SENATE FINANCE COMMITTEE
May 4, 2019
9:06 a.m.

9:06:07 AM

CALL TO ORDER

Co-Chair von Imhof called the Senate Finance Committee meeting to order at 9:06 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 [attending via teleconference]
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Cathy Giessel; Senator Mia Costello; Senator Lora Reinbold; Alexei Painter, Analyst, Legislative Finance Division; Juli Lucky, Staff, Senator Natasha von Imhof; Representative John Lincoln, Sponsor; Rose Foley, Staff, Representative John Lincoln; John Skidmore, Director, Criminal Division, Department of Law.

PRESENT VIA TELECONFERENCE

Jaenell Manchester, 49th Rising, Fairbanks; Beth Goldstein, Acting Public Defender, Department of Administration; Chrissy Vogeley, Community Relations Manager, Office of Children Services, Department of Health and Social Services.

SUMMARY

SB 35 CRIMES;SEX CRIMES;SENTENCING; PAROLE

SB 35 was HEARD and HELD in committee for further consideration.

SB 74 INTERNET FOR SCHOOLS

CSSB 74(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the Department of Education and Early Development.

CSHB 14(FIN)
ASSAULT; SEX OFFENSES; SENT. AGGRAVATOR

CSHB 14(FIN) was HEARD and HELD in committee for further consideration.

#sb74
SENATE BILL NO. 74

"An Act relating to funding for Internet services for school districts."

9:07:01 AM

Co-Chair von Imhof relayed that the committee had heard the bill on April 24, 2019. Her office had received no amendments from committee members, however, the Legislative Finance Division (LFD) had raised several concerns.

9:07:46 AM

ALEXEI PAINTER, ANALYST, LEGISLATIVE FINANCE DIVISION, discussed the changes to the bill. He explained that the federal disparity test functioned to determine whether the state could deduct federal impact aid from its share of the foundation formula for education, which was worth approximately $80 million to $90 million per year to the state. He said that the ability to deduct the aid was contingent on passing the disparity test each year. He shared that the test compared the highest funded districts in the state to the lowest funded; the E-rate money from the federal government was counted in the test, the bill would greatly increase E-rate funding in certain districts already at the top of the test list. The qualifying percentage for funding was 25 percent and passage of the

bill would raise the percentage in those districts to 40 percent causing them to fail the disparity test.

Mr. Painter stated that a possible solution had been discussed with the Department of Education and Early Development (DEED) but was contingent on federal approval. The department had requested to exclude e-rate funding from inclusion in the disparity test but had yet to hear a response from the federal government. In the interest of time, a conditional effective date had been added to the bill; the bill would only come into effect if the federal government approved the request to exclude E-rate from the federal disparity test.

9:10:19 AM

Co-Chair Stedman asked for a more definitive explanation. He understood the general nature of the disparity test but wanted more detail about the potential funding imbalance.

Mr. Painter detailed that the disparity test was a comparison for school districts based on the average daily membership. He furthered that based on state funding, there would not be a disparity; however local funding could potentially breach the 23 percent cap and raise the total disparity above 25 percent. Since E-rate funds fell outside of the funding cap and was concentrated in few districts, those districts would rise to the top, beyond 25 percent. The top school that was the cutoff in 2018 was the Lower Kuskokwim, which was a district that did not have a local contribution and would normally not be at the top of the list, but they receive a disproportioned amount of E-rate funding. The department projection showed that the district would rise too high to pass the disparity test. He noted the other small districts received E-rate money but not to the scale of some of the districts in Western Alaska.

9:12:42 AM

Co-Chair von Imhof asked about the effective date of the bill being contingent upon agreement with the federal government. She asked whether there was a cut off date for implementation of the bill.

Mr. Painter informed that there was a cutoff date of January 1, 2020. The date would give districts a chance to apply for FY 2021.

9:13:34 AM

JULI LUCKY, STAFF, SENATOR NATASHA VON IMHOF, explained that the changes in the CS would not change the fiscal note, unless the federal government failed to approve the state's request. She commented that there had been confusion about the e-rate program at previous meetings. She clarified that the federal program subsidized internet service only, and did not provide for infrastructure, all remaining yearly funds were returned. She shared that burden was shared between the federal and state governments; the E-rate was the federal program and the BAG Program was the state program. The BAG program allowed the state to help districts that could not reach the minimum number of megabits specified under current law. The bill would change the minimum amount form 10 megabits per second to 25 megabits per second, which would increase the number of eligible schools. She clarified that the bill would not put infrastructure in schools. She reiterated that the money was applied for annually and was given to districts on a monthly basis to pay for service, any unused money was returned to the state at the end of the year.

9:16:18 AM

Co-Chair Stedman MOVED to ADOPT proposed committee substitute for SB 74, Work Draft 31-LS0600\K (Caouette, 5/1/19). There being NO OBJECTION, it was so ordered.

Co-Chair Stedman MOVED to report CSSB 74(FIN) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSSB 74(FIN) was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note from the Department of Education and Early Development.

#hb14
CS FOR HOUSE BILL NO. 14(FIN)

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

relating to the duties of the prosecuting attorney; and relating to victim notifications."

9:17:40 AM

Co-Chair von Imhof stated that the committee had heard the senate finance version of the bill on March 11, 2019, at which time public testimony was taken. She said that like SB 12, HB 14 sought to close a loophole in the state's criminal statutes that had allowed an assailant to go free when he should have served time. The law, when read literally, was unable to be applied to the egregious situation.

9:18:57 AM

REPRESENTATIVE JOHN LINCOLN, SPONSOR, stated that the bill would address issues with the current law that had come to light in 2018 when a man strangled a woman to the point of unconsciousness and then sexually assaulted her. The bill would define the strangulation or suffocation to the point of unconsciousness as first degree assault and would add the behavior to the list of aggravators for sentencing in other crimes. Additionally, the bill would expand the statutory definition of "sexual contact" to include forcing someone to come into contact with ejaculate and would expand victim notification laws so that all victims would be notified versus only felony sex crimes.

9:20:11 AM

ROSE FOLEY, STAFF, REPRESENTATIVE JOHN LINCOLN, discussed the differences between the current versions of SB 12 and HB 14. HB 14 used the term "ejaculate" while SB 12 referred to fluid as "semen". SB 12 investigated sentencing through sentence enhancement, while HB 14 created an aggravator for strangulation. She said that credit for time served under electronic monitoring was eliminated under SB 12 but was not mentioned in HB 14. She concluded the HB 14 first provided notification to all victims of sex crimes and allowed the court to reschedule a plea hearing to allow the court to comply with notification requirements.

9:21:13 AM

Co-Chair von Imhof recalled that Senator Olson had brought up a concern in a previous meeting that pertained to

whether victim notification requirements regarding plea agreement struck a balance between ensuring that victims were included, without putting additional pressure on them to participate against their wishes.

Ms. Foley directed attention to Page 9, line 13 of the bill, which specified that there was no requirement for the victim, or their legal guardian, to provide a response to a prosecuting attorney regarding a plea agreement. If a victim did not wish to be part of the legal proceedings, there was no requirement that they participate or provide a response. The Alaska Network Domestic Violence and Sexual Assault had requested stronger victim notification language, the sponsor had worked with that agency as well as the courts to craft that language. Department of Law had raised concerns with earlier language in the bill requiring the prosecuting attorney to state in court what notification attempts had been made with victims. The concern had been that this would provide information with the defense, if the victim could not be located, that could be detrimental to the victim's case during the early stages of a plea agreement.

9:22:55 AM

Co-Chair von Imhof asked Senator Micciche to comment on victim notification component.

Senator Micciche said that the language in the CS was identical to his original bill. He stressed that there were no expectations that the victim would be required to do anything. However, he reminded the committee that Judge Michael Corey, who ruled in the Schneider case that birthed the legislation, had testified that requiring the victim to testify could had resulted in a stronger sentence for the perpetrator. He supported the current language in the CS.

9:24:41 AM

Senator Micciche noted that the sponsor had been remarkable to work with.

9:25:40 AM

Co-Chair von Imhof invited John Skidmore from the Department of Law to the table for questions.

9:27:02 AM

Senator Wielechowski asked whether Department of Law had a position on the bill.

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, explained that LAW supported the bill. The legislation contained some concepts originally found in the governor's suite of proposed crime bills.

9:27:38 AM

Senator Wielechowski asked Mr. Skidmore to describe the difference between a special circumstance in sentencing and an aggravator.

Mr. Skidmore explained that a special circumstance in sentencing, which was specifically listed in statute, controlled the presumptive range that a court would impose. An aggravator was a legal tool that allowed a judge to increase a sentence above the presumptive range if the court deemed appropriate.

9:28:38 AM

Senator Wielechowski referenced page 8, section 6 of the bill, which pertained to a recording when asking victims or victim's guardians whether they agreed with a proposed plea agreement. He wondered whether this could force victims to be questioned by a defendant.

Mr. Skidmore answered "no." The bill language stated that the prosecuting attorney shall make a reasonable effort to confer with the victim, to explain the proposed plea agreement and then ask whether they agree with the agreement. He stated that the same prosecutor, or the prosecutor at the time of sentencing, would indicate whether the victim had been spoken to and whether they agreed. He stressed that the victim would not be required to go to court, to be subject to cross examination, and no details of the conversation would be divulged.

9:30:35 AM

Senator Wielechowski thought that there would be a defense attorney that would want to hear directly from the victim

whether they agreed with the plea agreement. He worried that this section of the bill would be challenged in court.

Mr. Skidmore appreciated the question. In his experience and that of other prosecutors dealing with victim's rights provisions, he had not seen defense attorneys have success in demanding that a victim be put on the stand.

9:31:50 AM

Senator Wilson asked whether the section would allow the victim’s agreement with a plea deal in a criminal case, or non-agreement, to be used in a civil case.

Mr. Skidmore noted that he did not practice civil law. He did not believe that agreement or disagreement would have any bearing on a civil case. He knew that a conviction could have influence on a civil case if the civil case was based on the conduct of the defendant. He was not sure whether the agreement would have any bearing on the sentence in a civil case.

Co-Chair von Imhof noted that there was a public defender available to answer questions.

9:34:01 AM

Senator Wilson wondered what would happen if victims recanted or changed their statements or agreement with the plea agreement in the criminal case.

Mr. Skidmore thought the subsection of the bill would not have an effect on the scenario that Senator Wilson was describing. He furthered that the plea agreement dealt with the sentence that was imposed and not whether the victim agreed on the matter of charges being brought in the first place.

9:35:26 AM

Senator Wilson pondered that a defense attorney for a perpetrator could probe the victim’s reason for not agreeing to a plea bargain, which could then be used against them in civil proceedings.

Mr. Skidmore reiterated that he was not an expert or practitioner of civil law.

9:36:12 AM

Senator Micciche shared that there was a similar provision in law concerning victims agreeing with plea agreements. There had been a case of sexual abuse of a minor in Healy, Alaska; in which the parents had not agreed to the plea agreement.

Mr. Skidmore relayed that LAW had policies under which attorneys communicated with victims about plea agreements before they were entered into, and certainly before sentencing hearings. He said that the bill simply formalized actions that the department already did.

9:38:06 AM

Senator Wielechowski agreed with Senator Wilson. He said that in the case of a violent sexual assault, if the victim decided not to testify, making the case harder to prove and increasing the chances of a plea bargain, and if the sentence were pled down significantly and the victim agreed to the plea change, it would absolutely be used in a civil case.

Senator Wielechowski asked to what lengths the department was required to go to attempt contact with the victim.

Mr. Skidmore referenced Page 8, lines 9-11, which said that the attorney "shall make reasonable efforts." This meant that the department would use the information in existing files. He said that there were other steps that were taken to try to locate victims, rarely was law enforcement sent to track down a victim.

9:40:22 AM

Senator Micciche asked Mr. Skidmore to describe how the same sentencing for an egregious crime could be reached by either using an aggregator or using enhanced sentencing.

Mr. Skidmore detailed that the bill added the subsection that discussed a person knowingly causing a person to become unconscious by means of a dangerous instrument. He said that the increase the conduct of a dangerous instrument to a Class A felony, could increase sentencing ranges. He stated that under current law the sentencing range for strangulation, which was a Class B felony, was 0-

2 years. He noted that the change would up it to 3-6 years, and 4-7 years and 5-8 years were being considered. There was a concept of putting strangulation into a special circumstance, which had potential to increase the range for a Class B felony strangulation from 0-2 years to 1-3 years. It was also possible to adjust the presumptive range for Class B felonies. He relayed that the aggravator in the bill said that if you strangled someone into unconsciousness it could serve and an aggravator, which could only be used if it was not an element of the offense. He explained that the aggravator could not be used on top of the crime of assault, instead the aggravator would have to be used in another type of crime. He related that the two different tools allowed prosecutors to make tactical decisions about the best method to get to the right sentence.

9:43:43 AM

Senator Micciche thought the simple answer for the public was that using either method would result in an appropriate sentence to punish the crime.

Mr. Skidmore stated that without question the Class A felony available in the bill would increase the sentencing range for strangulation. He said that if the strangulation not been charged as an assault, but used as an aggravator, it would have made a dramatic difference in the sentencing.

9:45:45 AM

Senator Wielechowski referenced Page 2, line 4 of the bill and Page 1, line 13, respectively:

(4) that person recklessly causes serious physical injury to another by repeated assaults using a dangerous instrument,

(3) the person knowingly engages in conduct that results in serious physical injury……

Senator Wielechowski asked whether there was a difference between "knowingly causes" and "knowingly engages in conduct."
Mr. Skidmore answered in the negative.

9:47:02 AM

Co-Chair von Imhof stated that the committee would not move the bill. She acknowledged that Senator Wilson and Senator Wielechowski had concerns and asserted that the bill was a priority for the entire legislature. She said that the committee would continue to work with the bill sponsor.

9:48:03 AM

JAENELL MANCHESTER, 49TH RISING, FAIRBANKS (via teleconference), spoke in support of the bill. She asserted that survivors of sexual violence were encouraged to support but that the legal system was notoriously unfriendly to survivors. She cited a story from a woman named Jessica, who had recounted that when she reported being raped, police had told her that the defense would "tear her down" in court. When asked if she could handle that, she responded that she could not, and declined to press charges. She said that including all sex offenses in the victim notification statute, and stipulating that a court could reschedule a plea agreement hearing if the victim notification requirement was unfulfilled, would ensure that the legal system was more survivor friendly, while ensuring the defendants right to a fair trial. She added that the bill would help survivors feel safe and protect survivors by elevating the severity of strangulation. She shared that strangulation was a serious and deadly form of abuse that was often underestimated. She relayed that victims of strangulation were likely to suffer long-term physical and mental repercussions and were 7 times more likely to be killed by their partners. She believed that recognizing the severity of strangulation in statute would help remove perpetrators from society and provide additional tools to survivors and advocates to keep survivors safe. She supported the amendment to end the practice of granting credit towards a sentence of imprisonment for time spent under electronic monitoring. She thought that passing the amendment would increase accountability and send the signal that sexual violence was taken seriously by the legislature and the courts. She concluded that nonconsensual contact with semen was a form of sexual violence and should be recognized as much by the legislation.

9:50:31 AM

Senator Wielechowski asked whether the Public Defender Agency had concerns with the bill.

BETH GOLDSTEIN, ACTING PUBLIC DEFENDER, DEPARTMENT OF ADMINISTRATION (via teleconference), stated that the office had a concern with Section 4, which amended AS 11.81.900(b)(60). She believed that the wording did not require the sex act to be committed in the presence of the victim. She worried that by separating the sex act from the contact the language my capture contact that the legislature does not intend to punish. She understood the need to close the loophole in statute but felt the language could be clearer.

9:52:13 AM

Senator Wielechowski asked whether there were any other concerns.

Ms. Goldstein replied in the negative.

9:52:46 AM
AT EASE

9:54:34 AM
RECONVENED

Co-Chair von Imhof relayed that the committee would set the bill aside to allow the sponsors of HB 14 and SB 12 to continue to work with all involved parties on changes to the bill. The committee would take the bill back up on the following Monday.

CSHB 14(FIN) was HEARD and HELD in committee for further consideration.

#sb35
SENATE BILL NO. 35

> "An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register;

relating to eligibility for discretionary parole; and providing for an effective date."

9:55:20 AM

Co-Chair von Imhof relayed that the committee intended to hear an overview of the bill. Public testimony would be scheduled for another meeting.

9:56:49 AM

Mr. Skidmore stated that SB 35 was defined to deal with sex offenses in the state. The bill was a broad // Some of the provisions had been removed // The bill

Mr. Skidmore reminded that the state had the dubious position of leading

9:58:06 AM

Mr. Skidmore addressed a Sectional Analysis (copy on file):

> **Summary: This legislation makes sexual abuse of a minor in the third degree a sexual felony if there is a six year age difference between the perpetrator and the victim. It also clarifies how to count prior felonies when determining the appropriate sentencing range when sentencing a person for a sexual felony and requires out-of-state sex offenders to register in Alaska when they are present in the state. The bill makes indecent viewing or production of a picture of a person under the age of 16 and indecent production of an image of an adult a registerable sex offense. The bill creates the new crimes of enticement of a minor, repeatedly sending images of genitalia, and eliminates marriage as a defense to most acts of sexual assault.**
>
> **Section 1 Legislative Intent and Findings** Expresses intent to overturn Williams v. State, 418 P.3d 870 (Alaska App. 2018) in regards to counting prior felonies when sentencing a person for a sexual felony and State, Department of Public Safety v. Doe, 425 P. 3d 115 (Alaska 2018) in regards to out-of-state sex offenders registering as a sex offender when they are present in Alaska. Also expresses legislative intent for the Department of Public Safety to make additional

resources available to expand investigations of online exploitation of children.

Section 2-3 Changes the mental state for sexual assault in the second degree (penetration; class B felony) and sexual assault in the third degree (sexual contact; class C felony) from "knowing" to "reckless" when the victim is mentally incapable, incapacitated, or unaware that the sexual act is being committed.

10:01:41 AM

Mr. Skidmore continued to address the Sectional Analysis:

Section 4-5 Eliminates marriage as a defense to sexual assault in all cases except when both parties consent and it is the nature of the relationship that is criminalized (i.e. probation officer/probationer, peace officer/person in custody, Division of Juvenile Justice Officer/person 18 or 19 and under the jurisdiction of the Division of Juvenile Justice).

Mr. Skidmore added that the marriage defense was most problematic in situations where one spouse was mentally incapable, meaning that they were unable to understand the nature and consequences of their conduct.

Section 6-7 Clarifies the applicable sentencing provisions for sexual abuse of a minor in the third degree (class C felony) when there is at least a six year age difference between the offender and the victim. The crime will be sentenced as a sexual felony under AS 12.55.125(i) if there is a six year age difference between the offender and victim.

10:05:10 AM

Mr. Skidmore continued to address and discuss the Sectional Analysis:

Section 8-10 Removes the word "online" from the crime of "online enticement" criminalizing any enticement of a minor regardless of whether the enticement occurs "online."
Section 11 Makes unlawful exploitation of a minor an unclassified felony if the person has been previously

convicted of unlawful exploitation of a minor or if the victim is under 13 years of age.

10:09:02 AM

Mr. Skidmore continued to address the Sectional Analysis:

Section 12 Amends the crime of indecent exposure in the first degree to include masturbation in the presence of either an adult or child. If the masturbation occurs in the presence of an adult the offense will be a class C felony. If it occurs in front of a person under 16 years of age it will be a class B felony.

Section 13 Adds repeatedly sending unwanted images of genitalia to the crime of harassment in the second degree.

Section 14 Separates "production" from "viewing" in the crime of indecent viewing or production of a picture.

Section 15 Conforming amendment. Changes the word "photography" to "production of pictures."

Section 16 Conforming amendment. Changes the word "photography" to "production of pictures."

Section 17 Classification section. Makes production of a picture of a minor a class B felony (which will be sentenced as a sexual felony). Viewing of a minor is a class C felony (which will be sentenced as a sexual felony). Production of a picture of an adult is also a class C sexual felony. Viewing of a picture of an adult is a class A misdemeanor.

Section 18 Clarifies that the crime of indecent viewing or production of a picture does not apply to activities that would reasonably be construed as normal caretaker responsibilities or a recognized form of medical treatment.

10:13:44 AM

Mr. Skidmore continued to address and discuss the Sectional Analysis:

Section 19 Adds a definition of "semen" to statute.

Mr. Skidmore pointed out that the crime lab used a broader definition than just a fluid that had sperm in it; the medical definition of semen used by the crime lab would be added to statute.

> **Section 20** Codifies a presumption that the court shall order the offender not to have contact with the victim as a condition of probation for cases involving sex offenses or crimes of domestic violence unless the court finds that contact between the victim and offender is necessary.
>
> **Section 21** Conforms the sentencing statutes for sex offenses to the change made to unlawful exploitation of a minor in section 11, indecent exposure in section 12, sexual abuse of a minor in the third degree in sections 6-7, and indecent viewing or production in section 17. Also creates an enhanced sentencing structure for distribution of child pornography if the offender hosted, created, or helped host or create a mechanism for multi-party sharing or distribution of child pornography. This section also creates a new sentencing range for a first conviction of distribution of child pornography of 4-12 years.

Mr. Skidmore clarified that many of the provisions written into the bill were the result of work done in lower committees and had not been in the governor's original bill.

10:17:31 AM

> **Section 22** Clarifies that any prior felony counts for the purposes of determining the presumptive sentencing range for a person being sentenced for a sexual felony.

Mr. Skidmore said that the clarifying language would ensure that sex offenders would be appropriately sentenced when they had prior felony convictions that happened to not be sex felony convictions.

Section 23 Conforming amendment: new crime of enticement of a minor clarified in the definition of "most serious felony."

Section 24 Adds sexual abuse of a minor in the third degree when there is a six year age difference between the perpetrator and the victim, indecent viewing or production of an image of a minor, indecent production of a picture of an adult, and the new crime of enticement of a minor to the definition of "sexual felony."

Mr. Skidmore said that the definition would impact the use of a sex offense as a presumptive sentence enhancement, in discussions about pre-trial credit, and in probation.

Section 25 Requires the Department of Corrections to notify the victim of a sex offense or a crime involving domestic violence of the option to request a protective order and provide contact information for victim resources.

10:19:30 AM

Mr. Skidmore continued to discuss the sectional analysis:

Section 26-29 Requires a person required to register as a sex offender or child kidnapper in another jurisdiction to register in Alaska when that person is present in the state. Also adds indecent viewing or production of a picture of a minor or indecent production of a picture of an adult to the list of registerable sex offenses.

10:20:32 AM

Co-Chair Stedman understood that sexual offenders that came to Alaska from other states had to register or they would be in violation.

Mr. Skidmore answered in the affirmative.

Co-Chair Stedman asked what was required by current law. He referenced an individual living in his district that had been found to be a registered sex offender from another state. He believed that the provision would alleviate similar problems.

Mr. Skidmore answered in the affirmative.

Co-Chair Stedman supported the bill provision.

10:22:22 AM

Co-Chair von Imhof asked whether it was necessary to make a change to the bill to speak to Co-Chair Stedman's concern.

Co-Chair Stedman thought the bill accomplished what he believed to be a solution.

10:22:51 AM

Senator Bishop referenced Section 32 and asked whether the bill sought to develop a database from scratch based on the word "develop."

Mr. Skidmore stated that the concept had been added in another committee, and asked LAW and DPS to report on locations where sex offenses were occurring around the state. He said that the information was already available in various databases; a program would need to be written to extract the information from the databases, which would be provided in a detailed report to the legislature.

10:24:51 AM

Senator Wilson considered the sex offender registry. He found it fascinating the process of registering from state to state was not a common requirement.

Mr. Skidmore said that DPS received 8 to 10 calls per week from individuals inquiring whether they would be required to register as a sex offender if they moved to the state. He said that there was not a single, national registry for sec offenders, rather registry occurred on a state by state basis. Each state set their own laws about who was required to register. He shared that there were three different approaches to the issue: individuals were required to register in one state if they were registered in another (found in this legislation); registration would be required if the facts of the offense in one state would qualify you in another; finally, registration would be based on a comparison of the elements of the crime from state to state (current practice in Alaska).

10:28:01 AM

Senator Wilson thought that the current practice of the state attracted sex offenders to the state.

Mr. Skidmore lamented that this was one of the consequences of the current law.

10:28:26 AM

Senator Wielechowski asked if a person was a sex offender in another state, and the person's conduct was not a crime in Alaska, would they be required to register in the state.

Mr. Skidmore replied that the individual would be required to register.

Senator Wielechowski understood that the Supreme Court had determined that sex offender registry was a form of punishment. He asked if it was likely that the court would uphold the proposed bill.

Mr. Skidmore was not certain that the court had determined whether registering was a form of punishment. He believed that the court would uphold the law. He added that Alaska was not the first state to be making the change.

10:29:28 AM

Senator Micciche summarized his understanding of the discussion thus far. He believed that the bill closed a loophole in the area of registration. He recommended that people read Section 12. He discussed the importance of tracking the movements of sex offenders.

10:31:44 AM

Senator Shower mentioned that there were many archaic elements in the state's sex crime laws that needed to be updated. He supported the legislation.

10:33:10 AM

CHRISSY VOGELEY, COMMUNITY RELATIONS MANAGER, OFFICE OF CHILDREN SERVICES, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), she spoke to the changes in the bill that affected mandatory reporters; how they reported and

the amount of training that was expected. She stated that, currently, the Office of Children's Services (OCS) mandatory reporters training was utilized by OCS workers and community partners, healthcare professionals, childcare providers, and other mandatory reporters in other departments. She understood that the Department of Education and Early Development (DEED) used a different training for mandatory reporters, which linked to the DHSS training. She cited Section 33 of the bill, which would require mandatory reporters to report child maltreatment that was the result of a suspected sex offense to OCS and the nearest law enforcement agency. She said that, right now, mandatory reporters were required to report to OCS only. The change would require an update to the mandatory reporter training and outreach to reporters to inform them of the change. She said that because the consequence of not reporting would result in a misdemeanor, outreach was vital to ensure that mandatory reporters were educated of the new law. She spoke to Section 36 of the bill, which required annual reporter training, and stressed that some outreach would be needed to inform mandatory reporters of the new training requirements. She spoke to the analysis in the fiscal note:

> The bill would require modifications to the department's mandatory reporter training due to both the new statutory definition of a sexual offense, as well as the new requirement in which mandatory reporters would need to report to both the department and the nearest law enforcement agency when there is suspected child maltreatment involving a sexual offense. The training resides in the Department of Health and Social Services website. The Office of Children's Services would be involved in modifications. The cost to update the training module and ensure readiness for an increase in annual traffic would be $3.6.
>
> Mandatory reporters of suspected sexual offenses to children would require notification of the broadened communication methods of child enticement and exploitation, the requirement to report child maltreatment that involves sexual offense to both the department and the nearest law enforcement agency, and be advised that their training must occur annually. The department estimates that television and radio advertising as well as printed materials would be

necessary for effective outreach to statewide mandatory reporters. The estimate for outreach is $62.0 and the estimate for printed materials is $6.9 for FY2020. In subsequent years, the department estimates that the cost for outreach can decrease to $21.0 for FY2021, FY2022, FY2023, FY2024, and FY2025. Due to the annual training component, it is necessary to achieve ongoing outreach efforts to ensure that mandatory reporters have full knowledge of the new requirements. The Office of Children's Services estimates that the ongoing outreach would require one month of messaging.

The Office of Children's Services contracts with the department's commissioner's office public information team to manage and promote the mandatory reporting module through a reimbursable services agreement. The Office of Children's Services anticipates the total cost in FY2020 would be $73.3. The total cost in FY2021, FY2022, FY2023, FY2024, and FY2025 would be $21.0.

10:37:20 AM

Co-Chair von Imhof said that the new fiscal note was being copied for the committee for distribution.

10:37:48 AM
AT EASE

10:44:13 AM
RECONVENED

Co-Chair von Imhof addressed a new fiscal impact note from Department of Health and Social Services, OMB Component 1628. She reiterated the fiscal analysis.

10:45:29 AM

Senator Bishop commented that Section 36 of the bill required school districts to provide mandatory training. He thought the legislature should support the implementation of the bill within school districts by providing proper funding to support the mandate.

Co-Chair von Imhof agreed. She noted that invited testifiers were online to answer committee questions.

10:46:46 AM

Ms. Vogeley mentioned the mandatory reporting training that would be required would be used by many of the mandatory reporters in the state, hence the need for a statewide outreach campaign.

Co-Chair von Imhof suggested Ms. Vogeley confer with DEED to see whether OCS training materials could be used by school districts.

Ms. Vogeley stated that DEED had its own training that it provided to districts. She assured the committee that conversations between the two department's were ongoing.

10:47:46 AM

BETH GOLDSTEIN, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION (via teleconference), was most concerned with Section 2 and Section 3: the elimination of the marriage defense. The concern was that the change would capture couples where one spouse was in the other spouse's care. She explained that dementia was not a static condition under which lucidity could change hourly or from week to week. She asserted that during the periods of lucidity, consensual sexual contact could occur. She detailed that there were many situations where family dynamics could result in false accusations. She added that the increased penalties in the bill would lead to more litigation in cases, which would increase spending.

10:50:51 AM

Co-Chair von Imhof tried to re-articulate Ms. Goldstein's points. She thought that by eliminating the entire section, actual cases of marital rape slip through the cracks. She asked if Ms. Goldstein had a suggestion in order to protect the subset of situations that she had described.

Ms. Goldstein thought the matter could be addressed.

Co-Chair von Imhof asked whether Senator Shower had encountered the issue in other committees.

Senator Shower answered in the affirmative, although he recalled there had not been much time spent on the manner.

He recalled that LAW had not felt that the change would not affect the subset significantly.

10:53:29 AM

Co-Chair von Imhof thought it was important to note that the matter had been discussed in another committee. She noted that the bill contained an incredible amount of important legislation and the hope was to pass it within this legislative session. She though that if the issue could not be agreed upon in a timely manner, it could be revisited next year, but it should not hold up the entire piece of legislation.

10:54:21 AM

Senator Wielechowski asked whether there was concern about the provision that required sex offender registration for offenders from other states.

Ms. Goldstein stated that the agency had concern with automatic registration. She stated that there were states that had criminalized things that Alaska had not, and that those individuals would be subject to registering as sex offenders even though they ultimately would not have to register under Alaska law. She pointed out that offender registration could have an impact on housing options and procuring employment. She said that the crime that they were convicted of in the other state might not be something that Alaska had criminalized.

Senator Wielechowski understood that in 13 states public urination was registrable as a sex offense. He asked whether this was true in Alaska.

Ms. Goldstein replied in the negative.

Senator Wielechowski listed that consensual sex between teenagers was a registerable offense in Georgia. He asked whether this was the case in Alaska.

Ms. Goldstein replied no.

Senator Wielechowski listed that in Colorado, a 13-year-old who repeatedly hugged a 14-year-old might be required to register as a sex offender for life. He wondered whether the same was true in Alaska.

Ms. Goldstein did not believe so.

10:56:22 AM

Senator Micciche thought the discussion was interesting and wanted to see a list of the crimes that should not be included as part of a sex offense registry. He did not think there was a national effort that unreasonably require an individual to register as a sex offender. He worried that offenders could be "shopping around" for states with more lenient registration requirements.

10:58:19 AM

Co-Chair von Imhof stated that her office would work with the Public Defender Agency and work with LAW to decide on how to proceed with the bill.

10:58:39 AM

Senator Wilson reiterated his support for the legislation as written.

Co-Chair von Imhof thought there was room for further discussion. She stated that the bill was comprehensive and was a legislative priority. She wanted the committee to explore the concepts and concerns that were raised.

10:59:27 AM

Senator Micciche supported the way the bill was currently written.

10:59:59 AM

SB 35 was HEARD and HELD in committee for further consideration.

Co-Chair von Imhof discussed housekeeping.

#
ADJOURNMENT
11:00:53 AM

The meeting was adjourned at 11:00 a.m.