

HOUSE FINANCE COMMITTEE
April 26, 2019
9:02 a.m.

9:02:09 AM

CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 9:02 a.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Tammie Wilson, Co-Chair
Representative Jennifer Johnston, Vice-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Andy Josephson
Representative Gary Knopp
Representative Bart LeBon
Representative Kelly Merrick
Representative Colleen Sullivan-Leonard
Representative Cathy Tilton

MEMBERS ABSENT

None

ALSO PRESENT

Tim Lamkin, Staff, Senator Gary Stevens; Thatcher Brouwer, Staff, Representative Geran Tarr; John Scanlon, Staff, Representative Jonathan Kreiss-Tomkins; Rose Foley, Staff, Representative John Lincoln; John Skidmore, Director, Criminal Division, Department of Law.

SUMMARY

HB 14 ASSAULT; SEX OFFENSES; SENT. AGGRAVATOR

CSHB 14(FIN) was REPORTED out of committee with a "do pass" recommendation and with two new indeterminate fiscal notes from the Department of Administration; three previously published zero notes: FN1 (DHS), FN2 (LAW), FN3 (DPS); and one

previously published fiscal impact note: FN7 (COR).

HB 16 LOCAL FOOD PROCUREMENT; LABELING

HB 16 was REPORTED out of committee with a "do pass" recommendation and with one new zero fiscal note from the House Finance Committee for the Department of Health and Social Services and one previously published zero note: FN1 (DEC).

HB 32 AK ENERGY EFFICIENCY LOANS: ELIGIBILITY

HB 32 was REPORTED out of committee with three "do pass" recommendations, four "do not pass" recommendations, four "no recommendation" recommendations, and with one previously published zero note: FN1 (REV).

SB 61 COMM FISHERMEN'S FUND:VESSEL OWNER CLAIMS

SB 61 was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal impact note: FN1 (LWF).

Co-Chair Wilson reviewed the meeting agenda.

#sb61

SENATE BILL NO. 61

"An Act relating to claims against protection and indemnity insurance policies of vessel owners."

[9:02:47 AM](#)

TIM LAMKIN, STAFF, SENATOR GARY STEVENS, introduced himself.

Vice-Chair Johnston MOVED to REPORT SB 61 out of committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

SB 61 was REPORTED out of committee with a "do pass" recommendation and with one previously published fiscal impact note: FN1 (LWF).

[9:03:34 AM](#)

AT EASE

[9:04:09 AM](#)

RECONVENED

#hb16

HOUSE BILL NO. 16

"An Act relating to the Alaska Food, Drug, and Cosmetic Act; and relating to the sale of milk, milk products, raw milk, and raw milk products."

[9:04:13 AM](#)

THATCHER BROUWER, STAFF, REPRESENTATIVE GERAN TARR, introduced himself.

Representative Carpenter remarked that out of an abundance of caution he would declare a conflict of interest as his family participated in a herd share program. He relayed he did not stand to gain anything from the legislation.

Vice-Chair Johnston MOVED to REPORT HB 16 out of committee with individual recommendations and the accompanying fiscal notes.

HB 16 was REPORTED out of committee with a "do pass" recommendation and with one new zero fiscal note from the House Finance Committee for the Department of Health and Social Services and one previously published zero note: FN1 (DEC).

[9:05:32 AM](#)

AT EASE

[9:06:12 AM](#)

RECONVENED

#hb32

HOUSE BILL NO. 32

"An Act making certain entities that are exempt from federal taxation under 26 U.S.C. 501(c)(3), (4), (6), (12), or (19) (Internal Revenue Code), regional housing authorities, and federally recognized tribes eligible for a loan from the Alaska energy efficiency revolving loan fund; relating to loans from the Alaska

energy efficiency revolving loan fund; and relating to the annual report published by the Alaska Housing Finance Corporation."

[9:06:17 AM](#)

Co-Chair Wilson reported that public testimony had previously been closed and the fiscal note had been reviewed.

Representative LeBon noted that the Alaska Banker's Association had issued an opinion stating it believed the bill competed with the private sector. The association believed its members (nine banks operating in Alaska) could fill the need if asked.

Co-Chair Wilson asked if the sponsor had reached out to the Alaska Banker's Association.

JOHN SCANLON, STAFF, REPRESENTATIVE JONATHAN KREISS-TOMKINS replied that the sponsor had repeatedly reached out to the Alaska Banker's Association.

Co-Chair Wilson asked if the sponsor had received any comments from the association.

Mr. Scanlon replied that the sponsor had been unable to schedule a call with the association despite multiple attempts.

Co-Chair Wilson remarked that the committee could hold the bill to hear from the association at a later time. She asked Representative LeBon for his preference.

Representative LeBon replied that the association's opinion was probably not enough to hold the bill. His earlier comment was based on a written opinion from the association stating that the private sector could and had made the loans. He shared that he had made the loans in the past. He stated, "however designed, it's not a burning necessity, maybe it's more luxury, but the private sector can make these types of loans."

Co-Chair Wilson appreciated the remarks and believed it was likely validated as the state was still looking for someone that wanted the specific kinds of loans. She asked the sponsor to reach out to the banking association to receive

an answer on its comfort level before the bill reached the House floor.

[9:08:51 AM](#)

Vice-Chair Ortiz asked if a denial letter had to be obtained from a commercial bank before one of the loans could be made.

Mr. Scanlon deferred the question to the Alaska Housing Finance Corporation.

Co-Chair Wilson replied that a denial letter was not required. She elaborated that on some commercial and agriculture loans a denial letter was required; however, that was not the case with the loans addressed by the bill. She reminded the committee that it had heard from numerous boroughs that they had done energy efficiency work and had found cheaper loans through the private market. She suggested that if the idea [in the legislation] did not work and they found the same thing was happening with nonprofits, perhaps it would be time to shut down the specific loan. She hoped to have the answers prior to a floor vote.

Vice-Chair Johnston MOVED to REPORT HB 32 out of committee with individual recommendations and the accompanying fiscal note.

Representative Carpenter OBJECTED.

A roll call vote was taken on the motion. [Note: the first and second roll calls were VOIDED. See 9:14 a.m. for final roll call.]

[9:12:04 AM](#)

AT EASE

[9:14:45 AM](#)

RECONVENED

Co-Chair Wilson clarified Vice-Chair Johnston would restate the motion.

Vice-Chair Johnston MOVED to REPORT HB 32 out of committee with individual recommendations and the accompanying fiscal note.

Representative Carpenter OBJECTED.

A roll call vote was taken on the motion.

IN FAVOR: Josephson, Johnston, Merrick, Ortiz, Wilson, Foster

OPPOSED: Knopp, LeBon, Sullivan-Leonard, Tilton, Carpenter

The MOTION PASSED (6/5).

There being NO further OBJECTION, HB 32 was REPORTED out of committee with three "do pass" recommendations, four "do not pass" recommendations, four "no recommendation" recommendations, and with one previously published zero note: FN1 (REV).

[9:16:22 AM](#)

AT EASE

[9:17:14 AM](#)

RECONVENED

#hb14

HOUSE BILL NO. 14

"An Act relating to assault in the first degree; relating to sex offenses; relating to the definition of 'dangerous instrument'; and providing for an aggravating factor at sentencing for strangulation that results in unconsciousness."

[9:17:18 AM](#)

Co-Chair Foster MOVED to ADOPT Amendment 1, 31-LS0182\0.2 (Radford, 4/22/19) (copy on file):

Page 1, line 1, following "degree;":
Insert "relating to harassment;"

Page 2, following line 6:
Insert a new bill section to read:
"* Sec. 2. AS 11.61.118(a) is amended to read:
(a) A person commits the crime of harassment in the first degree if, under circumstances not proscribed under AS 11.41.434 - 11.41.440, [(1)] the person violates AS 11.61.120(a)(5) and the offensive physical

contact is contact (1) with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces; or (2) [UNDER CIRCUMSTANCES NOT PROSCRIBED UNDER AS 11.41.434-11.41.440, THE PERSON VIOLATES AS 11.61.120(a)(5) AND THE OFFENSIVE PHYSICAL CONTACT IS CONTACT] by the person touching through clothing another person's genitals, buttocks, or female breast."

Renumber the following bill sections accordingly.

Page 2, line 23:

Delete "ejaculating on the victim"

Insert "causing the victim to come into contact with ejaculate"

Page 9, line 8, following "Act;":

Insert "AS 11.61.118(a), as amended by sec. 2 of this Act,"

Page 9, line 9:

Delete "sec. 2"

Insert "sec. 3"

Page 9, line 10:

Delete "sec. 3"

Insert "sec. 4"

Delete "sec. 4"

Insert "sec. 5"

Co-Chair Foster noted the amendment was a sponsor's amendment by the request of the Department of Law (DOL).

Representative Carpenter OBJECTED for discussion.

Co-Chair Wilson asked the sponsor's office to review the amendment.

ROSE FOLEY, STAFF, REPRESENTATIVE JOHN LINCOLN, reviewed the amendment that made two changes. She began at the bottom of page 1, line 20 that reverted back to the previous definition of sexual contact: "causing the victim to come into contact with ejaculate." The Department of Law expressed concern that it would be difficult to prove the method of delivery if the language only read "ejaculating on the victim." She expounded there may be instances where the victim had ejaculate on their person, and it was not

readily provable that the perpetrator had ejaculated on the victim rather than delivering the fluid in another manner. The top part of the amendment eliminated some overlap between the sexual abuse of a minor and harassment statutes by adding to the harassment statute "under circumstances not proscribed under AS 11.41.434-11.41.440," which would instruct the prosecutor to first look to see if the criteria for sexual abuse of a minor is met before charging harassment.

Representative Josephson thought the amendment was beneficial because there could be circumstances where there could be a sexual abuse of a minor charge that previously would not have been charged because of the placement of the clarifying language "under circumstances not proscribed." Additionally, the amendment dealt with the issue of transport of bodily fluid. He asked if Legislative Legal Services had communicated to the sponsor's office that there had been an equal protection concern relative to bodily fluid.

Ms. Foley replied in the affirmative.

Representative Josephson requested to ask DOL about its view of the equal protection argument.

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, replied that he had been asked about DOL's view on concerns about equal protection. He referenced debates that had occurred in the legislature about whether or not the bill needed to refer to ejaculate or semen. He reported that equal protection under the Alaska Constitution and the U.S. Constitution stated that people who were similarly situated could not be treated differently. He explained that the use of the word "semen" did not deal with people who were similarly situated differently because only men produce semen. He stated it did not treat women differently. Second, if it was found for some reason there was a distinction and it was said they were treated differently, the law specified that it was necessary to determine whether there was a compelling reason for doing so. The statistics that applied to sexual assault and sexual abuse of minors showed that 97 to 98 percent of the offences were committed by men.

Mr. Skidmore continued that if someone wanted to prosecute a case where a female had engaged in the activity

criminalized under the bill, the prosecutor would have to determine whether there was testing that could help prove the case. The state crime lab had informed DOL that the scientific evidence available could specify whether or not a fluid was semen. There was no testing available to indicate whether or not other fluid would have been ejaculate that would have been produced by a female. The choice between the words "ejaculate" and "semen" was a policy choice by the legislature. He added that semen was the term used in several other sex crime statutes. He clarified that the word choice was ultimately up to the legislature and either would work for DOL.

[9:22:59 AM](#)

Representative Josephson asked how to deal with the situation for a man who had a vasectomy and did not produce semen. He asked if there was a definition for the situation.

Mr. Skidmore answered there was not currently a definition in statute. The department had consulted with the state crime lab that used a technical definition for semen as follows: seminal male reproductive fluid, which may contain sperm cells. There were a number of medical conditions or procedures that could result in semen not containing sperm cells. The crime lab's definition of semen would not be impacted if someone had a vasectomy.

Representative Josephson had looked at Alaska caselaw and it contained 73 usages of the word semen and 9 usages of the word ejaculate. He did not look at every case to determine if it was impactful or meaningful. He asked the information was informative to DOL in some way.

Mr. Skidmore responded that had not done a similar search and therefore had not read all of the references in caselaw. He declined to comment without reviewing the cases.

Representative Josephson noted that the court had talked about semen 73 times. He asked if that was informative.

Mr. Skidmore answered that semen was the term used in a number of other statutes, which was in part why the word may be referenced more frequently [in caselaw]. The information indicated that the courts and practitioners

were comfortable and accustomed to using that particular language. In the department's experience, when language was changed there was always litigation as people would try to argue about what was actually meant. He explained it was the natural course of the way things worked in an adversarial system like criminal justice.

Representative Carpenter pointed to line 11 of the amendment pertaining to a person coming into contact with human fluid or some other substance including human or animal blood, mucus, saliva, etcetera. He asked if a crime still fell under harassment a communicable disease was transmitted. He wondered if there was a more severe penalty applied in the situation.

Mr. Skidmore answered that DOL had wrestled with the question in the past. He explained that DOL evaluated the disease that had been transferred and the potential risks or harm the disease caused. Based on the information, DOL evaluated whether or not the disease was transferred knowingly, intentionally, or recklessly and it would consider whether the harm could be defined as physical injury. He expounded that if harm could be defined as physical it would fall under the assault category. He added that DOL would have to look to the definitions of physical injury or serious physical injury to determine if the particular disease would qualify.

[9:26:57 AM](#)

Representative Carpenter asked for verification that precedence and caselaw would support that type of outcome. He explained that if the legislature passed the bill, it would appear to the public that it would only be a crime of assault if the conditions were met. He asked if there was certainty it would be the outcome of the legislation.

Mr. Skidmore responded that in criminal law everything was based on facts and details. He explained that civil law was more difficult to practice because so many laws applied. The statutes in criminal law were fewer in number, but the nuances in the facts of each case drove the outcome. He could not make promises or guarantees about how a particular case would be evaluated or what the outcome would be. He could tell the committee that there had been cases in the past where diseases had been transferred and DOL had looked at them to determine whether the higher

crime could be charged. Sometimes the answer was yes, and other times the answer was no because unfortunately everything was driven by the specific facts.

Representative Carpenter WITHDREW his OBJECTION to Amendment 1.

There being NO further OBJECTION, Amendment 1 was ADOPTED.

Representative Josephson shared that he had drafted three amendments that he would not offer.

Vice-Chair Johnston MOVED to REPORT CSHB 14(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

Representative Josephson OBJECTED for discussion. He applauded the sponsor for the bill. He believed it would make Alaska safer. He detailed that once the bill passed if a person was strangled and passed out, the perpetrator would instantly be in a Class A felony position (in the past it had been necessary to prove physical injury). He believed the bill was fair to treat the action in the Schneider matter as a sex offense, given the outrageous, heinous conduct that had occurred.

Representative Josephson commented on his belief that the judge's hands had been tied in the Schneider case. He acknowledged that the judge could have rejected the plea deal. He was concerned with the fact that under AS 12.55.027, a person who had murdered someone with malice or forethought, could get credit toward a sentence pretrial if they were on electronic monitoring (EM). The bill did not change that, which did not mean the bill was not a great step forward, it just meant the events of Schneider will be hemmed in, specifically relative to the creation of a new sex crime and in cases where there was strangulation to the point of unconsciousness. However, in many other circumstances, EM remained available and still remained available for the offenses in the bill. The penalties would be greater.

Co-Chair Wilson asked Representative Josephson to stick to the bill.

Representative Josephson agreed and reported his intent to offer an amendment at some point in order to resolve some of his concerns related to the Schneider case.

[9:32:22 AM](#)

AT EASE

[9:32:57 AM](#)

RECONVENED

Vice-Chair Johnston restated her motion to move the bill from committee.

There being NO further OBJECTION, CSHB 14(FIN) was REPORTED out of committee with a "do pass" recommendation and with two new indeterminate fiscal notes from the Department of Administration; three previously published zero notes: FN1 (DHS), FN2 (LAW), FN3 (DPS); and one previously published fiscal impact note: FN7 (COR).

Co-Chair Wilson reviewed the schedule for the following meeting.

#

ADJOURNMENT

[9:33:37 AM](#)

The meeting was adjourned at 9:33 a.m.