

SENATE FINANCE COMMITTEE

May 9, 2019

1:33 p.m.

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CALL TO ORDER

Co-Chair von Imhof called the Senate Finance Committee meeting to order at 1:33 p.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

John Skidmore, Director, Criminal Division, Department of Law, In Room; Senator Jesse Kiehl.

SUMMARY

CSHB 49(FIN) am
CRIMES; SENTENCING;MENT. ILLNESS;EVIDENCE

CSHB 49(FIN) am was HEARD and HELD in committee for further consideration.

#hb49

CS FOR HOUSE BILL NO. 49(FIN) am

"An Act relating to criminal law and procedure; relating to pretrial services; establishing the crime of possession of motor vehicle theft tools; relating

to electronic monitoring; relating to controlled substances; relating to probation and parole; relating to sentencing; amending the definitions of 'most serious felony,' 'sex offense,' and 'sex offender'; relating to registration of sex offenders; relating to operating under the influence; relating to refusal to submit to a chemical test; relating to the duties of the commissioner of corrections; relating to testing of sexual assault examination kits; relating to reports of involuntary commitment; amending Rules 6(r)(6) and 38.2, Alaska Rules of Criminal Procedure; and providing for an effective date."

Co-Chair von Imhof explained that the Department of Law (LAW) would provide an overview regarding changes. She stated that the meeting would provide an overview without the fiscal impact discussed.

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JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, IN ROOM, discussed CSHB 49 (FIN). He noted that the CS drew from various bills including the Senate versions. He looked at the Sectional Analysis:

- Eliminate Marriage as a Defense to Sexual Assault
 - o Repeals marriage as a defense to sexual assault except in cases where there is consent and the conduct is illegal due to the nature of the relationship but-for the marriage (probation officer/probationer, peace officer/person in custody, DJJ officer/person 18 or 19 an under the jurisdiction of the Division of Juvenile Justice).
- Sexual Abuse of a Minor in the Third Degree Sentencing
 - o Makes sexual abuse of a minor in the third degree a sexual felony when there is a 6 year age difference, thus increasing the sentencing range from 0-2 to 2-12 years.
- Enticement of a Minor
 - o Deletes "online" from the crime of "online enticement of a minor" making any solicitation of a minor to commit sexual acts a B felony.
- Indecent Viewing
 - o Makes indecent viewing or production of a picture of a child and production of a picture of an adult a registerable sex offense and sentenced as a sexual

felony. Conduct involving the viewing of a picture of an adult would be a class A misdemeanor.

- Theft
- Indecent Viewing involves conduct such as setting up a camera in a locker room to capture the private exposure of other people.
- o Removes inflation adjustment.
- Failure to Appear o Removes the 30 day grace period for FTA to ensure better enforcement for defendants appearing in court for the hearings, including trial.
- Violating Conditions of Release
- o Pre-SB 91:

- Escape

Class A misdemeanor if the person violates conditions while on release for a felony. Class B misdemeanor if the person violates conditions while on release for a misdemeanor.)

- o Makes it a class C felony
- Threats
- for a person to tamper or remove an electronic monitoring device while under official detention for a misdemeanor; or
- tamper or remove an electronic monitoring device or leave one's residence or other place designated by a court as a condition of release before trial.
- o Creates a generalized terroristic threatening statute to address threats of harm.
- Drugs o Possession - First two offenses would be a class A misdemeanor subject to a sentencing range of 0-365 days. On the third offense it would be a class C felony.
- o Drug Distribution - Returns distribution of drugs to class B and A felonies from the current C and B levels and removes quantity as an element.
- o Methamphetamine Manufacturing and Distribution - Re-enacts the enhanced sentences for those who make methamphetamine around children or who engage children in the manufacture of methamphetamine.
- Arraignment o Allows 48 hours after arrest to arraign a defendant and set bail.
- Presumptions For Release on Bail
- o Removes the presumptions that are in current law which require the judge to release unless they find by clear and convincing evidence that there is no nonmonetary condition that will ensure the defendant's appearance in court or Removes inability to pay as a reason for the court to review a bail setting; and o

Makes the risk assessment tool a factor that the judge can consider when determining bail and conditions of release.

- Pretrial Electronic Monitoring
 - o Prohibits a court from granting credit towards a person's sentence for time spent on electronic monitoring before trial for certain offenses.
- Probation Lengths
 - o Increases the maximum probation length for sex felonies to 25 years and 10 years for all other offenses.
- Caps on Sanctions for Technical Violations and Absconding
 - o Repeals the caps on the sanctions for technical violations (currently 3, 5, and 10 days for the first three violations respectively) and absconding (up to 30 days). Returns discretion to judges and the parole board to impose a sanction appropriate for the offender, the type of violation, and the underlying offense.
- Early Termination Of Probation And Parole
 - o Returns to a true recommendation of the probation or parole officer instead of a mandated recommendation after 1 or 2 years without violation.
- Felony sentences -Increases A and B felony presumptive ranges by approximately 1 year.
- A Misdemeanor Sentencing
 - o Remove 30-day presumptive sentence for A misdemeanors and returns discretion to judges to impose 0-365 days. Also increases the sentencing range for B misdemeanors from 0-10 days to 0-30 days.
- Presumptive Sex Offense Sentencing
 - o Clarifies that any prior felony counts as a prior felony for presumptive sentencing purposes in sex cases. This means prior felonies, even when they are a non-sex felony, trigger an increased presumptive range for a sex offense.
- Driver's License after Felony DUI
 - o Allows a person to obtain a driver's license if they have been convicted of a felony DUI that was not associated with a crime against a person (vehicular assault etc.), their license has been revoked for 10 years and in the preceding 10 years the person has not committed a new criminal offense.
- Driving with License Suspended/Revoked/Canceled
 - o Returns DWLS to a crime.
- Under current law it is a crime only if the person has had their license revoked due to a DUI.

- Out Of State Sex Offender Registration o Requires anyone convicted of a registerable sex offense in another state to register in Alaska if they are present in the Alaska.
- Earned Compliance Credits o Grants credit against a person's term of probation or parole upfront. The reduction to a person's period of probation or parole will be at 1/3 instead of 30 days for every 30 days the person goes without a violation. If a person violates, they will have time added back on to their period of probation or parole. This restructuring of earned compliance credits is similar to how statutory good time is awarded to prisoners in custody. Also, prohibits certain offenders from getting earned compliance credits.
- Parole Eligibility - Returns to restricting what crimes are eligible for discretionary parole. Makes the following crimes ineligible:
 - o Non-sex class A felonies (Robbery 1, Assault 1, Arson 1, Escape 1, MIW 1);
 - o B felonies if the person had one or more prior felony convictions;
 - o C felonies if the person had two or more prior felony convictions; and
 - o B and C sex felonies (Sexual Assault 2, Sexual Abuse of a Minor 2, Distribution of Child Pornography).
- Parole Release Presumptions o Returns discretion to the parole board by eliminating a presumption of release.
- Parole Application o Requires the person to actually apply for discretionary parole rather than forcing the parole board to have a hearing automatically.
- ASPIN Use At Grand Jury o Allows APSIN (rap sheet) to be used at grand jury when an element of the offense requires proof of prior convictions.
- Increase Use of Video-Teleconferencing - Encourages the use of videoconferencing for all pretrial court hearings.
- Involuntary Commitments o Requires the Alaska Court System to transmit information regarding involuntary commitments that have occurred since October 1, 1981 to the Department of Public Safety.

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Co-Chair von Imhof asked about cybercrime.

Mr. Skidmore clarified that the crime was related to online enticement as it existed in current statute. The change did not change it from being criminal, rather it included a face-to-face enticement.

Senator Olson asked about the possibility that two students that were in high school that may be enticing each other.

Mr. Skidmore replied that the law did not change the requirement. He stated that the elements stated that it was a crime when the individual engaging in the enticement who was older than 18-years-old, and the enticed was under the age of 16-years-old.

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Senator Olson surmised that the solicitation does not relate to who "pushes send."

Mr. Skidmore replied that the solicitation must occur by a person 18 years of age or older, and they knowingly communicated with someone under the age of 16.

Senator Olson proposed a situational crime.

Mr. Skidmore clarified the question.

Senator Olson asked his question again.

Mr. Skidmore replied someone who is 18 years old or older. Statute related to solicitation of child.

Mr. Skidmore sections 9-25 and the vast majority of the sections same as SB 32, which adjust for inflation for a felon.

Mr. Skidmore highlighted section 9. He noted that the addition of theft in the second degree. He mentioned that the theft two and the identification document added to the crime.

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Co-Chair von Imhof clarified that the bill was similar to that passed by the Senate.

Mr. Skidmore elaborated about the new material in section 19 and the motor vehicle theft. He noted that the conscious objective to commit a vehicle theft.

Senator Wilson asked the department's opinion on the vehicle theft.

Mr. Skidmore stated that the department did not recommend the crime, instead it was advocated for by law enforcement. Therefore, the department supported the Section.

Senator Wilson asked about intent described within.

Mr. Skidmore replied that the intent was not subjective. He stated that "intent" was defined in Alaska Statute 11.81.900, which was a definition that required the conscious objective to achieve a particular result.

Senator Wielechowski wondered if the department supported expanded the language to include breaking into the vehicle to steal its contents.

Mr. Skidmore stated that he was pausing to process the concept. He shared that the concept would allow for the prosecution of someone possessing such tools to break into vehicles. He stressed that it would be a class A misdemeanor. He announced that he would support that language.

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Senator Micciche discussed stealing a vehicle and the felony charge. He asked whether including the possession of motor theft tools in the theft of objects would increase the level of the crime, than the value of the stolen objects.

Mr. Skidmore replied that the crime could prevent people from engaging in the crime itself. He responded that if someone possessed to engage in the activity, the tools would be used multiple times.

Mr. Skidmore discussed section 26, page 14. He noted that some theft is just enough to be charged with a lower level offence. He referenced a statute allowing the aggregation. He provided an example. He clarified that the statute

Co-Chair von Imhof provided an example of theft and aggregate of charges.

Mr. Skidmore agreed that it did not matter.

In response to a question from Senator Bishop, Mr. Skidmore replied that the other body established the notion discussed in section 26.

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Senator Bishop remarked that construction sites constantly had their tools stolen, and he felt that should be discussed further.

Senator Micciche asked about specific language. He wondered if any theft of items taken of value.

Mr. Skidmore stated that he had focused on commercial establishments, but agreed with the addressing of Senator Bishop's concerns.

Senator Micciche appreciated the addition to the legislation. He noted that the consequences were steeper with the changes to the bill.

Co-Chair von Imhof looked at the "or persons", so a perpetrator could go to homes or cabins over six months to steal items. She remarked that the "or persons" would result in more than \$750.

Mr. Skidmore agreed.

Mr. Skidmore discussed sections 27 and 28.

Mr. Skidmore highlighted sections 29 and 30.

Mr. Skidmore addressed sections 31-36.

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Senator Micciche asked whether the sections met the intent of the discussions related to indecent viewing.

Mr. Skidmore replied that the legislation was drafted with the intent of the discussions in the legislature.

Senator Wielechowski wondered whether the legislation made viewing pornography a crime.

Mr. Skidmore replied no.

Senator Wielechowski wondered about indecent viewing.

Mr. Skidmore replied private exposure in situation in which they would not think that a person would take a photograph. He mentioned a case where a person placed a camera in a public place to photo someone without their knowledge.

Senator Wielechowski wondered about an exception for art that might be viewed in a museum.

Mr. Skidmore stated not a private exposure for art class was not considered private exposure.

Senator Olson asked medical professionals who would take photographs.

Mr. Skidmore replied that there was an exception with use for medical treatment in Section 36.

Mr. Skidmore discussed Sections 38 through 40.

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Senator Shower discussed law enforcement and the use of the charge of possession to - 1. entice people to go into treatment; and 2. have the tool to ensure prosecution or have evidence. He felt that the bill was removing the tool.

Mr. Skidmore agreed that the bill kept the charge as a misdemeanor, but would be subject to zero to 365 days; as opposed to current law where the first two possessions get zero jail time. The idea was having up to a year in jail to use as either the incentive for treatment or the incentive for cooperation. He understood that there was still a difference between a misdemeanor and felony, but stressed that it was a policy issue. He stressed that the administration originally requested the felony. He felt that the change was still a substantial step in the direction to help law enforcement and prosecutors.

Co-Chair von Imhof wondered whether the "up to a year in jail" was the change.

Mr. Skidmore replied in the affirmative. He stated that there were two important changes: 1. The first two offenses would carry up to a year in jail, 2. A third offense would become a Class C felony.

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Senator Wielechowski looked at page 25, lines 1 through 5, which addressed possession of a schedule 3A, 4A, 5A, and 6A controlled substance with reckless disregard that the possession occur within 500 feet of a school ground or recreation youth center. He noted that there were many houses in that range, and noted that a schedule 6A substance was marijuana. He wondered about a person who had an ounce of legal marijuana in their home, and wondered whether that person would be committing a crime under the law.

Mr. Skidmore replied in the negative, because that person was in compliance with AS 17.38, which had the marijuana regulatory exemptions.

Senator Micciche looked at page 26, which had the two required convictions that would become a felony on the third conviction. He wondered whether it was in the legislature to require a different felony on the second conviction, if looking for some middle ground. He stressed that getting caught twice with possession might imply hundreds of injections of drugs. He wondered whether it was possible for the legislature to require a felony on the second arrest.

Mr. Skidmore replied that it was a complicated question, because the SEJ contemplated resolving a case by setting certain conditions.

Senator Micciche clarified that if the situation did not work the first time, the ability to require successful treatment. He stressed that compromise is constitutional.

Mr. Skidmore agreed to look into that consideration.

Mr. Skidmore discussed section 43 and misconduct in the 5th degree. He noted that the differences related back to the concept.

Mr. Skidmore moved to sections 44 and 45 that continued to deal with the drug statutes. He pointed out that the statutes were now written to assure that the 6a substance would not qualify.

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Senator Micciche asked for a reminder about misconduct of a controlled substance and 4th and 5th degrees.

Mr. Skidmore summarized that 4 degree was class C felony. He stated that misconduct involving controlled substance in the 5th degree was possession of various controlled substances other than marijuana, that would make the first two offenses a Class A misdemeanor. He noted the other subsections that dealt with some other concepts.

Senator Micciche wondered whether there was logic in tracking between the 4th and 5th degree.

Mr. Skidmore stated that he did not understand the question.

Senator Micciche assumed that the 5th degree required two or more convictions for a felony charge.

Mr. Skidmore replied that the distinction included the possession, but left the subsection that made the possession a misdemeanor. He stated that prior to SB 91, both misconduct involving a controlled substance in the 4th and 5th degree broke out a more complex tiered approach to possession or distribution of some of the other lower classifications.

Mr. Skidmore transitioned to procedure discussed in section 46-48. Time held prior to arraignment same as SB 33. He noted that section 47-52 all addressed bail.

Mr. Skidmore continued with section 48 and 49 including the subsequent bail hearing.

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Mr. Skidmore continued with the subsections.

Senator Shower recalled repeal language for SB 91. He expressed concern that judges would use the information was

Mr. Skidmore responded that the court must consider 12 factors and the relationships. Any pending criminal charges. He wondered about the risk assessment tool. This version says that the factors should be considered. All of the information in front of them. Risk assessment tool

[2:25:10 PM](#)

Senator Micciche asked about the pretrial assessment tool. He discussed that lack of requirement for the pretrial risk assessment.

Mr. Skidmore replied that subsection b, lines 19 and 20, which said, "in addition to conditions under 'A' of this section, the judicial officer may order the person to submit." He stated that in reading that in combination with subsection c, found on page 32, which said, "the court shall consider the risk assessment provided by the pretrial services officer." He stated that the court would examine whatever the risk assessment tells them, but were free to assign whatever weight they deem appropriate.

Senator Micciche opined that a pretrial risk assessment might not be ordered.

Mr. Skidmore replied that the law stated that statutes must conform with each other. Risk assessment is available, and it should be considered.

Senator Micciche followed up regarding the risk assessment.

Mr. Skidmore replied that there was not a require to order a risk assessment.

Senator Bishop felt that with the word, "shall" the judge must do the requirements.

Mr. Skidmore stated that the judge must consider the factors. He noted that the information might not be something to consider. He stressed that the judge may not have all of that information.

Senator Bishop paused because he did not understand

Mr. Skidmore moved to sections 51 and 52 discussing third party custodians, which is the same language as SB 33.

[2:30:47 PM](#)

Senator Micciche asked about changes in the Senate, so he surmised that the language was different than the Senate's final.

Mr. Skidmore replied that it was the exact same language as the Senate.

Co-Chair von Imhof clarified that the language was the same in Section 52.

Mr. Skidmore agree.

Mr. Skidmore sections 53 and 55.

Co-Chair von Imhof asked how it changes the intent in the Senate version.

Mr. Skidmore replied that an individual would have to be on probation for two years or eighteen months before recommendations are made for early termination.

Co-Chair von Imhof noted that the section adds more restrictions.

Mr. Skidmore agreed.

Mr. Skidmore moved on to section 57 and caps on technical violations.

Co-Chair von Imhof asked the Department of Law's opinion about the caps.

Mr. Skidmore stated that Department of Law looked at the caps. He asked for consideration of administrative sanction, which was an intermediate step. He used the example including the filing of a petition to change the conditions enforced.

Mr. Skidmore continued that the technical violation addressed the lesser penalty. He stated that the bill now allowed for adjusting behavior. He pointed out 21,000 administrative sanctions and opportunities to correct behavior without creating a petition. Petitions must be

addressing more significant violations. He stated that technical caps do not work and should be eliminated.

Senator Wilson wondered about third party vendors.

Mr. Skidmore replied that the technical caps only apply to felonies.

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AT EASE

[2:42:16 PM](#)

RECONVENED

Mr. Skidmore replied that technical caps only apply to felony probation.

Co-Chair von Imhof asked about Section 57, and that the Department of Law was not thrilled. She wondered if the administrative sanctions could overrule Sections 1 and 2, and ignore the caps. She queried the flexibility of probation officers.

Mr. Skidmore replied that probation officers could not ignore subsection C 1 and 2. He explained that the cap was a restriction placed on the judge, not on the probation officer.

[2:45:17 PM](#)

Senator Wielechowski requested the available administrative sanctions for probation officers.

Mr. Skidmore replied that caps could be eliminated. He advocated for the administrative sanctions.

Senator Wielechowski discussed the goal of quick and immediate action, and wondered whether it could be tied to the violation.

Mr. Skidmore replied that it could be considered.

Mr. Skidmore explained Sections 58 through 73.

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Co-Chair von Imhof looked at page 52, line 3, which said, "a person has not been convicted of a criminal offense in the ten years preceding the request for restoration of license." She surmised that if a person had not an issue for ten years, there license could be reinstated.

Mr. Skidmore reviewed the provision and the revoked driver's license. He agreed that 10 years without another criminal offense, would be eligible to have license restored.

Co-Chair von Imhof announced that it was identical to the provisions in the Senate version.

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Mr. Skidmore same concept and identical to senate version. He looked at Section 73.

Senator Wilson used the example of someone with seven DUIs, but did not harm anyone. He stated that after ten years, then it was ok to get a driver's license.

Mr. Skidmore stated that the person must have to go for 10 years without any other issue or conviction.

Mr. Skidmore discussed Section 74.

Senator Bishop asked about a timeline for the commissioner to establish the regulations.

Mr. Skidmore replied no. He agreed to examine the issue further.

Senator Bishop wondered if the issue could be nailed down to be included in the bill.

Mr. Skidmore stated that the law said that the law must have regulations.

Senator Shower noted the attempt to separate the accounting for time, because there was a possible accounting for time while at home. He wondered whether there was an attempt to fix that issue.

Mr. Skidmore clarified that the concepts were separate. He stated that probation could be reduced by 33 percent. He noted how the litigation could resolve the litigation.

Co-Chair Stedman handed the gavel to Co-Chair von Imhof.

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AT EASE

[3:05:57 PM](#)

RECONVENED

Mr. Skidmore discussed Sections 75 through 77.

Co-Chair von Imhof asked Department of Law's opinion.

Mr. Skidmore shared that they had no position.

[3:10:15 PM](#)

Mr. Skidmore moved to section 78 and the eligibility of discretionary parole. The amendment occurred on the House floor.

Senator Wilson queried what the language was changing toward.

Mr. Skidmore replied that the Senate version was SB 34, in Section 10 that set out the ineligibility or eligibility for discretionary parole.

Co-Chair von Imhof surmised that the House version increased the number of requirements needed to be ineligible.

Mr. Skidmore agreed. He replied that the difference was that the current version stated that there would be more individuals eligible to apply for discretionary parole, therefore it would be more restrictive. The difference between the two was the number of prior felonies.

Co-Chair von Imhof remarked that it was the discretion of the Board, so the Board ultimately had the discretion regardless of the number of prior felonies.

Mr. Skidmore agreed.

[3:14:23 PM](#)

Senator Micciche asked where the unclassified was located in the list of people who would not be eligible for discretionary parole.

Mr. Skidmore replied that a different statute addressed the unclassified crimes, and were restricted.

Senator Wilson asked whether geriatric release was included in SB 91.

Mr. Skidmore replied in the affirmative, and looked at page 57, lines 6 through 8.

Mr. Skidmore discussed Sections 79 through 83.

Mr. Skidmore highlighted Sections 84 through 91.

[3:20:35 PM](#)

Senator Wilson wondered about hearings.

Mr. Skidmore replied that a number of other hearings occurred and would occur.

Co-Chair von Imhof stated that the meeting would resume tomorrow at 9:00 am. She noted that there were missing aspects of the Senate version of the bills.

CSHB 49(FIN) am was HEARD and HELD in committee for further consideration.

#

ADJOURNMENT

[3:22:02 PM](#)

The meeting was adjourned at 3:21 p.m.