

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 1, 2013

1:33 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. 43

"An Act relating to theft offenses; and providing for an effective date."

- MOVED CSSB 43(JUD) OUT OF COMMITTEE

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)
02/22/13	(S)	Heard & Held
02/22/13	(S)	MINUTE(JUD)
02/25/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/25/13	(S)	Heard & Held
02/25/13	(S)	MINUTE(JUD)
03/01/13	(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)
02/22/13	(S)	Heard & Held
02/22/13	(S)	MINUTE(JUD)
02/25/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/25/13	(S)	Heard & Held
02/25/13	(S)	MINUTE(JUD)
03/01/13	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

CHUCK KOPP, Staff
 Senator Fred Dyson
 Alaska State Legislature
 Juneau, AK

POSITION STATEMENT: Explained that Amendments 1 and 5 to SB 22.

LEE KADINGER, representing himself
 Juneau, AK

POSITION STATEMENT: Testified in support of the intent of SB 22, but expressed concern the mandatory reporting provision.

SCOOTER WELCH, Executive Director
 Resource Center for Parents and Children (RCPC)
 Fairbanks, AK

POSITION STATEMENT: Testified in support of the mandatory reporting provision in SB 22.

DIANE PAYNE, Director
 Justice for Native Children Project
 Eagle River, AK

POSITION STATEMENT: Testified in support of the mandatory reporting provision in SB 22.

JESSICA LAWMASER, Executive Director
 Haven House and Chair
 Alaska Children Alliance

Homer, AK

POSITION STATEMENT: Testified in support of the mandatory reporting provision in SB 22.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Legal Services Section
Department of Law (DOL)

POSITION STATEMENT: Answered questions and provided information related to SB 22.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, AK

POSITION STATEMENT: Explained proposed Amendment 13 to SB 22.

ACTION NARRATIVE

[1:33:49 PM](#)

CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Wielechowski, Dyson, and Chair Coghill.

SB 43-PROPERTY CRIMES

[1:34:01 PM](#)

CHAIR COGHILL announced the consideration of SB 43. [Work draft CSSB 43, version U, was before the committee.] He asked for a motion to adopt Amendment 1.

SENATOR DYSON moved to adopt Amendment 1, labeled 28-LS0401\U.1.

AMENDMENT 1

OFFERED IN THE SENATE

TO: CSSB 43(), Draft Version "U"

Page 1, line 6:

Delete "\$1,500"

Insert "\$1,000"

Page 1, line 14:

Delete "\$1,500"

Insert "\$1,000"

Page 2, line 15:
Delete "\$1,500"
Insert "\$1,000"

Page 2, line 29:
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Page 2, line 31:
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Page 3, line 11:
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Page 3, line 22:
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Page 3, line 25:
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Page 3, line 31:
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Page 4, line 3:
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Page 4, line 9:
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Page 4, line 12:
Delete "\$1,500"
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Page 4, line 20:
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Page 4, line 22:
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Page 4, line 31:

Delete "\$1,500"

Insert "\$1,000"

Page 5, line 2:

Delete "\$1,500"

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Page 5, line 22:

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Page 6, line 7:

Delete "\$1,500"

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Page 7, line 2:

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Page 7, line 4:

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Page 7, line 9:

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Page 7, line 12:

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Insert "\$1,000"

Page 7, line 15:

Delete "\$1,500"

Insert "\$1,000"

Page 7, line 18:

Delete "\$1,500"

Insert "\$1,000"

[1:34:59 PM](#)

CHAIR COGHILL objected for discussion purposes.

SENATOR DYSON explained that the amendment was his response to testimony from retailers about misdemeanor versus felony theft limits. The amendment reduces the limits to \$1,000, which is in line with other states.

[1:36:01 PM](#)

CHUCK KOPP, Staff, Senator Fred Dyson, explained that Amendment 1 deletes the proposed upper limit of \$1,500 and replaces it with a new upper threshold of \$1,000.

[1:36:47 PM](#)

CHAIR COGHILL removed his objection. Finding no further objection, he announced that Amendment 1 passed.

[1:37:03 PM](#)

SENATOR DYSON moved to report CS for SB 43, as amended, from committee with individual recommendations and attached fiscal note(s).

[1:37:22 PM](#)

CHAIR COGHILL announced that without objection, CSSB 43(JUD) moved from the Senate Judiciary Standing Committee.

SB 22-CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

[1:37:31 PM](#)

CHAIR COGHILL announced the consideration of SB 22. [Work draft CSSB 22, version U, was before the committee.]

[1:38:49 PM](#)

SENATOR DYSON noted that Amendment 4 was before the committee and he had an amendment to propose to that amendment.

CHAIR COGHILL suggested he withdraw the amendment and move the amendment with the desired changes.

[1:39:16 PM](#)

SENATOR DYSON withdrew Amendment 4, labeled 28-GS1587\U.4.

[1:39:48 PM](#)

SENATOR DYSON moved to adopt Amendment 5, labeled 28-GS1587\U.16.

AMENDMENT 5

OFFERED IN THE SENATE BY SENATOR DYSON
TO: CSSB 22(JUD), Draft Version "U"

Page 19, line 12:
Delete "[OR]"
Insert "or"

Page 19, lines 13 - 14:
Delete "or, with respect to (a) of this subsection, in performance of their occupational or volunteer duties"

Page 20, line 1:
Delete "or volunteer"

CHAIR COGHILL objected for discussion purposes.

[1:40:38 PM](#)

CHUCK KOPP, Staff, Senator Dyson, explained that Amendment 5 removes the requirement that volunteer athletic coaches are included as mandatory reporters. This leaves persons who are paid or are performing occupational duties as mandatory reporters.

CHAIR COGHILL summarized that paid professionals would be mandated reporters, but volunteers would not.

[1:45:34 PM](#)

LEE KADINGER, representing himself, Juneau, AK, said he has been a volunteer wrestling coach for the last 11 years and while he supports the intent of SB 22, he is concerned about some of the language. He relayed that he is acutely aware of the growing issue of sex trafficking and believes that strengthening state laws to mirror federal laws, combined with education, will help address the issue. He discussed that he and his wife are foster parents, and have seen the devastating effect that sexual and physical abuse has on children.

MR. KADINGER said he has some training in youth protection, but still finds it difficult to detect emotional or sexual abuse, especially when he spends an hour or two [volunteering] during wrestling practice. For this reason, he is very concerned about the proposal to require both paid and volunteer athletic coaches to be mandatory reporters. This imposes legal liability on moms and dads, aunts and uncles, and brothers and sisters who many times volunteer on short notice. These people may have no formal training in this area and may not know what to look for, yet they could be both criminally and civilly liable. This is an onerous responsibility when many youth behaviors can easily be

misinterpreted. Accusations of abuse are a very serious matter and could cost a person their job - all because an inexperienced volunteer or coach reported something as suspicious, he said.

MR. KADINGER said SB 22 begins to address some of serious issues facing the state, but he hopes the committee finds other means that can have a more direct impact on the issue of preventing child abuse.

[1:54:07 PM](#)

SCOOTER WELCH, Executive Director, Resource Center for Parents and Children (RCPC), Fairbanks, AK, testified in support of SB 22. He noted that RCPC operates the child advocacy center called "Stevie's Place." He said it is the responsibility of all adults to do what is reasonable when there is suspected abuse, whether it is sexual, physical, or otherwise. He said he has been in the law enforcement and justice system since 1971, and is well aware that sex offenders will find a place to abuse if steps aren't taken to prevent it. In fact, many organizations have found how critical it is to have two-deep leadership and to report incidents that occur. He said he doesn't know the requirements for organized sports and volunteers, but RCPC does background checks on all employees and volunteers and conducts training in the work that RCPC does as a nonprofit. He said he has been involved in coaching for many years and he firmly believes that if people are required to be mandatory reporters for these organized activities, then resources should be allocated for training.

[1:56:12 PM](#)

CHAIR COGHILL thanked Mr. Welch for his work.

[1:56:52 PM](#)

DIANE PAYNE, Director, Justice for Native Children Project, testified in support of SB 22. She said her office is based in Eagle River, but she works nationwide on issues that relate to child safety and helping the system to be more responsive to children who have been victimized. She asked the committee to keep in mind that certain adult positions engender trust among children, and that children are more likely to trust adults that they see frequently. Children are more likely to tell these people if abuse is occurring, she said.

MS. PAYNE said she appreciates the anxiety that volunteers have when they haven't been trained to recognize signs of abuse. She relayed that she spends a lot of time training mandatory reporters in the state of Alaska and believes it is important to

stay focused on the fact that adults who work with children should be free, comfortable, and required whenever possible to report reasonable suspicions of abuse. Coaches and people who engage with children in play and adventurous activities are role models, and children trust them to do something if they suspect wrongdoing. She encouraged the committee to think about the people children have a right to trust and the environments where there are vulnerable children.

CHAIR COGHILL asked what a reasonable training time would be for someone to feel comfortable about recognizing signs of potential abuse for reporting purposes.

[2:01:17 PM](#)

MS. PAYNE related that she has done training using the mandatory reporter CD that is available online at the Office of Children's Services (OCS) website, and it takes about 1.5 hours. The CD and supplemental handouts will help the layperson recognize behaviors like acting out, shutting down, withdrawing, or acting differently. The training material also gives guidance to the adult about how to express concern and listen to the child. She opined that these things are a minimum that anyone who has children or who has kids spend the night at their house should know.

CHAIR COGHILL asked about the potential for civil and criminal liability if a report turns out to be wrong.

MS. PAYNE explained that current law provides that if a child has been harmed, there is a consequence for a person who has information and fails to report. She tells people who are current mandatory reporters that the investigators have the skills to screen the reports and know which ones warrant a visit to the parent or child. That's their job.

[2:04:53 PM](#)

JESSICA LAWMASTER, Executive Director, Haven House and Chair, Alaska Children Alliance, highlighted the important nature of the relationship between a coach and athlete. She reported that in over 90 percent of child sexual abuse cases the perpetrator is somebody the child knows and trusts. As a child forensic interviewer, she knows that children do seek out safe adults, including coaches. She highlighted that child advocacy centers statewide have acknowledged the gap that coaches are not mandated reporters. She pointed out that the bill only asks coaches to report reasonable suspicions of abuse, and her experience is that not every report rises to the level of an

investigation. There is no harm in making a report that investigators screen out; it is better to be safe than sorry. She urged the committee to make coaches mandatory reporters.

[2:07:47 PM](#)

CHAIR COGHILL mentioned the concern that some people would be less willing to serve or too willing to report out of fear that they'll be held accountable. He asked if that's a problem for current mandatory reporters.

MS LAWMASTER said her organization has a policy that volunteers are required to report reasonable suspicions and she hasn't had the experience that volunteers are less willing to serve. Conversations with various representatives of law enforcement, other child advocacy centers, and OCS indicate that mandatory reporting isn't a deterrent. She would have concerns if they were deterred.

[2:09:58 PM](#)

CHAIR COGHILL asked if the Department of Law had a position on the issue.

[2:10:09 PM](#)

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law (DOL), Juneau, AK, clarified that a person does not have to report unless there is reasonable suspicion that a child suffered harm. This is more than seeing a bruise on a child's leg during soccer practice, because the law doesn't hold people to that tough a standard, she said. For criminal liability, it is a knowing standard, which is that the person knows or should have known. She suggested the committee think about whether coaches should have to abide by the knowing standard. She also pointed out that AS 47.17.050 provides immunity for a person who makes a good-faith report, but is mistaken.

MS. CARPENETI explained that volunteer coaches were included as mandatory reporters as part of the governors effort to reduce child abuse and neglect, sexual abuse, and sexual assault. The Coaching Boys into Men program recognizes that volunteer coaches spend a great deal of time working with children and that they develop special relationships. For this reason, the administration believes these people should be mandatory reporters. The law provides protections in terms of when a person has to report and the culpable mental state. She noted that a computer search for cases prosecuted under AS 47.17.068

found only one referral and Department of Law declined to prosecute that case.

CHAIR COGHILL said the likely result of this change is that training would become mandatory for volunteers.

MS. CARPENETI agreed with earlier testimony that training is already available. She recalled that when she volunteered for peewee basketball, Parks and Recreation in Juneau provided a forum for volunteers. She suggested that this training could be added to that type of forum or people could be directed to a website to inform themselves.

SENATOR WIELECHOWSKI asked if people who volunteer for a school district would have to be trained and report under AS 47.17.022 (a).

(a) A person employed by the state or by a school district who is required under this chapter to report abuse or neglect of children shall receive training on the recognition and reporting of child abuse and neglect

[2:14:33 PM](#)

MS. CARPENETI relayed that someone from the school athletic association informed her that coaches with direct supervisory authority over kids receive training. This includes volunteers.

SENATOR DYSON said his office did some research on the history of volunteer reporting and found that in 1985, a governor's bill sought to broaden the teacher and administrator category of mandatory reporters to include "employees and volunteers of private and public schools," but the legislature removed that provision. That governor also sought to broaden the category of licensed daycare providers to include all childcare providers. That change succeeded and became law. The definition of childcare provider clarifies that it means an adult employee of an organization who provides care and supervision for compensation. Only three states specifically require volunteer coaches to report. At that time, mandatory reporters were people who were paid, and almost everyone on the list, but childcare providers, was certified or licensed. He said their research also found only Louisiana, Virginia, and Washington specifically require coaches or organized volunteers to report.

SENATOR DYSON said he hopes everyone realizes that everyone can report, and that a report from a mandatory reporter is not given

more weight. AS 11.56.765(a), which is failure to report a violent crime committed against a child, says that any person who knows or reasonably should have known is required to report any one of a list of crimes against a child. He emphasized that that makes everyone in Alaska a mandatory reporter. He asked Ms. Carpeneti if she had any comments.

2:19:06 PM

MS. CARPENETI agreed that everybody should consider him or herself a mandatory reporter, but a person that has a mandatory duty might look more carefully. She noted that Title 11 and Title 47 have the same culpable mental state.

CHAIR COGHILL said his expectation is that paid coaches will require volunteers to get training, and according to Ms. Payne, it could be done in 1.5 hours.

2:21:03 PM

SENATOR WIELECHOWSKI said he, too, learned from the website child welfare.gov that four states have designated faculty, administrators, volunteers and others as mandatory reporters. However, he was surprised to learn that 18 states and Puerto Rico require any person who suspects child abuse or neglect to report. He said it seems to be a trend over the last 20 years to make everyone a mandatory reporter. He said he shares Senator Dyson's concerns, but he would vote no on the amendment.

SENATOR DYSON pointed out that Alaska is one of the 18 states that requires everyone to be a mandatory reporter.

SENATOR WIELECHOWSKI said he didn't read the section that way.

SENATOR DYSON pointed out that AS 11.56.765 says that a person is bound to report if the person sees the abuse or reasonably should know it occurred.

MS. CARPENETI clarified that the crime in AS 11.56.765 only applies to the most serious crimes. She suggested the committee not worry too much about civil liability because the immunity section in Chapter 47.17 provides protection.

CHAIR COGHILL said he struggled with the issue, but was going to agree with the governor and vote against the amendment.

MS. CARPENETI clarified that the immunity applies to making a good faith report.

[2:27:31 PM](#)

SENATOR WIELECHOWSKI suggested providing the next committee of referral with research about how it's working in the 18 states that have the reporting requirement for everyone. He said the legislature certainly doesn't want to discourage volunteers and potentially exposing them to liability.

CHAIR COGHILL asked Senator Dyson if he would be willing to follow the research on that.

SENATOR DYSON said he probably would, but he didn't think that requiring athletic volunteers to be mandatory reporters was consistent with what is required of all the other volunteers that are around children.

CHAIR COGHILL asked what volunteers, other than coaches, work with groups of children.

SENATOR DYSON named Sunday school teachers

CHAIR COGHILL noted that he had done background checks on Sunday school teachers, but his understanding is that they are not mandatory reporters.

SENATOR DYSON also named Scouts, Boys and Girls Club, and Campfire Girls.

CHAIR COGHILL asked if the governor would be willing to investigate making mandatory reporters of all volunteers who work with groups of children.

MS. CARPENETI said she would bring it to the attention of the Governor's office and have a conversation.

CHAIR COGHILL said he now agreed with Senator Dyson.

[2:30:08 PM](#)

A roll call vote was taken. Senators Dyson and Coghill voted in favor of Amendment 5 and Senator Wielechowski voted against it. Therefore, Amendment 5 passed by a 2:1 vote.

SENATOR WIELECHOWSKI raised the procedural question of how many votes are required to pass an amendment.

CHAIR COGHILL said a majority of those present can pass an amendment.

[2:31:18 PM](#)

At ease

[2:34:56 PM](#)

CHAIR COGHILL reconvened the meeting and relayed that he checked with Mr. Gardner, the director of Legal Services, and he confirmed that a majority of those present can pass an amendment. Therefore, Amendment 5 passed.

[2:35:20 PM](#)

CHAIR COGHILL moved Amendment 6, labeled 28-GS1587\U.6

AMENDMENT 6

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 7, line 31:

Delete "**with a**"

Insert "**with an active**"

Page 8, line 16:

Delete "**a**"

Insert "**an active**"

SENATOR DYSON objected for purposes of an explanation.

CHAIR COGHILL explained that this requires [under AS 12.30.016(e)(4) and AS 12.30.027(a)(4)] that a monitoring program with a global positioning system (GPS) device will be active. He offered his perspective that this was reasonable if it was a safety issue. Paying for it is discretionary just as the application of this provision is discretionary. He asked Ms. Carpeneti if she had any comment.

[2:36:25 PM](#)

MS. CARPENETI clarified that the Department of Corrections (DOC) had yet to develop the procedures for the GPS monitoring system, and requiring an active system potentially limits the choices DOC can make. For example, the Econ 1 monitoring system is passive until the defendant moves into an exclusionary zone, at which time it becomes active. She posited that the amendment has the potential to exclude a better and less expensive system.

SENATOR WIELECHOWSKI stated support for the amendment, because it sends a message. He opined that passive monitoring is a waste if the idea is to protect somebody from stalking. He said his

intent is for the system to be active at the time the person violates a condition of probation or parole.

CHAIR COGHILL asked Senator Dyson if he had any comment.

SENATOR DYSON remarked that in these circumstances he finds it almost inconceivable that DOC would use a system that wouldn't protect the victim in real time. However, he does appreciate DOL's position about using a term that could potentially limit technologies in the future.

CHAIR COGHILL offered his understanding that the amendment would narrow the possibilities that DOC could consider.

SENATOR DYSON said he wants DOC to use the best technology available to protect victims in real time, but he acknowledges that there may be economic limits.

[2:40:06 PM](#)

CHAIR COGHILL withdrew Amendment 6, 28-GS1587\U.6. He offered his belief that an active system would more likely than not be used if victim safety is a concern.

MS. CARPENETI said her assumption was that the system would be active.

CHAIR COGHILL said the idea is that DOC will use the most active system it can get, but it should have discretion to make the determination. If one type of monitoring is mandated, it may be incorrect.

SENATOR DYSON encouraged the committee not to use terms like "active" because it might become a term of art. The idea is for DOC to use the most effective real time monitoring system.

[2:41:29 PM](#)

CHAIR COGHILL moved to adopt Amendment 7, labeled 28-GS1587\U.7.

AMENDMENT 7

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 9, line 19, following "trial":

Insert ", or at a later time as the court may, for good cause, permit"

Page 9, line 20, following "may":
Insert ", for good cause shown,"

Page 11, line 7:
Delete "The"
Insert "Except for good cause, the"

SENATOR DYSON objected for purposes of an explanation.

CHAIR COGHILL explained that this relates to evidence that is admitted.

[2:42:28 PM](#)

MS. CARPENETI affirmed that this pertains to the rape shield law. She added that DOL's concern relates to what is "good cause" although it can be up to the discretion of the judge.

CHAIR COGHILL announced that without objection, Amendment 7 passed.

[2:42:59 PM](#)

CHAIR COGHILL moved Amendment 8, labeled 28-GS1587\U.8.

AMENDMENT 8

OFFERED IN THE SENATE
TO: CSSB 22(JUD), Draft Version "U"

Page 1, lines 9 - 10:
Delete "**relating to procedures for granting immunity to a witness in a criminal proceeding;**"

Page 2, line 20:
Delete "SECS. 22 AND 23"
Insert "SECS. 20 AND 21"

Page 9, line 30, through page 10, line 20:
Delete all material.

Renumber the following bill sections accordingly.

Page 22, line 25:
Delete "Sections 2 - 14, 20, 21, 25, 26, and 30 - 35"
Insert "Sections 2 - 14, 18, 19, 23, 24, and 28 - 33"

Page 22, line 27:

Delete "Sections 15 - 17, 22 - 24, 27, and 28"

Insert "Sections 15, 20 - 22, 25, and 26"

Page 22, line 29:

Delete "Section 18"

Insert "Section 16"

Page 22, line 31:

Delete "Section 19"

Insert "Section 17"

SENATOR DYSON objected for discussion purposes.

CHAIR COGHILL explained that this removes the section relating to granting immunity to a witness in a criminal proceeding who is mandated to appear before a judge. He informed Ms. Carpeneti that he was open to discussion on the issue.

MS. CARPENETI said the problem arises in serious cases, such as murder, where the judge finds a privilege for the witness and tells the prosecution if it doesn't grant immunity to that witness, he/she will dismiss the murder case against the defendant. Because DOL wants to make the best decision possible about granting immunity to a witness, it believes the judge should listen to the witness him/herself and then make findings that an appellate court can review. She noted that Mr. Svobodny expressed hope that if the committee doesn't adopt the proposed changes in Section 16, that it would consider leaving Section 17 in the bill. This section provides that when the judge decides the witness has a Fifth Amendment privilege, he/she will make written findings so it can be reviewed by a higher court.

CHAIR COGHILL noted that the ACLU raised the question of how to make an appeal in the middle of a case that is at all timely.

MS. CARPENETI highlighted that the courts handle many cases on an expedited basis.

CHAIR COGHILL said his concern in this situation is that there seems to be huge opportunity for intimidation of the witness.

MS. CARPENETI said the only people in the in-camera proceeding are the judge, the witness, and witness's lawyer who is there to defend the witness. It's important for the judge to have as much information as possible to make the decision, and the

credibility of the witness is a critical component. Right now, the witness might not even appear at the hearing and that removes a part of fact finding that should be required so a court can make the best decision possible.

[2:49:06 PM](#)

CHAIR COGHILL requested additional discussion of Section 17 and the interlocutory appeal.

MS. CARPENETI explained that the witness seeks immunity because he/she is worried that their testimony would support a conviction for a crime. Section 17 requires the judge to explain in writing the real or substantial danger that the proffer or testimony of the witness would support a conviction. It also provides the opportunity for the state to bring an immediate, interlocutory appeal of that one judge's decision. She said that most superior court judges' decisions are subject to review, but without this provision, there is no other way to get a review.

CHAIR COGHILL offered his perspective that an individual is free until the state can show reason why they shouldn't be free, and this gives the state more horsepower over that individual. He said he was open to suggestion if the committee wanted to look at it further.

SENATOR WIELECHOWSKI stated support for the amendment. He pointed out that without the amendment the bill proposes to change bedrock constitutional law to require people to testify against themselves. Then Section 17 says the findings of the court are sealed, but if there is an interlocutory appeal of the court's decision, it is unclear how that sealed information would not be disclosed.

[2:52:47 PM](#)

CHAIR COGHILL found no objection, and announced that Amendment 8 passed.

[2:54:19 PM](#)

At ease

[2:54:51 PM](#)

CHAIR COGHILL reconvened the meeting and moved Amendment 9, labeled AM-1, 2/19/2013, Carpeneti.

AMENDMENT 9

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 2, line 20:

Delete "SECS. 22 AND 23"
Insert "SECS. 23 AND 24"

Page 3, line 6:

Delete "sec. 22"
Insert "sec. 23"

Page 3, line 7:

Delete "sec. 23"
Insert "sec. 24"

Page 6, following line 6:

Insert a new bill section to read:

"*Sec. 8. AS 11.41.432 is amended by adding a new subsection to read:

(c) It is an affirmative defense to a crime charged under AS 11.41.425(a)(5) or 11.41.427(a)(4) that the offender and the person on probation or parole had, before the person was placed on probation or parole, a dating relationship or a sexual relationship, and the relationship continued until the date of the alleged offense."

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "Sections 2-14, 20, 21, 25, 26, and 30-35"
Insert "Sections 2-15, 21, 22, 26, 27, and 31-36"

Page 22, line 27:

Delete "Sections 15-17, 22-24, 25, 27, and 28"
Insert "Sections 16-18, 23-25, 28 and 29"

Page 22, line 29:

Delete "Section 18"
Insert "Section 19"

Page 22, line 31:

Delete "Section 19"
Insert "Section 20"

SENATOR DYSON objected for discussion purposes.

[2:55:31 PM](#)

MS. CARPENETI explained that this creates an affirmative defense for a probation or parole officer to have sexual relations with a person on probation or parole if they had a preexisting dating or sexual relationship and the relationship continued until the date of the alleged offense.

CHAIR COGHILL found no objection, and announced that Amendment 9 passed.

[2:56:24 PM](#)

SENATOR DYSON asked the practical effect of the first three sections of the amendment.

MS. CARPENETI said they have no substantive effect; they conform the numbers of the bill sections.

CHAIR COGHILL stated his intention to have a committee substitute (CS) drafted that incorporates these amendments so members could examine the bill in its entirety before it moves from committee.

[2:57:18 PM](#)

CHAIR COGHILL moved Amendment 10, labeled 28-GS1587\U.9.

AMENDMENT 10

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 12, line 13, following "combination,":
Insert "has"

Page 12, line 14:
Delete "has"

Page 12, line 15:
Delete "does not have a history"
Insert "a history free"

Page 12, line 21:
Delete "of law by a showing that"
Insert "if"

Page 12, line 22, following "combination,":
Insert "has"

Page 12, line 23:

Delete "has"

Page 12, line 24:

Delete "does not have a history"

Insert "a history free"

SENATOR DYSON objected for discussion purposes.

SENATOR COGHILL explained that Sections 22 and 23 go to the *Collins* case, and the amendment seeks to state in the positive the circumstances under which a court may refer a case to a three-judge panel. He read Sections 22 and 23, including the language in the proposed Amendment 10 as follows:

*Sec.22. AS 12.55.165 is amended by adding a new subsection to read:

(c) A court may not refer a case to a three-judge panel under (a) of this section if the defendant is being sentenced for a sexual felony under AS 12.55.125(i) and the request for the referral is based on the claim that the defendant, either singly or in combination has

(1) Prospects for rehabilitation that are less than extraordinary; or

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

Sec. 23. AS 12.55.175 is amended by adding a new subsection to read:

(f) A defendant being sentenced for a sexual felony under AS 12.55.125(i) may not establish, nor may the three-judge panel find under (b) of this section or any other provision of law, that manifest injustice would result from imposition of a sentence within the presumptive range if the defendant, either singly or in combination has

(1) Prospects for rehabilitation that are less than extraordinary; or

(2) A history free of unprosecuted, undocumented, or undetected sexual offenses.

He noted the suggestion to insert in Section 22, page 12, line 12, the word "solely" so the phrase would read, "request for the referral is based solely on the claim."

[3:00:09 PM](#)

MS. CARPENETI said she worked with Mr. Steiner on the proposal to allay his concerns.

CHAIR COGHILL found no objection to the [conceptual] amendment to Amendment 10, as described above, and it was adopted.

He noted that DOL also suggested a change to AS 12.55.175 in Section 23.

MS. CARPENETI explained that the suggestion in Section 23 on page 12, line 21, is to insert the phrase "based solely on the claim that" between "presumptive range" and "the defendant" and remove the word "if." The phrase would read, "manifest injustice would result from imposition of a sentence within the presumptive range based solely on the claim that the defendant,".

CHAIR COGHILL moved the second conceptual amendment to Amendment 10, as described above.

SENATOR WIELECHOWSKI asked Ms. Carpeneti if she worked on this suggestion with Mr. Steiner.

MS. CARPENETI said yes.

[3:01:31 PM](#)

CHAIR COGHILL found no objection and announced that the second conceptual amendment was adopted, and Amendment 10 was before the committee. Finding no objection, he announced that Amendment 10 was adopted.

[3:01:59 PM](#)

CHAIR COGHILL moved Amendment 11, labeled 28-GS1587\U.11.

AMENDMENT 11

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 21, line 6:

Delete "The"

Insert "If the crime involved a victim, the"

SENATOR DYSON objected for discussion purposes.

SENATOR COGHILL asked Ms. Carpeneti for an explanation.

MS. CARPENETI said this Court Rule amendment clarifies that the court may not accept a presentence report if it does not include a victim's impact statement or consider the harm done to the victim.

CHAIR COGHILL found no objection and announced that Amendment 11 passed.

[3:03:21 PM](#)

CHAIR COGHILL moved Amendment 12, labeled 28-GS1587\12.

AMENDMENT 12

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 14, following line 4:

Insert a new bill section to read:

"* Sec. 26. AS 18.65.865(b) is amended to read:

(b) The Alaska Court System shall prepare forms for petitions and protective orders and instructions for their use by a person seeking a protective order under AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil Procedure, except that information on the forms may be filled in by legible handwriting. Filing fees may not be charged in any action seeking only the relief provided in AS 18.65.850 - 18.65.870. Each protective order form must contain the following warning in boldface type: "Violation of this order may be a misdemeanor, punishable by up to one year of incarceration and a fine of up to **\$10,000** [\$5,000]."

Renumber the following bill sections accordingly.

Page 22, line 25:

Delete "26, and 30 - 35"

Insert "27, and 31 - 36"

Page 22, line 27:

Delete "27, and 28"

Insert "28, and 29"

SENATOR DYSON objected for discussion purposes.

[3:04:20 PM](#)

At ease

[3:04:38 PM](#)

CHAIR COGHILL reconvened the meeting and asked Ms. Carpeneti to explain the proposed amendment to AS 18.65.865.

[3:04:48 PM](#)

MS. CARPENETI said that Section 26 of version U is a conforming amendment. She explained that violation of certain provisions of domestic violence protective orders can be a misdemeanor. In the past few years, the legislature raised the maximum fine for a class A misdemeanor from \$5,000 to \$10,000. The amendment to AS 18.66.130(d) conforms the warning to current law. Amendment 12 does the same thing and conforms the law to another change in the protective orders for stalking and sexual assault that are not necessarily domestic violence.

SENATOR DYSON removed his objection.

CHAIR COGHILL found no objection and announced that Amendment 12 passed.

[3:06:12 PM](#)

At ease

[3:06:39 PM](#)

CHAIR COGHILL reconvened the meeting and moved Amendment 13, 28-GS1587\15

AMENDMENT 13

OFFERED IN THE SENATE

TO: CSSB 22(JUD), Draft Version "U"

Page 15, lines 29 - 30:

Delete "The information shall include the judge's compliance with AS 12.55.025(a)(5) when imposing sentence on persons convicted of felony offenses."

Insert "The information may include the judge's consideration of victims when imposing sentence on persons convicted of felony offenses where the offenses involved victims."

SENATOR DYSON objected for discussion purposes.

CHAIR COGHILL asked Ms. Carpeneti to describe the amendment.

MS. CARPENETI noted that the Department of Law has concerns with the amendment and suggested that Ms. Meade provide an explanation.

[3:07:15 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, Anchorage, AK, stated that the court system considers the proposed language an improvement. It gives the judicial council discretion to avoid reporting unsubstantiated information about a judge, but still allows the council to publicize information about a judge when there are substantiated reports that the judge is not considering victims appropriately at sentencing. It also serves to heighten awareness among judges about the importance of considering victim information at sentencing.

CHAIR COGHILL read the three criteria a judge has to consider under AS 12.55.025(a)(5):

- (5) in the case of a conviction for a felony offense, information assessing
 - (A) the financial, emotional, and medical effects of the offense on the victim;
 - (B) the need of the victim for restitution; and
 - (C) any other information required by the court.

He offered his understanding that DOL wants to make sure that judges consider these factors when imposing a sentence.

[3:09:46 PM](#)

MS. CARPENETI said that DOL has no interest in requiring the judicial council to publish information about judges that is inaccurate or unsubstantiated, but does want to require the judicial council to report information it finds accurate about how a judge follows the law in terms of considering the harm done to victims when imposing sentence. The concern is that the proposed language may not be strong enough to compel judges to consider victims when imposing sentence.

[3:10:40 PM](#)

SENATOR WIELECHOWSKI asked Ms. Meade if the language that Amendment 13 proposes to delete is unworkable for the court system.

MS. MEADE said it would be more accurate to say it is unworkable for the judicial council, but the requirement to provide data would be difficult for both organizations.

SENATOR WIELECHOWSKI characterized Amendment 13 as reasonable. He said what the administration is trying to do is laudable, but the proposal is unworkable.

[3:11:19 PM](#)

CHAIR COGHILL asked Ms. Carpeneti what difficulties she foresees with regard to annual reporting requirements.

MS. CARPENETI said the problem is that it says the evaluation "may" include this information. She offered to work with Ms. Meade on acceptable language.

CHAIR COGHILL asked if it would be acceptable to replace the word "may" with "shall" in the amendment.

MS. CARPENETI said yes.

CHAIR COGHILL said he intended to bring a CS on Monday based on the amendments passed, but he was willing to leave this amendment open.

[3:13:55 PM](#)

MS. MEADE pointed out that the word "may" serves several purposes, one of which is that it is not applicable to all judges because some judges only do civil cases. The proposed language provides discretion so problems with victims in felony sentencing would be reported, but if there was not a problem or it was not applicable to a certain judge, there would not be a pro forma statement in the information that there were no problems. She agreed to work with Ms. Carpeneti on acceptable language.

[3:14:57 PM](#)

CHAIR COGHILL withdrew Amendment 13, and noted that the original language would appear in the forthcoming CS.

[3:15:28 PM](#)

CHAIR COGHILL asked Ms. Carpeneti to explain proposed Amendment 14.

[3:15:37 PM](#)

MS. CARPENETI explained that the change in the rape shield provision in Section 15 on page 9 regarding time limits and sexual conduct of the victim after the alleged offense affects Rule 404(a), Alaska Rules of Evidence because of the time.

[3:16:07 PM](#)

CHAIR COGHILL moved Amendment 14, labeled AM-2, 1/25/13, Carpeneti.

AMENDMENT 14

OFFERED IN THE SENATE JUDICIARY COMMITTEE

TO: CSSB 22(JUD), 28/LS1587\U

Page 2, line 14:

Delete "**Rule**"

Insert "**Rules 404(a) and**"

Page 22, line 22:

Insert a new bill section to read:

"***Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 12.45.045(a), amended by sec. 15 of this Act, has the effect of changing Rule 404(a), Alaska Rules of Evidence, by providing, with some exceptions, that a defendant must request admission of certain evidence about the complaining witness after the alleged offense."

Renumber the following bill sections accordingly.

Page 23, following line 1:

Insert a new bill section to read:

"***Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. AS 12.45.045(a), enacted by sec. 15 of this Act, takes effect only if sec. 44 of this Act receives the two-thirds vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

Renumber the following bill section accordingly.

SENATOR DYSON objected for discussion purposes.

[3:17:26 PM](#)

SENATOR WIELECHOWSKI clarified that this takes into consideration the amendments that the committee passed adding the exceptions for good cause.

MS. CARPENETI agreed.

SENATOR DYSON removed his objection.

CHAIR COGHILL found no further objection, and announced that Amendment 14 passed.

CHAIR COGHILL noted that Amendment 13 was a lingering question and then informed the committee that he would order a CS based on the amendments that passed. It would be available either Monday, April 1 or Tuesday, April 2.

[SB 22 was held in committee.]

[3:18:02 PM](#)

There being no further business to come before the committee, Chair Coghill adjourned the meeting at 3:18 p.m.