

MR. STENSON said yes, but Section 17 also says that the judge must make written findings of facts and conclusions in a sealed written order. He argued that if the written order were subsequently disclosed, that would destroy the privilege. He opined that the only basis for claiming that this doesn't violate the constitution, is the claim that the information will never go beyond the judge's chambers. As currently written, the statute does not provide that protection; it suggests that the prosecution will be able to read the statement of fact from the court.

CHAIR COGHILL suggested that he submit any further written information for the committee to consider when it takes up amendments.

QUINLAN STEINER, Director, Public Defender Agency, Department of Administration (DOA) said he was available for questions now and would be available on Monday.

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, Anchorage, AK, said she wanted to comment on the record about two portions of SB 22, Version U. She directed attention to Section 29, which would have the Alaska Judicial Council evaluate judges who do felony sentencing on their compliance with the statute that requires consideration of victim information. She described the current language as an improvement and something that the court could work with. However, the information that the council would provide could be incomplete and a little unfair, because the majority of sentencings are done through Rule 11 plea agreements. If the victim appears at the hearing, the judge asks their thoughts about the plea agreement and if the victim elects not to appear the judge asks the prosecutor what the victim thinks about the plea agreement. The prosecutor relays that information if he or she was able to contact the victim, but sometimes the victim doesn't want to be involved. To have people assess how well the judge considered the victim is difficult to do in the situations that the victim declined to be involved.

When the victim does appear and makes their views known, it's often not possible for the judge to do what the victim wants. Sometimes that's because it's not allowed by law, and in other situations the judge would have difficulty overturning a plea agreement without knowing why the parties entered the agreement. Based on these circumstances, it could be misleading to assess whether a judge is complying with the victim information.

MS. MEADE reiterated that the current language was an improvement, but it would be preferable to consider whether the provision in Section 29 was needed at all.

2:53:58 PM
SENATOR DYSON asked if it would help to insert the phrase "except if there was a plea bargain."

MS. MEADE agreed to think about it and provide a follow up response, but it did sound like an improvement.

She said the second area she wanted to address was the judge's determination whether a witness has a privilege against self-incrimination and the subsequent right of appeal. She said the Court System has no position on the constitutionality of Section 16 but does have procedural concerns with Section 17 regarding the interlocutory right of appeal by the attorney general. She highlighted that it was unusual to have an appeal in the middle of a trial and the consequence was that it would cause a delay.

She said there was also the accompanying rule change to the criminal rules saying that these would be expedited.

MS. MEADE referenced previous testimony and stated that the court has definite definitions of "sealed." A sealed document can only be seen by a judge and people with a court order to see it. However, the provision is unclear about how the court would handle it and how somebody would appeal or write a brief on something they hadn't seen.

2:56:58 PM
CHAIR COGHILL said the conversation would continue on Monday.

[SB 22 was held in committee.]
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2:59:05 PM
There being no further business to come before the committee, Chair Coghill adjourned the meeting at 2:59 p.m.