HOUSE FINANCE COMMITTEE
April 27, 2019
10:00 a.m.

10:00:12 AM

CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 10:00 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

John Skidmore, Director, Criminal Division, Department of Law.

SUMMARY

HB 20 SEXUAL ASSAULT EXAMINATION KITS

HB 20 was HEARD and HELD in committee for further consideration.

#hb20
HOUSE BILL NO. 20

"An Act requiring law enforcement agencies to send sexual assault examination kits for testing within six

months after collection; and providing for an effective date."

10:00:49 AM

Vice-Chair Johnston MOVED to ADOPT the proposed committee substitute for HB 20, Work Draft 31-LS0253\C (Radford, 4/26/19). There being NO OBJECTION, it was so ordered.

10:03:08 AM

Co-Chair Wilson asked about the inflation proofing change in the committee substitute (CS).

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, was present to review the (CS). He relayed that the CS eliminated the inflation proofing adjustment enacted in SB 91-Omnibus Crim Law & Procedure; Corrections [CHAPTER 36 SLA 16 - 07/11/2016]. He underlined that a monetary threshold determined the difference between a misdemeanor or felony level offense regarding property crime. He delineated that historically, the legislature adjusted the monetary levels. The level was adjusted in 2015 with the passage of SB 64 Omnibus Crime/Corrections/Recidivism Bill [CHAPTER 83 SLA 14, Adopted on 07/16/2014] after significant debate. He remarked that when the level was adjusted again the following year in SB 91 the topic was heavily debated. The legislature addressed the threshold again in SB 54- Crimes; Sentencing; Probation; Parole [CHAPTER 1 4SSLA 17 - 11/26/2017]. He explained that retaining the inflation adjustment meant the legislature would abdicate its role in changing the threshold for a misdemeanor and felony level offense. The Alaska Judicial Council would announce any changes in the threshold based on inflation information provided by the Department of Commerce, Community and Economic Development (DCCED) every five years. He noted that when SB 91 was enacted the Department of Law (DOL) had addressed its concerns with the approach in a SB 91 bill review letter [copy not on file] to the legislature. The SB 91 inflation adjustment provisions had not yet been implemented due to an effective date of 2020. The CS eliminated the inflation adjustment approach.

10:05:39 AM

Mr. Skidmore noted that Sections 14 through 21 of the CS related to the inflation adjustment. He continued with Section 22 on page 13 of the legislation that addressed the crime of escape in the third degree. He elaborated that the provisions criminalized the conduct of tampering with an electronic monitoring (EM) device while under official detention for a misdemeanor. He offered that official detention occurred subsequent to a conviction and was addressed in subsection (3). He indicated that subsection (4) addressed EM tampering under pretrial release, which adjusted the crime to escape in the third degree, which was a Class C felony; it would increase jail time from 0 to up to 30 days for removing an electronic device.

Representative Josephson asked if the department wanted a similar provision relative to the Department of Health and Social Services (DHSS) for escape in the second degree. He asked whether there had been two provisions in SB 32-Crimes; Sentencing; Ment. Illness; Evidence that involved similar concepts. Mr. Skidmore answered in the affirmative. He read the following from Section 22, lines 11 through 14 subparagraph (B):

> (B)without prior authorization, leaves one's residence or other place designated by the commissioner of corrections or the commissioner of health and social services for service by electronic monitoring;

Mr. Skidmore reported that DHSS was referenced because it housed the Division of Juvenile Justice. The provisions for the Department of Corrections applied to adults and the provisions for DHSS applied to juveniles. He indicated that Representative Josephson pointed to an omission that DOL discovered in AS 11.56.310 related to escape in the second degree, that had a provision for DOC but not for juveniles under DHSS. The dual provision was only included in SB 32.

10:09:24 AM

Representative Carpenter asked if a child detained under EM that cut off their ankle monitor would be charged with a Class C felony. Mr. Skidmore replied in the affirmative. The difference was that the juvenile would be dealt with in the juvenile court and it was not public information. The sanctions imposed between the juvenile courts and the adult courts were "dramatically different."

10:10:21 AM

Mr. Skidmore reviewed Sections 23 and 24 related to the crime of failure to appear and indicated that the CS returned the discretion to the courts. He detailed that prior to SB 91, if someone failed to appear to any type of court hearing the person could be charged with the crime of failure to appear. The failure to appear charge depended on whether the crime the offender committed was a felony or misdemeanor. A felony failure to appear was a Class C felony and a misdemeanor failure to appear was a Class C misdemeanor. Previously, when individuals failed to show for certain hearings, judges would frequently issue a bench warrant without officially entering it into the system for a couple of days - the defense had that amount of time to get their client to appear. However, in some instances the judge would issue the warrant immediately. In SB 91, the concept of a 30-day grace period had been introduced unless the prosecutor could prove that the reason the defendant failed to show up was to avoid prosecution. The numbers were not dramatic in terms of the number of prosecutions for failure to appear, which was 137 in 2015. After the grace period went into effect the number of cases dropped to 30, which was about 107 fewer cases. The department found that it became much more difficult to prosecute the cases. He furthered that when someone failed to appear it was not just about the hearing failing to go forward, there were also collateral consequences. He detailed that it was a waste of time for the victims, witnesses, police officers, court employees, etc. who disrupted their lives, jobs etc. to show up for court. The CS returned the bench warrant discretion to the courts.

10:14:37 AM

Mr. Skidmore moved to Section 25 related to the state's drug laws. He elucidated that 3 major changes had taken place. The first provision dealt with possession crimes. Prior to SB 91, possession of controlled substances was a Class C felony with a sentencing range of zero to two years. Subsequent to SB 91, the crimes had been reduced to a Class A misdemeanor with a sentencing range of zero for a first or second offense. The third offense authorized some active jail time. Generally, sanctions were ratcheted up as offences continued. The department had done approximately 1,000 drug prosecutions prior to SB 91 - that number had decreased to around 300 after the bill passed. He observed

that as a result, fewer offenders were sent to drug treatment programs. Drug distribution crimes were reduced in SB 91. Prior to SB 91 the sentences ranged from unclassified felony, Class A felony, to Class B felony. After SB 91, the unclassified sentences had been left in place, but classed felonies were reduced downwards. In addition, a new concept considering the quantity of drugs determined whether it was considered a low or high level distribution. He noted that the distribution changes had "substantially disturbed the framework" that was established in prior law. He mentioned an appellate court case called Knight [Knight v. State, 1993] that set out all the factors concerning drug distribution.

10:18:11 AM

Mr. Skidmore read from page 7 of the bill review letter related to the Knight case:

> "Within any class of controlled substance, what constitutes an unusually small or large quantity may vary from case to case, depending on variables such as the precise nature of the substance and the form in which it is possessed, the relative purity of the substance, its commercial value at the time of the offense, and the relative availability or scarcity of the substance in the community where the crime is committed. Variations may also occur over time: what amounted to a typical controlled substance transaction ten years ago might be an exceptional one today. These variables do not lend themselves to an inflexible rule of general application, and they render it both undesirable and wholly impractical to treat the question of what constitutes a "large" or "small" quantity . . . as an abstract question of law. The question must instead be resolved by the sentencing court as a factual matter, based on the totality of the evidence in the case and on the court's discretion, as informed by the totality of its experience."
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> Knight v.State, 855 P.2d 1347, 1349-50 (Alaska Ct. App. 1993

10:19:13 AM

Mr. Skidmore noted that the letter described the "elegance" of the former review system. He pointed to Sections 25 through 27 and reported that the CS returned the distribution crimes to pre-SB 91 levels. He cautioned members related to reviewing the bill sections. He informed the committee that there were elements that seemed to be repeated and it was critical to read the repealers while reading the legislation. He reviewed the third change made in the drug laws. He voiced that previous law included sections addressing methamphetamine distribution. He offered that meth production was extremely hazardous and required specialized HAZMAT [hazardous materials] cleanup. The offenses were "serious" and the laws that were enacted helped to combat the problem. Unfortunately, meth was now imported to Alaska primarily from Mexico. He communicated that the CS returned the meth provisions in statute to ensure that meth manufacturing would "never raise its ugly head again in Alaska."

10:21:34 AM

Representative Josephson liked the restoration of the drug code with one concern. He recalled his alarm when possession of heroin with no intention to distribute became a Class A misdemeanor not subject to jail under SB 91. He asked that if possession was returned to a Class C felony but conditions mandating substance abuse treatment were imposed under a suspended entry of judgment (SEJ), what would assure him that the state was providing alternatives other than imposing jailtime. He would be more comfortable restoring the possession statutes with assurances that conditions under an SEJ would always be imposed. Mr. Skidmore affirmed that possession crimes were returned to Class C felonies in the CS. He communicated that he favored SEJ and it was one of the concepts from SB 91 that remained in the CS and was not proposed for repeal. He specified that an SEJ imposed conditions on a conviction for a person who pleaded guilty. If the offender followed the conditions the case would be dismissed, the record would not reflect that the individual was ever convicted. He characterized SEJ as a "new tool" available that he hoped prosecutors could take better advantage of in possession cases.

10:25:02 AM

Mr. Skidmore indicated that the remaining sections up to Section 32 dealt with drug offenses. The sections returned

drug offenses to pre-SB 91 laws. He reviewed Section 33 on page 24 related to Class B felony sentencing. The section returned Class B felony sentencing back to what it had been prior to SB 91. He elaborated that a first offense was returned to a one to three year presumptive sentence. A second offense was returned to a sentence of two to seven years and the third offense was returned to 6 to 10 years. He believed that Class B felonies were more serious than Class C felonies, yet currently the sentences (zero to two years) were the same. The change would apply to strangulation as in the Justin Schneider case. He commented that currently any degree of strangulation would be treated the same as a Class C felony and was subject to a sentence of zero to two years. The CS increased the sentence to one to three years and applied additional sentencing if prior felonies were involved.

10:27:02 AM

Mr. Skidmore furthered that Section 34 contained conforming language related to drug laws. He noted that Section 35 through 38 were existing sections. Section 39 contained a change that created an efficiency for felony cases. He elucidated that prosecutors had to show prior criminal convictions when indicting felony cases. A wrap sheet (a type of print out) was sufficient for Driving Under the Influence (DUI) offences but other felonies required a certified copy of the judgement by the time a case went to trial. He concluded that Section 40 included changes to repealers that he was unable to review due to time contraints.

Representative Josephson asked to hear Mr. Skidmore again after floor.

HB 20 was HEARD and HELD in committee for further consideration.

Co-Chair Wilson RECESSED the meeting to a call of the chair [note: the meeting never reconvened].

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RECESSED

10:29:00 AM

The meeting was adjourned at 10:29 a.m.