SENATE FINANCE COMMITTEE
March 11, 2019
9:02 a.m.

9:02:09 AM

CALL TO ORDER

Co-Chair von Imhof called the Senate Finance Committee meeting to order at 9:02 a.m.

MEMBERS PRESENT

Senator Natasha von Imhof, Co-Chair
Senator Bert Stedman, Co-Chair
Senator Click Bishop
Senator Lyman Hoffman
Senator Peter Micciche
Senator Donny Olson
Senator Mike Shower
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Cathy Giessel; Edra Morledge, Staff, Senator Peter Micciche; Carmen Lowry, Executive Director, Alaska Network on Domestic Violence and Sexual Assault; Kaci Schroeder, Assistant Attorney General, Criminal Division, Department of Law.

PRESENT VIA TELECONFERENCE

Judge Michael Corey; Elizabeth Williams, No More Free Passes, Anchorage; Marie McConnell, Self, Sterling.

SUMMARY

SB 4 NAMING SCOTT JOHNSON MEMORIAL BRIDGE

SB 4 was REPORTED out of committee with a "do pass" recommendation and with one previously published zero fiscal note: FN 1(DOT).

SB 12 ASSAULT; SEX OFFENSES; SENTENCING CREDIT

SB 12 was HEARD and HELD in committee for further consideration.

#sb4
SENATE BILL NO. 4

"An Act naming the Scott Johnson Memorial Bridge."

9:02:58 AM

Co-Chair von Imhof informed that the committee had heard the bill, received public testimony, and reviewed the fiscal note on March 8, 2019. Her office had received no amendments and had heard of no concerns.

Senator Micciche MOVED to report SB 4 out of Committee with individual recommendations and the accompanying fiscal note.

SB 4 was REPORTED out of committee with a "do pass" recommendation and with one previously published zero fiscal note: FN 1(DOT).

#sb12
SENATE BILL NO. 12

"An Act relating to assault in the first degree; relating to sex offenses; and relating to credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring."

9:03:50 AM

Senator Peter Micciche, Sponsor, informed that the bill was a result of a specific heinous crime that occurred on August 8, 2017, when the perpetrator (Justin Schneider) offered a ride to a young Alaska Native woman. The perpetrator had given the woman a ride, after which he tackled her, choked her to unconsciousness, sexually assaulted her and left her. After a year it had become clear that the state code was missing several key considerations on such crime. The perpetrator was convicted of assault. The perpetrator had been sentenced to two years; he then received one year of electronic monitoring

and suspended the second year. He asked the committee to consider the fact that the perpetrator had assaulted a young woman and then did not spend any time in prison.

Senator Micciche continued his discussion of the bill. He stated that SB 12 resolved the legal issue he had described. He cited Alaska's ranking as number one for sexual assault. He reiterated that there were gaps in the state's laws that had not come to light until the case in question which had resulted in a plea deal. The bill would give prosecutors additional tools. The bill would: redefine what a sex crime was, added unwanted contact with semen to a list of crimes, expanded offenses required registering as a sex offender, increased penalties for strangulation in commission of a sex crime, and no longer allow credit for electronic monitoring for crimes against a person. Finally, the bill required formal consultation with the victim on the plea agreement. The sponsor felt that had consultation been required by law, the Schneider case would not have resulted in a plea deal under which there was no jail time.

9:08:39 AM

EDRA MORLEDGE, STAFF, SENATOR PETER MICCICHE, addressed the sectional analysis for SB 12 (copy on file):

> Section 1: Amends AS 11.41.200(a), assault in the first degree, to add new subsection 5, which adds a person "knowingly causes another to become unconscious by means of a dangerous instrument" and defines "dangerous instrument" in accordance with the definition in AS 11.81.900. (Page 1, line 6 – Page 2, line 5)
>
> Section 2: Adds "knowingly causing a victim to come into contact with semen" to the definition of "sexual contact" in AS 11.91.900(b)(60). (Page 2, lines 6 – 25)
>
> Section 3: Repeals and reenacts AS 12.55.027(d) to specify that a court may not grant credit against a sentence for time in a private residence or on electronic monitoring. (Page 2, Lines 26 – 28)
>
> Section 4: Amends AS 12.55.027(e) to remove "electronic monitoring" as an option for claiming

credit toward a sentence of imprisonment. (Page 2, line 29 – Page 3, line 7)

Section 5: Amends AS 12.55.125(c) to add an enhanced sentencing structure for assault in the first degree when a dangerous instrument is used in the assault, which is a class A felony. (Page 3, line 8 – Page 4, line 4)

Section 6: Amends AS 12.55.125(d) to add an enhanced sentencing structure for assault in the second degree when a dangerous instrument is used in the assault, which is a class B felony. (Page 4, lines 5 – 29)

Section 7: Amends AS 12.55.125(e) to add an enhanced sentencing structure for assault in the third degree when a dangerous instrument is used in the assault, which is a class C felony. (Page 4, line 30 – Page 5, line
23)

Section 8: Amends AS 12.55.125(i) to add increased presumptive ranges to second- and third-degree sexual crimes when in the commission of the crime, a defendant possessed a firearm, used a dangerous instrument or caused serious physical injury. (Page 5, line 24 – Page 8, line 22)

Section 9: Adds AS 12.61.015(d), a new subsection that requires the prosecuting attorney to make a reasonable effort to confer with the victim of a sexual felony (or their legal guardian) to ascertain if they agree with the proposed plea agreement. (Page 8, lines 23 – 30)

Section 10: Repeals AS 12.55.027(g), which allowed for sentencing for time spent on electronic monitoring. (Page 8, line 31)

Section 11: Applicability. (Page 9, line 1 – 10)

Section 15: Effective date clause. (Page 9, line 11)

9:12:24 AM

Co-Chair von Imhof informed that there were three individuals signed up for invited testimony.

9:13:05 AM

CARMEN LOWRY, EXECUTIVE DIRECTOR, ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT, thanked the committee for the opportunity to discuss the bill and engage about the serious nature of sexual crimes. She stated that the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA) was a membership organization comprised of 24 community-based agencies that provided direct life-saving services to victims and survivors. She stated that the network and its members fully supported the bill. She thanked the sponsor for addressing clear deficiencies in the state's laws. She referenced Section 1 of the bill, which expanded the definition of strangulation. It allowed for understanding the perpetrators used many ways to deny a victim oxygen.

Ms. Lowry discussed Section 9, which had to do with a reasonable effort to contact a victim if there was a plea deal. She reiterated the importance of prosecuting attorneys working closely with victim's services agencies. She relayed that more often than not, agencies or shelter services had contact with victims. She offered the expertise of the network to work with the Department of Law (LAW) to come up with a checklist to ensure a reasonable attempt was made to contact a victim and give them a voice. She noted that a prosecuting attorney would not be bound in any way by the provision, but it was very important for to fully understand why a victim may have a certain perspective.

9:16:21 AM

Senator Olson asked about Section 9 of the bill, which he thought did not have the "teeth" he would have expected. He referenced the phrase "reasonable effort" and noted that nothing in the section required the prosecuting attorney to be bound by the victim's response regarding the plea deal. He thought it seemed like a soft-handed, feel-good piece of legislation.

Ms. Lowry explained that ANDVSA thought the reasons listed by Senator Olson were the reasons a checklist would be helpful. She thought there needed to be consultation. She explained that victims did not always want to go on the record, because it put pressure on her to determine what

happened to someone who likely was known. She thought there had to be a process for the law to uphold the intent and make sure people were informed.

Senator Olson considered the crime that was the impetus for the bill. He thought one problem was the prosecuting attorney that was trying to go for a conviction and almost acted recklessly and arrogantly, and the judge had his hands tied. He thought the prosecuting attorney had erred on the side of leniency.

9:19:34 AM

Senator Micciche reminded that the vast majority of what occurred in the crime being discussed had not been criminal, save for the second-degree assault. He stated he was not pushing victims to participate to a level that they were not comfortable. He thought the bill would result in victim's participation at a high enough level to prosecute individuals to the highest extent of the law.

Senator Wilson wondered if LAW would be participating in invited testimony.

Co-Chair von Imhof stated that LAW was not part of invited testimony, but there was a representative of the department in the room that could answer questions.

Co-Chair von Imhof asked if Senator Micciche wanted to make a brief statement before the third testifier began his remarks.

Senator Micciche stated that the third testifier was Judge Michael Corey, who had presided over the Justin Schneider case. He had not supported the judge's retention. The judge had called Senator Micciche and had helped clarify why he thought the greater participation on behalf of the victim was important.

9:23:30 AM

JUDGE MICHAEL COREY (via teleconference), informed that he had presided over the Justin Schneider case. He wanted to be clear that he was speaking on his own behalf as a private citizen, as he was no longer a judge. He relayed that he had followed the law as was required by his oath, and he had "been crucified for it." He supported the bill,

and thought it fixed problems that existed in law. He opined that if SB 12 had been in effect that the time Justin Schneider engaged in his actions, there would not be the problems that had followed. He wished to be involved in the bill to help his former colleagues on the bench so that no one would have to go through what he and his family had experienced.

Mr. Corey continued his testimony. He thought it was clear that there were segments of the population that exploited social media without regard for accuracy or hurt to others while seeking political relevance. He emphasized that he had not been the problem (in the outcome of the case), but rather the law had been the problem. He reiterated that he thought SB 12 fixed the problem with the law. He supported all of the measures included in the bill, including the addition to the definition of "sexual contact." He asserted that if the different definition had been included in the law prior to Justin Schneider's actions, there was no way a plea arrangement would have been sought by the prosecutor. He mentioned public outrage at the credit given for time served on electronic monitoring.

Mr. Corey continued his remarks. He did not dispute the increase in sentencing ranges as proposed in the bill. He explained that the expanded definition of sexual contact, if applied to the Schneider case, would have resulted in a greater sentence and registration on the sex offender database.

9:27:17 AM

Mr. Corey addressed the concerns of victims. He thought the Alaska constitution mentioned that victims needed to be treated with respect. He thought respect should also be shown to victims that did not want to be present in court proceedings. He did not think that a few individuals should dictate how victims had to conduct themselves. He thought it was possible that a victim could not be found because they did not want to come forward. He thought it was troubling that if a defendant could know or act on the status of a victim's participation.

9:29:22 AM

Mr. Corey addressed Section 9 of the bill and liked the fact that a prosecutor had an affirmative obligation,

without which the obligation was on victims to come forward. He thought discreet sensitive contact originating with the prosecuting attorney's office might bring more involvement. He thought the court had to perpetuate objectivity.

Mr. Corey expressed gratitude for Senator Micciche and his staff taking his call and discussing concerns for victims. He thought that there were unintended consequences when law was changed. He thought one possibility was to give a victim veto power over a plea arrangement. He thought that at a minimum, if the bill was enacted as-is, it seemed that it would be helpful if the legislature would send judicial officers the freedom to reject plea agreements if victims did not agree.

Mr. Corey anticipated that there would be additional discussion about a victim's displeasure about a plea agreement and he thought judges would question whether there was authority to reject the agreement solely on the grounds of the victim's disapproval. He thought there were times a plea agreement should be accepted even over a victim's disapproval, but he did not want to see his former colleagues subjected to the malicious attacks if it was perceived the courts ignored the wishes of the victims.

9:33:24 AM

Co-Chair Stedman noted that the charge of kidnapping had not been used in the Schneider case. He wondered if kidnapping statutes should be updated to help in future cases.

Mr. Corey thought it did not hurt to take another look at the relevant statutes. He knew the court could not reject a plea agreement predicated on the manner in which the prosecution chooses to charge a defendant. If the charge was dropped, there was a separation of powers issue between the executive and judiciary branches. He emphasized that much of the issue had to do with what the prosecutor thought she or he could prove. He clarified that the judge was precluded from being involved in the negotiation process. Since the plea agreement was by definition a liquidation of risk on both sides, the agreement would be too lenient or too harsh as compared to a different eventuality. There were other parameters for other plea bargains. The question of community condemnation weighed on

judges. He discussed the level of sanctions imposed on perpetrators under plea agreements and thought the public would be horrified.

9:36:16 AM

Senator Wielechowski considered the definition of kidnapping under AS 11.41.300. He cited that news reports had described the actions taken by the perpetrator in the Schneider case, and he thought the crime clearly met the definition of kidnapping and attempted murder. He asked what the prosecution was prepared to go forward on if the judge had rejected the plea agreement.

Mr. Corey stated that the charges had included kidnapping and assault in the second degree, but not attempted murder. He informed that a judge did not have the power to direct the prosecution in terms of what charges could be brought, nor could a judge stop the prosecution from dropping charges. He explained that judges were obligated to follow the law when personal preferences diverged from the letter of the law.

Mr. Corey thought the case had a horrible result. He discussed the role of the judge in presiding over cases. He thought reexamination of the particulars of the case would require a sit-down with the district attorney's office, which could answer the question of the charges more fully.

9:40:48 AM

Co-Chair von Imhof reminded that there were others to give invited testimony. She asked for speakers to stay focused on the questions and stay concise. She appreciated Mr. Corey's testimony.

Senator Wielechowski asked if a kidnapping charge was an unclassified felony.

Mr. Corey answered in the affirmative.

Senator Wielechowski asked if the charge meant the potential for life in prison.

Mr. Corey stated that the sentence could be up to 99 years. He thought there might be common-law restrictions and ranges.

Senator Wielechowski asked if there was case law that said the definition of kidnapping could include moving to another location by deception.

Mr. Corey believed Senator Wielechowski's description was correct.

Senator Wielechowski asked if the judge had rejected the plea, the case would have gone to trial on a kidnapping charge.

Mr. Corey stated that judges were not authorized to reject pleas because the state dropped a charge. He stated that if there had been a legitimate reason for him to reject the plea (which there had not been) it would have gone to trial and the state may or may not have pursued the charge of kidnapping depending on the evidence.

Senator Micciche wanted to ensure that he had looked in to the case and found a conviction of kidnapping would have been very challenging. The bill tried to put tools in place that would have resulted in a conviction. He wanted to clarify that it seemed that a kidnapping conviction, particularly without a willing witness, would have been difficult to prove.

9:44:50 AM

Co-Chair von Imhof OPENED public testimony.

ELIZABETH WILLIAMS, NO MORE FREE PASSES, ANCHORAGE (via teleconference), testified in support of the bill. She commented that the bill was different than any other crime bill because crimes that involved power and control were different than other crimes and needed to be prosecuted differently. She discussed recent criminal justice reform efforts. She stated that the goal of No More Free Passes was to educate policy-makers that crimes of domestic violence and sexual assault needed to be treated differently. She compared strangulation to water-boarding.

Ms. Williams asserted that crimes of sexual assault were similar to torture and would stay with victims for life. She discussed the rate of recidivism and cited that 45 percent of domestic violence perpetrators committed another crime of domestic violence. She informed that most of the

time perpetrators of domestic violence and sexual assault victimized the same people. She pointed out that release of the perpetrators potentially revictimized people. She supported a provision that was added to require prosecutors to confer with victims.

9:48:50 AM

MARIE MCCONNELL, SELF, STERLING (via teleconference), testified in opposition to the bill. She opposed the provision of the bill related to not allowing credit for time spent on ankle monitoring. She discussed the financial costs and restrictions of ankle monitoring. She thought ankle monitoring was a severe restriction of liberty and was a severe punishment.

9:52:06 AM

Co-Chair von Imhof CLOSED public testimony.

Senator Wilson asked about Section 9 of the bill and wanted a description of how the provision might work in a case similar to the Schneider case being discussed.

KACI SCHROEDER, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, informed that the language in Section 9 outlined best practice for a prosecutor in consulting with a victim. She noted that the practice was not unlike what was already being done for most cases. She conveyed that at the case initiation; the office would attempt to contact victims by phone, email, or letter. In the initial contact the prosecutors would explain the victim's rights and inform of consultation in the case of a plea agreement or what might happen if the case when to trial. If a victim was inclined to be involved, automatic systems would send notifications of court hearings and potential offender release. If the victim did not agree, the attorneys would make note and often let the court know. At the point of a plea agreement, the office would contact the victim and consider feedback. Victims could also show up at change of plea hearings to express dissatisfaction with the agreement.

Senator Wilson wondered how the victim's agreement would be recorded into the record. He had worked with victims of domestic violence and sexual assault. He was concerned that the criminal process was but one piece of the puzzle,

followed by the civil process. He thought whether the agreement was recorded could have a difference in the civil case.

Ms. Schroeder stated that a victim's information/feedback would be recorded in the electronic and hard file, and the information would be accessible to any prosecutor in the trial. The information was not available on a searchable database.

9:56:06 AM

Senator Wilson did not want to see the civil process or seeking of damages negatively affected by the record from the criminal case.

Senator Micciche noted that the testifier had used the word "often" (in reference to recording victim's feedback) and noted that the bill required the recording of the information. He was not sure he could make a connection between plea agreements and change in civil status. He noted that the bill formalized a process that usually existed. He had felt that if the information had been recorded in the Schneider case it could have resulted in a different outcome.

Ms. Schroeder stated that Senator Micciche was correct. While it was currently the policy of LAW to record the information, the bill would make it law.

Senator Wielechowski referenced Section 9, which stated that prosecuting attorneys should make a reasonable effort to confer with victims. He wondered if there was liability or repercussions if an attempt was not made to contact the victim.

Ms. Schroeder was not certain but affirmed that employees of LAW were required to follow the law.

Senator Wielechowski asked if the state had been prepared to prosecute the Schneider case if the plea agreement was rejected; and if so, on what grounds.

Ms. Schroeder stated she had not prosecuted the case and had not done an audit of the case. She did not know what the state had been ready to go forward with had the plea

agreement been rejected. She offered to get more information.

Senator Wielechowski was interested in more information. He did not understand why the charge of kidnapping was not pursued, and thought the acts in question were clearly a case of attempted murder. He thought the law already covered the matter and wanted to know why the department settled for a very lenient plea agreement.

10:00:48 AM

Co-Chair von Imhof interjected that it was not relevant to the bill to discuss opinions on the plea agreement.

Senator Wielechowski opined that the case was relevant. He asserted that the current law was not followed in the Schneider case, and passing a new bill was not needed. He wanted more information from the department.

Co-Chair von Imhof asked Ms. Schneider to follow up with Senator Wielechowski to address why particular laws were not followed at the time. She mentioned the issue of kidnapping and asked for the subject to be addressed.

Senator Olson thought the bill might be inadequate to address the concerns being discussed. He thought Section 9 of the bill was particularly troubling, in that that LAW was unbound by the victim's response regarding the plea agreement. He was also interested in the information Senator Wielechowski had requested from Ms. Schroeder.

Co-Chair von Imhof acknowledged the ongoing discussion regarding Section 9 of the bill and urged the bill sponsor to work with LAW to look at the section.

Senator Micciche addressed a comment by Senator Wielechowski and wanted understanding that whether or not a conviction would have occurred (in the Schneider case) for kidnapping or murder; the perpetrator still would not have been charged with commission of a sex crime because "unwanted contact with semen" had not been a prosecutable offense. He emphasized that the bill was necessary to adequately prosecute crimes such as the one that occurred in the Schneider case.

Senator Shower asked about the blank spots on the bottom right of that chart the sponsor provided (copy not on file), and if it indicated there were no changes to the provisions under SB 12.

Senator Micciche answered in the affirmative.

10:04:11 AM

Senator Wielechowski agreed that changes needed to happen in the area of law pertaining to sex crimes. He addressed Section 3 of the bill and thought there might be some merit to keeping some of the credits for time spent on electric monitoring. He asked if it was standard procedure in other states to have credit for time spent on electronic monitoring, and if Alaska had historically allowed the credit.

Ms. Schroeder stated that the language in Section 3 had been in law for many years prior to five years previously, when the legislature had passed a law allowing for credit for time spent on electronic monitoring. She noted that some of the credit had been capped at 360 days via SB 91 [criminal justice reform legislation passed in 2016] for certain violent offenses. The fact that people were getting credit for electronic monitoring pre-trial was a fairly new development in Alaska law. She was not aware of the law in other states.

Senator Wilson thought the credit for electronic monitoring was inequitable due to the financial requirements to participate. He wanted to see it capped or left out of the bill. He appreciated the sponsor's omission of the provision in the bill.

Senator Micciche anticipated that the issue of electronic monitoring would resurface in the other body. He wanted people to consider that for pre-trial monitoring, the benefit of the credit would be given to those convicted of a crime while being withheld from those who were found innocent. He pointed out that it was still possible to use electronic monitoring post-conviction for the right candidate. He thought the Schneider case had incentive to delay and had resulted in a sentence of one year on electronic monitoring. He noted that the proposed change to law for electronic monitoring was only for crimes against a

person, and still allowed for the credit for minor crimes not against a person.

Co-Chair von Imhof thought she heard that it was important to determine what factors contributed towards the unsatisfactory results in the Schneider case, and what could be done to mitigate the factors. She thought the bill was a step in the right direction. She suggested it was important to research other possible steps.

10:08:21 AM

Senator Wilson referenced the question of innocent people spending time on electronic monitoring. He asked if banking of time served for similar crimes was still used.

Ms. Schroeder stated that banking of time was not used in the way Senator Wilson described. She continued that people could bank time if they were serving time on the same case. If a person was serving time on electronic monitoring, and then was acquitted, the person could not use the time accrued on another case.

Senator Wilson asked about case globalization settlement.

Ms. Schneider thought as part of global resolutions, the court would address the matter and use time spent on electronic monitoring.

Senator Wilson asked how many cases similar to the Schneider case resulted in global resolutions.

Ms. Schroeder informed that global resolutions were typically found when a person had many cases and LAW wanted to dispose of the cases in one agreement. She could not say that the resolutions were or were not typical to one kind of case.

Senator Wilson referenced his experience testifying against batterers and recalled many other charges being used to dismiss cases.

Ms. Schroeder was not sure she understood Senator Wilson's comment.

Senator Wilson asked if there was anything in SB 12 to prohibit a globalization plea agreement that would offset what was trying to be remedied in the bill.

Ms. Schroeder stated that there was nothing in the bill that would impact how the state could negotiate cases. She continued that the bill gave prosecutors more tools and more flexibility on how cases may resolve. She used the example of the addition of enhanced penalties for using a dangerous instrument in furtherance of a sexual assault.

10:11:57 AM

Senator Wilson pondered if Justin Schneider had been serving time on ankle monitoring and if his case had been globalized. He thought it was possible that he would have served no time after credit for time spent on another charge.

Ms. Schroeder wanted to check on the transferring of time as described by Senator Wilson, which she stated did not happen often. She offered to provide more information.

Senator Bishop was glad to hear Ms. Schroeder state that prosecutors would have more tools.

Co-Chair von Imhof stated the committee would hold the bill for further review and members would have time to pursue more information.

10:13:54 AM

Senator Micciche commented that there was a secondary value of the bill. He cited that 63 percent of sexual assault crimes in the state were not reported, which he thought was in part because of outcomes such as in the Schneider case. He hoped the changes proposed in the bill would result in more reporting and encourage victims to engage more in the trial process.

Senator Micciche reviewed FN 1, OMB component 43. The fiscal note was indeterminate. He read from the analysis on page 2:

> This bill will increase caseloads. The state will likely bring more cases, and these cases will require

significant resources because of the severity of the charges and consequences of conviction.

Senator Micciche reviewed FN 2, OMB component 1631. The fiscal note was indeterminate for the same reason as FN 1.

Senator Micciche reviewed FN 3, OMB component 2134. The fiscal note showed zero fiscal impact.

Senator Micciche reviewed FN 4, OMB component 2202. The fiscal note showed zero fiscal impact.

Senator Micciche reviewed FN 5, OMB component 768. The fiscal note showed zero fiscal impact.

Senator Micciche discussed a sixth fiscal note.

Co-Chair von Imhof did not have the fiscal note.

10:17:38 AM
AT EASE

10:18:30 AM
RECONVENED

Co-Chair von Imhof noted that the most recent fiscal note discussed by Senator Micciche had not been provided to members. She set the bill aside for further consideration.

SB 12 was HEARD and HELD in committee for further consideration.

Co-Chair von Imhof discussed the schedule for the following day.

#
ADJOURNMENT
10:19:13 AM

The meeting was adjourned at 10:19 a.m.