

SENATE FINANCE COMMITTEE

May 12, 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

Senator Cathy Giessel; Senator Jesse Kiehl; Senator Lora Reinbold; Senator Shelley Hughes; Juli Lucky, Staff, Senator Natasha von Imhof; Buddy Whitt, Staff, Senator Shelley Hughes; Kelly Howell, Legislative Liaison, Department of Public Safety; Mary Siroky, Deputy Commissioner, Department of Transportation and Public Facilities; John Skidmore, Director, Criminal Division, Department of Law; Sonja Kawasaki, staff, Senator Bill Wielechowski; Jen Winkelman, Director of Probation and Parole, Department of Corrections.

PRESENT VIA TELECONFERENCE

Nancy Meade, General Counsel, Alaska Court System; James Stinson, Office of Public Advocacy, Department of Administration.

SUMMARY

CSHB 49(FIN) am

CRIMES; SENTENCING;MENT. ILLNESS;EVIDENCE

SCS CSHB 49(FIN) was REPORTED out of committee with a "do pass" recommendation and with forthcoming fiscal notes from the Department of Health and Social Services, the Department of Administration, the Department of Law, the Department of Public Safety, the Court System, and the Department of Corrections; and one new previously published zero fiscal note: FN 1(DHS).

Co-Chair von Imhof acknowledged members in the gallery.

#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."

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Co-Chair von Imhof read from a prepared statement:

While this is the first time this particular CS has been before our committee, I want to acknowledge the immense amount of work that has gone in to crafting this legislation.

Alaskans demand a response to rising crime levels in our state, and much of our energy this legislative

session has been devoted to addressing issues with our criminal justice system.

It started with the Governor introducing a suite of four bills to roll back the negative aspects of SB 91, including toughening our criminal statutes as they relate to sexual crimes.

The Senate has taken the governor's bills through a careful and deliberative committee process that included over fifty hours of "on the record" committee time, over ten hours of public testimony, and hundreds of hours behind the scenes by legislators and staff working to refine and improve these bills.

The Senate strongly believes that our four-month process has been transparent and deliberative, and we are ready to present a work product that repeals problematic aspects of SB 91, as well as toughening our sex crime laws.

With this in mind, we present today the Committee Substitute before you. We believe it includes the best aspects of the House, the Senate and the Governor's versions of the crime bills.

We believe in our process and we believe this is the best way forward to make Alaskans feel safer in their homes and communities.

Co-Chair Stedman MOVED to ADOPT proposed committee substitute for CSHB 49(FIN) am, Work Draft 31-GH1029\O (Radford, 5/11/19).

Co-Chair von Imhof OBJECTED for discussion.

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JULI LUCKY, STAFF, SENATOR NATASHA VON IMHOF, noted that the majority of the changes to the bill had been made in the Senate Judiciary Committee (SJUD). Staff from the committee would be available to speak in detail to the changes.

Ms. Lucky informed that the proposed Committee Substitute (CS) was a compilation of elements from SB 32, SB 33, SB 34, and SB 35 [legislation pertaining to criminal justice

reform]. She clarified that the compilation was drawn from the bills as they were introduced in the Senate Finance Committee, rather than from the original bills as proposed by the governor; and would include changes made in the Senate State Affairs Committee (SSTA) and SJUD.

Ms. Lucky detailed that there were some items that were put in the bill in the House and reworded with the direction of the Department of Law (LAW) and the Legislative Legal Department. From SB 32, there were sections pertaining to indecent viewing and photography, which were replaced by the House language. There was a "truth in sentencing" section put in another version of the bill that did not appear in the CS. There was compromise language being considered, and the Courts felt it would be difficult to put through the reports as requested by the SJUD committee. She detailed that the compromise language would be forthcoming in an amendment package to be considered later in the day.

Ms. Lucky referenced a section of SB 35. The bill had expanded some mandatory reporting for child sexual abuse. The bill also included required additional training, and there had been concern about unfunded mandates for schools. The training component had been removed, but mandatory reporting items had been included so that the committee could consider how to implement the training using existing resources without putting an unfunded mandate on schools.

Ms. Lucky spoke to additions to the CS. She reminded that technical violations and administrative sanctions had been repealed in other bill versions. In the CS technical violations were repealed, but administrative sanctions were allowed. She addressed the pre-trial risk assessment tool that had been repealed in previous Senate bill versions. The House had language for allowing the tool to be considered by the court, but there was concern about the bill language. The CS made a pre-trial risk assessment available for the court to use at its discretion.

Ms. Lucky discussed additions to the bill regarding the possession of motor vehicle theft tools. The proposed CS included language regarding the intent to steal contents of a vehicle in addition to the vehicle itself. There was a section added regarding aggregation of small theft crimes over time. She mentioned additional bill provisions in the

CS pertaining to solicitation or production of an indecent picture of a minor, and sexual assault examination kits.

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Ms. Lucky informed that there had been amendments that had been incorporated into the CS, while others would be considered individually by the committee. There was a change in the language regarding terroristic threatening. The new language would not affect the original intent. There was an addition to expressly list Native organizations as an eligible entity to run a Village Public Safety Officer (VPSO) program. She understood that the language was a technical fix which would conform statute to current practice.

Ms. Lucky continued that there was a section in the CS related to when car headlights would be required, which would annul the current Department of Transportation and Public Facilities (DOT) regulations on the topic.

Ms. Lucky noted that the CS had an expansion to include murder I, murder II, and manslaughter in some of the prohibitions regarding discretionary parole, mandatory parole, and good time. There was also a requirement for the three crimes that two-thirds of sentence be served prior to being eligible for discretionary parole.

Ms. Lucky explained that there had been a section in all the previous related bills that required courts to report involuntary commitment data. She recalled that there had been relevant amendments considered in the other body. In the CS, the date chosen was 2011 forward, which would allow for the work to be done without cost. The last addition was new language that required parole decisions, orders, and conditions to be posted on the internet. The intent of the section was to allow victims to easily access parole information.

Co-Chair von Imhof thought it made sense to go through a modified version of a Sectional Analysis and highlight important bill sections that had been identified in previous committees.

Ms. Lucky addressed Section 1, which was intent language that incorporated all findings and intent from all the associated bills. She did not think that there had been

concern about the intent language. She stated that Section 2 and Section 3 were mostly technical changes to conform felony murder statutes. The sections would add a reference to the items in felony murder statutes.

Ms. Lucky stated that Section 4 and Section 5 included language that changed the mental state by removing the word "know," which reduced the ability of offenders to avoid prosecution by claiming they did not positively know that a victim was incapacitated. The section was not in the House bill versions and had been added by the SJUD.

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BUDDY WHITT, STAFF, SENATOR SHELLEY HUGHES, affirmed that Section 4 and Section 5 of the CS amended sexual assault in the second and third degree; and removed the consideration of whether an offender knew that a victim was incapacitated.

Mr. Whitt noted that there were 10 sections from SB 35 that were in the CS and were not in the original version of bill as it came to the committee. He mentioned the repeal of previous criminal justice reform legislation. After reviewing crime data presentations and other factors, SJUD had considered strengthening laws that pertained to sexual crimes against children and adults. It was pointed out to him by a colleague that if Alaska was a country in and of itself, the number of forcible rapes per capita would relegate the state to the second highest rate by country. He noted that SJUD had considered public testimony and many other factors in developing enhanced sentencing structures and increases in classification in the bill.

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Ms. Lucky spoke to Section 6 and Section 7 of the CS, which addressed the marriage defense. The repeal section in the bill was Section 142. There were conforming changes made. She drew attention to Section 7 of the CS, in which a marriage defense would exist for those crimes that had to do with the relationship of one person to another if there was a position of authority or custody.

Ms. Lucky addressed Section 8 and Section 9 of the CS, which were added by SJUD to allow a higher sentence for sexual abuse of a minor in the third degree with more than

a 6-year age difference. She continued that Section 10 through Section 12 expanded the definition of enticement of a minor. Section 13 increased crimes for unlawful exploitation of a minor and raised the crimes by one degree.

Mr. Whitt discussed unlawful exploitation of minors, including production of child pornography. The classes of the crime were raised in the CS.

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Ms. Lucky addressed Section 14 of the CS, which dealt with indecent exposure and public masturbation. The section was identical to Section 12 of SB 35.

Mr. Whitt stated that the section was in the original bill and made the crime of masturbation in front of a minor less than 16 years of age to be indecent exposure in the first degree.

Ms. Lucky stated that the next few sections of the bill addressed minor property crimes. She recalled that SB 91 had changed the felony threshold and added an automatic inflation adjustment. She noted that HB 49 took out the automatic inflation adjustment to allow the community to be involved when the levels were bumped up rather than being automatically done through statute. She pointed out that the changes made in the other body were included; including the addition of identification documents.

Ms. Lucky looked at Section 22 on page 12. She pointed out that the felony threshold had been reduced for fraudulent use of an access device or identification document. The change had been made in the other body.

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Ms. Lucky discussed property crime changes in Section 25. The section came from the other body and pertained to motor vehicle theft tools. The automatic adjustment for inflation was removed.

Ms. Lucky looked at Section 32 of the CS, which had to do with aggregation of small amounts. There were no changes to the language that passed from the other body.

Ms. Lucky considered Section 37, which had to do with violations of conditions of release. The language was the same as what was in SB 32 but had not been included in House bills. She spoke to Section 39, which pertained to disorderly conduct and was included in the original governor's bills. She discussed Section 40, which pertained to the showing of indecent photographs and harassment.

Ms. Lucky discussed Sections 41 through 45 of the CS, relating to the viewing of indecent photographs. She added that the bill sponsors had worked with LAW and assorted stakeholders and the bill language that came from the other body was adopted. Section 46 was an addition from the other body pertaining to solicitation or production of an indecent picture of a minor. She stated that most of the changes were fairly similar until Section 50.

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Ms. Lucky reviewed Section 47 of the proposed CS. She discussed the charge of misconduct involving a controlled substance. She pointed out that while the section and the following section were fairly similar, the House had proposed to allow for the first two charges of possession of a controlled substance to count as a misdemeanor, while the third charge would be a felony. She believed there would be a forthcoming amendment to discuss the broader topic.

Ms. Lucky spoke to Section 50. She noted that much of the "misconduct involving a controlled substance" crimes had to be renumbered and reorganized within sections, but the largest policy call was the treatment of a first possession charge.

Ms. Lucky looked at Section 55. She explained that in the governor's proposed bill, a person would be taken to arraignment within 24 hours of arrest absent compelling circumstances. The Senate bill and House bill changed the language to allow 48 hours after any arrest. There had been concern about the topic in committee.

Ms. Lucky discussed Section 56, and language that was not repealed. She mentioned the addition of a pre-trial risk assessment as an optional tool.

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AT EASE

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RECONVENED

Co-Chair von Imhof expressed appreciation for the work of Ms. Lucky and Mr. Whitt.

Mr. Whitt relayed that Section 57 through Section 59 of the CS were exactly the same as had passed the House. He offered to highlight sections of the bill that were not in the previous versions of the bill, as the previous versions had been vetted.

Senator Micciche stated that the bill had adopted much of the House language. He thought that it was important to identify parts of the bills that were the same.

Co-Chair von Imhof asked Mr. Whitt and Ms. Lucky to identify sections of the CS that were the same as the House bills.

Mr. Whitt advanced to Section 60 of the bill. The section directed that a person detained could not be released until there had been a chemical test and the detainee was under the legal limit of being intoxicated. The word "may" had been changed to "shall."

Ms. Lucky pointed out that lines 27 and 28 showed that the court may consider a pre-trial risk assessment as a factor.

Mr. Whitt considered Section 61 and Section 62 of the CS, which were identical to the bill as it was brought to the committee. Section 63 was a new section.

Ms. Lucky noted that the sections were added by SJUD.

Mr. Whitt stated that Section 63 was changed in SJUD so that in cases of a sex offense or offense involving domestic violence, the court would make a presumption of a no contact order between the person being charged and the victim. Section 64 was identical to the House bill as it came across from the other body.

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Ms. Lucky noted that Section 65 was identical to SB 33, Section 11. The sections had to do with when electronic monitoring was allowed. She furthered that Section 66 was identical to SB 33 Section 12. Section 67 was identical to SB 33 Section 13. The change pertained to notification of a prosecuting attorney when a person left a treatment program. There were provisions in the bill that required the prosecuting attorney to notify the victim.

Ms. Lucky stated that Section 68 was identical to SB 33 Section 14. Section 69 was identical to SB 34 Section 2 and removed caps for technical violations.

Senator Micciche discussed the removal of pre-trial credit for electronic monitoring. He asked if there was anything in the CS that conflicted with prior changes in SB 14.

Ms. Lucky stated that there had been changes to electronic monitoring. She had asked the bill drafters to ensure that there was not a conflict within the bill. She would follow up with greater detail at a later time to confirm. She thought the committee could consider taking sections out of the bill that pertained to electronic monitoring.

Senator Wielechowski understood that there was an agreement between the bodies regarding HB 14 and electronic monitoring issues. He continued that Section 65 to Section 68 were agreed to as part of the deal in HB 14.

Ms. Lucky stated that the matter had been a difficulty in drafting. It was the intent to leave out the electronic monitoring changes as it had been addressed in HB 14. She stated that a conceptual amendment would be forthcoming to remove the sections from the proposed CS.

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Ms. Lucky stated that Section 69, pertaining to lifting the cap on technical violations, had been identical in all associated legislation. Section 70, changing the periods of probation, was identical in all versions of the legislation. The intent of Section 71 had remained constant in the Senate bills. The point of the section was to allow a probation officer to recommend to the court when probation could be terminated, and a defendant could be discharged. She reminded that current law required a recommendation when certain conditions were met. There had

been re-wording of language, but the intent was the same as SB 32 Section 3.

Ms. Lucky spoke to Section 72, which provided class A felony sentences. The section was the same as the previous Senate bill. She noted that the sentences were reduced by approximately one year as the bill came over from the other body. She continued that Section 73, pertaining to class B felonies, was also reduced by approximately one year. She noted that class C felony changes in Section 74 were consistent between the House and Senate versions of the bill.

Mr. Whitt reported that Section 75 added conforming sentencing guidelines for the crimes of unlawful exploitation of a minor, indecent exposure, and other offenses. The section also had an enhanced sentencing structure for those that hosted or created multi-party sharing or distribution of child pornography. The section was changed in SJUD and had not been included in the version of HB 49 as it came to the committee.

Ms. Lucky stated she had been alerted that there was a problem with the sentencing in the section on page 48, lines 7 through 11. There would be a conceptual amendment to address the issue. The point of the section was to allow for higher sentences however due to the placement of the language, corrective language was needed.

Ms. Lucky noted that Section 76 of the CS, which prohibited the lessening of mandatory probation for sex offenders, was identical in all the associated bills.

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Ms. Lucky spoke to Section 77, which was the same in all versions of the bill. Section 78 had to do with Class A misdemeanors. The CS remained consistent in making a 90-day sentence. The language being removed had a tiered approach, as did the House bill; however the Senate bill had all Class B misdemeanors at 90 days.

Ms. Lucky addressed Section 79, which had clarifying language for felonies that counted as prior conviction for the sentencing of sex offenses. The intent was the same throughout all the bills. Section 80 removed "online" from

"online enticement," and the change was consistent throughout all the associated bills.

Ms. Lucky noted that Section 81 was a technical change to make sure sentencing matched what was previously put into law. Section 82 and Section 83 were items added by SJUD.

Mr. Whitt addressed Section 82, pertaining to notification of a victim when a perpetrator was released from a treatment program for non-compliance. Section 83, also added in SJUD, required DOC to expand notification and resources for victims of a sex crime or domestic violence.

Ms. Lucky looked to Section 84 and Section 87, which pertained to out of state sex offenders registering in-state. The language had been perfected in the House, and most of the language was identical in all versions of the bill. The only changes to the sections solved a constitutional issue.

Ms. Lucky noted that there were technical changes in Section 88, which conformed to the 24-hour deadline time to arraignment. Previous bills envisioned 48 hours, and the CS envisioned a 24-hour period from arrest to arraignment.

Ms. Lucky discussed new concepts in the CS in Section 89 through Section 92, which added Native organizations as eligible entities to provide the VPSO program.

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Senator Micciche assumed there would be more discussion on the technical change relating to VPSOs. He did not know much about the subject.

Co-Chair von Imhof suggested a conversation at present or during the amendment portion of the meeting. She acknowledged that the many moving parts of the bill were put in the CS, and others would be presented as amendments in order to facilitate conversation. She suggested to make a note of the topic and include it as part of the amendment conversation.

Ms. Lucky affirmed that Section 93 and Section 94 was similar in all bill versions. There would be an amendment needed to change the sections back to the Senate version.

Ms. Lucky discussed Section 95 and Section 96, which allowed DOC to have discretion over a first conviction of Driving Under the Influence (DUI). There had been a difference between the House and Senate versions of the provision. Sections 97 and 98 dealt with reinstatement of a driver's license after 10 years. There had been some differences in language between the House and Senate. It was the intent of the CS to adopt the Senate version, and there would be a forthcoming amendment to do so.

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AT EASE

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RECONVENED

Ms. Lucky continued discussing Section 97 and Section 98 of the CS. She clarified that there were two different crimes that were generally given the same penalty: DUI and Refusing a Chemical Test. The sections had always gone together. The language would need to be amended.

Co-Chair von Imhof asked about Section 99 of the CS.

Ms. Lucky stated that Section 99 was a new section pertaining to the failure to use headlights. The language was previously in DOT regulation and was annulled later in the CS. She explained that it would be considered an infraction when a person did not use headlights one-half hour after sunset or one-half hour before sunrise or if there was insufficient light or clear visibility to 1000 feet.

Ms. Lucky addressed Section 100. The Senate bill had removed pre-trial enforcement duties to DOC. There were changes in the bill that referenced the pre-trial enforcement division.

Ms. Lucky spoke to Section 101, which was also a departure from House language. She thought Senator Micciche knew the details of the language change.

Mr. Whitt stated that Section 101 and Section 102 had been added to SB 34. Section 101 pertained to earned compliance credits for probationers. The section was not in the House bill as it came to the committee. Section 102 precluded certain persons from participating due to crimes of

unclassified felonies, a sex offense, a felony crime against a person, or a crime involving domestic violence.

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Ms. Lucky pointed out that Sections 102 and 103 were also related to repealing the pre-trial enforcement division. There was also a section that allowed the commissioner of DOC to procure and enter into agreements or contracts on electronic monitoring. The sections were in previous Senate bills as the bills came into committee.

Ms. Lucky detailed that Section 105 of the CS was similar to SB 33 Section 21. She pointed out that new language requested by the Legislative Legal Department stated that it was the duty of a probation officer to conduct a pretrial risk assessment. She understood the duty was current practice and was being codified in the law.

Senator Micciche wanted to clarify that Section 101 and 102 did not change intent. The end result accounting for earned compliance credits was the same.

Ms. Lucky noted that Section 106 and Section 107 were new. The section prohibited mandatory parole for murder I, murder II, and manslaughter; and had been an addition to the bill by the Senate Finance Committee.

Ms. Lucky explained that Section 108 clarified that a prisoner would have to submit an application in order get parole. The section was in the bill originally proposed by the governor.

Ms. Lucky continued that Section 109 of the CS was identical to SB 34 Section 10. The version that came from the house had some additional language; the section proposed in the CS was from the Senate language and related to who was eligible for discretionary parole and the minimum time served to be eligible.

Ms. Lucky pointed out that Section 110 had a change to accommodate murder I and murder II. The section required that two-thirds of an active term of imprisonment be served before a person could get discretionary parole. The new language applied to higher offenses.

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Ms. Lucky addressed Section 111 of the CS, relating to eliminating a presumption of release, which was identical in all three versions of the bill. Section 112 was identical in all versions of the bill and had to do with applications for discretionary parole.

Ms. Lucky stated that Section 113 and 114 also pertained to a prisoner's application for parole and what must be included. Section 115 was a new section relating to the confidentiality of parole board decisions. She understood that the amendment was sought in order for victims to better understand parole decisions.

Ms. Lucky spoke to Section 116, which was identical to SB 33 Section 22, and had to do with the movement of the pretrial enforcement division. Section 117 was identical to SB 34 Section 16 and dealt with a parole officer's recommendation for early discharge for a parolee.

Ms. Lucky noted that Section 118 and Section 119 removed references to a technical violation. She recalled that the administrative sanctions were allowed in the originally Senate bill.

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AT EASE

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RECONVENED

Mr. Whitt spoke to Section 120 and Section 121 of the CS, which pertained to compliance credits for parole. A deduction would come from the compliance credit. Section 121 would establish those that were ineligible for the credits.

Ms. Lucky noted that Section 120 was very similar to SB 34 Section 19; but for the addition of the language relating to murder I, murder II, and manslaughter.

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AT EASE

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RECONVENED

Mr. Whitt informed that Section 123 stated that a prisoner could not be awarded a good-time deduction for time spent in a treatment program, private residence, or under electronic monitoring. The language was identical to that in SB 34 Section 21.

Ms. Lucky stated that Section 124 put new crimes enacted by the bill into the definition of illegal activity involving a controlled substance. There were technical corrections in the section, but it was otherwise identical to what was in SB 32.

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AT EASE

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RECONVENED

Mr. Whitt drew attention to Section 125 of the CS, which related to the DOC's quarterly report to the Alaska Criminal Justice Commission (ACJC) working group.

Ms. Lucky pointed out a technical change on page 78 line 25 and line 26.

Mr. Whitt stated that Section 126 and Section 127 went together, which had to do with tracking and compilation of data on sex offense complaints and felony sex offenses. Section 126 stipulated that the data be included on the ACJC annual report.

Ms. Lucky added that the provisions were added in the Senate.

Mr. Whitt informed that Section 128 added a new subsection instructing the Department of Law to gather various data on sex offenses. The section was not included in HB 49 when it came to the committee. Section 129 through Section 132 all related to the sexual assault examination kits bill, and was exactly the same as the bill as it came to the committee.

Ms. Lucky confirmed that the sections were the same. There would be one conceptual amendment that was requested by LAW to re-word a sentence pertaining to anonymous reports.

Ms. Lucky stated that Section 133 was a technical change to address the renumbering of controlled substance crimes.

Mr. Whitt stated that Section 134 through Section 136 all dealt with the "duty to report" laws in the state. Under the sections, there would be a requirement to report to law enforcement harm done to against child.

Ms. Lucky recalled concerns about unfunded mandates and stated that the training component had been removed from the bill.

Ms. Lucky noted that Section 137 added a reference to the "sex offense" definition. Section 138 through Section 141 were all direct court rule amendments.

Mr. Whitt noted that Section 142 was the repealer section.

Ms. Lucky noted that Section 143 was an annulment of DOT regulations. Section 144 was added in SB 33 as it came from SJUD, and instructed DOC to report on certain rehabilitative services and their impact.

Ms. Lucky stated that Section 145 pertained to the report of the Superior Court regarding involuntary commitment. The section had been changed to only reflect orders issued after January 1, 2011; which were electronic and would not require additional personnel to transfer.

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Ms. Lucky addressed Section 146, which was an applicability section. There would be some technical amendments requested by LAW.

Mr. Whitt addressed Section 147, which was transition language as pre-trial services officers were transferred to probation officers. Section 148 was transition language for the LAW, the attorney general, and the Department of Public Safety (DPS) to be able to work together on regulations in order to implement the reporting mechanisms that were added to the bill. Section 149 had to do with indecent viewing or photography.

Ms. Lucky pointed out that Section 150 was the statement of the conditional effect of Section 138 and Section 141. She

listed court rule changes. The next sections were effective date sections.

Mr. Whitt added that the effective date of September 1, 2020 in Section 153 related to the sections of the bill pertaining to duty to report. The change was made to give more time to enable training before the start of the school year.

Ms. Lucky noted that there was a typographical error on page 5 that was addressed in the technical amendment packet.

Co-Chair von Imhof stated that the committee would consider questions from members. There were several people present to answer questions pertaining to specific departments. She hoped the committee would adopt the CS, and then consider amendments that were already drafted. There would be an at-ease to consider the amendments.

Senator Bishop wanted to hear from DPS.

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Senator Bishop asked if DPS had the tools to do what it needed and make arrests on small property crimes.

KELLY HOWELL, LEGISLATIVE LIAISON, DEPARTMENT OF PUBLIC SAFETY, stated that the Alaska State Troopers were diligently working to recruit and retain troopers. She continued that there were 18 recruits at the academy. She recognized that understaffing did create workload issues for the troopers. She noted that there was a significant amount of overtime involved in being able to respond to calls for service across the state. She hoped that once recruits were in the field that the department would have the tools to respond to the crimes mentioned by Senator Bishop.

Senator Hoffman referenced page 65, Section 99 of the bill, which pertained to the use of headlights. He asked if the section applied to boats.

Ms. Howell thought that the language applied only to vehicles travelling on roadways.

Senator Micciche asked if the department supported returning possession of certain drugs to a felony charge. He asked about drug crimes and related property crimes. He asked if the department supported the changes proposed in the CS and if the bill provided the tools to intervene in drug houses around the state.

Ms. Howell thought the troopers had communicated that the CS would provide enhanced and stronger tools to address drug houses and other problems. The department supported the increased penalties for drug crimes.

Senator Olson referenced Section 99 which pertained to headlights. He asked if the section was a deviation from statute.

Ms. Howell thought that most of the language was identical to regulation already in place. The section that was annulled in regulation and was not included in the bill section required that headlights be illuminated in any section of roadway with signs indicated headlights be on.

Senator Olson asked if the section applied to four-wheelers.

Ms. Howell deferred to LAW.

Senator Olson wondered why the section would not apply to four-wheelers.

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MARY SIROKY, DEPUTY COMMISSIONER, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, addressed Senator Olson's question and stated that the section only applied to four-wheelers on major highways where headlight rules were posted.

Senator Olson asked about the road between Teller and Nome.

Ms. Siroky affirmed that it was possible to drive on the road between Teller and Nome without headlights.

Co-Chair von Imhof WITHDREW her objection. There being NO further OBJECTION, it was so ordered. The SCS for CSHB 49(FIN) was adopted.

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AT EASE

[3:19:21 PM](#)

RECONVENED

Co-Chair von Imhof noted that there were several amendments to be considered. Several of the amendments were technical in nature, and others were new concepts brought forward by committee members. She detailed that Senator Shower was working on a technical amendment and would be joining the committee shortly.

Co-Chair Stedman MOVED to ADOPT Amendment 1 (copy on file).

Co-Chair von Imhof OBJECTED for discussion. She explained that the amendment was a technical change brought forward by LAW in order to make conforming changes throughout the bill.

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, spoke to Amendment 1. He explained that the conceptual amendment would add language to ensure that the crime of harassment in the second degree did not overlap with other crimes. The amendment also addressed pre-trial risk assessment. There was cleanup language to ensure the true discretion of a probation officer in terms of making a recommendation for early termination. He described technical changes contained in Amendment 1.

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Mr. Skidmore continued to address Amendment 1. He spoke about two sections that dealt with applicability. He referenced earned compliance credits and caps for technical violations. The effective date was adjusted in the amendment.

Mr. Skidmore explained that other portions of Amendment 1 addressed parole. Earned compliance credits and technical caps for parole were addressed.

Co-Chair von Imhof WITHDREW her objection. There being NO OBJECTION, it was so ordered. Amendment 1 was ADOPTED.

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Co-Chair von Imhof MOVED to ADOPT Amendment 2 (copy on file).

Co-Chair Stedman OBJECTED for discussion.

Co-Chair von Imhof spoke to the amendment, which included compromise language pertaining to truth in sentencing. She explained that the courts had approved the change, and the amendment would add a new subsection.

Co-Chair Stedman WITHDREW his OBJECTION. There being NO further OBJECTION, it was so ordered.

Senator Wilson MOVED to ADOPT Amendment 3.

Co-Chair von Imhof OBJECTED for discussion.

Senator Wilson spoke to the amendment. He detailed that the amendment would set a limit for the number of DUI's a person could receive. He asserted that the state had serious alcohol-related issues. He understood the need for rehabilitation so individuals could learn from their mistakes, but he thought there should be a limit on the number of offenses before the state put a permanent consequence in place. He discussed consequences for sex offenders. He discussed current law and the ability of a person to regain a driver's license after 10 years with no offense. He stated that the amendment would put a cap on the number of offenses before a person lost a driver's license permanently.

Senator Olson asked if the amendment was supported by LAW or DPS.

Senator Wilson had not asked the departments if there was support for the amendment.

Mr. Skidmore considered Amendment 3. He thought it made logical sense.

Co-Chair von Imhof asked if the amendment would be in conflict with a provision that allowed a person to potentially get a license back after ten years without re-offense. Under the amendment, if a person had six DUIs, a driver's license would be revoked permanently.

Co-Chair von Imhof reiterated her question about whether the amendment would be in conflict with existing law.

Mr. Skidmore wanted a few moments to consider the amendment.

[3:30:59 PM](#)

Ms. Howell spoke to Amendment 3. She stated the DPS had not seen the amendment and did not have a position. The department would defer to the judgement of LAW.

Senator Hoffman asked if the amendment would apply to out of state DUI offenses for individuals that moved to Alaska. He asked if the count of offenses would start after enactment of the new law if passed.

Senator Wilson believed that the count would start after bill passage.

Senator Micciche asked if three offenses constituted a felony DUI.

Mr. Skidmore affirmed that three DUI charges within ten years would constitute a felony. He asked about line 2 of the amendment, which referenced line "v."

Co-Chair von Imhof asked if after the sixth DUI the license would be revoked. She asked if a person could potentially retain a license after ten years of no offenses.

Senator Wilson answered in the negative. He felt that there should be a limit set after which a person would never be allowed to drive again.

[3:34:38 PM](#)

Co-Chair von Imhof asked which of the lower committees was considering the issue of driving under the influence. She reminded of the lengthy discussions that had taken place pertaining to the bill matter, while the amendment was on a new subject. She was not suggesting that Amendment 3 was not sound, but she wanted to ensure the amendment was properly vetted.

Senator Micciche thought the amendment was less than two felony DUIs. He reminded that it was possible to get a DUI

charge for driving a lawn mower in your front yard. He thought the amendment was counter to the spirit of the bill. He emphasized that he was not condoning any operation of a vehicle under the influence. He opposed the amendment but would consider supporting an amendment if it pertained to a person after three felony DUIs.

Senator Shower understood the thinking behind the amendment. He thought more work needed to be done on the concept of rehabilitation within criminal justice reform. He acknowledged the difficulty of persons trying to live life without access to a driver's license and thought the amendment might be setting people up to fail.

[3:38:45 PM](#)

Senator Micciche stated that if the maker of the amendment would consider a conceptual amendment of three felony DUIs rather than 5 DUI offenses.

Co-Chair von Imhof thought it was difficult to speculate the intent of a group of people that could or could not be rehabilitated over the course of ten years. She thought that members had issues with the amendment. She asked if a person lost a driver's license after a certain number of DUI offenses.

Mr. Skidmore stated that in a DUI prosecution at the misdemeanor level, a license was revoked for a period of days. The first offense revoked a license 90 days, and after a second DUI a license was revoked for longer. After a felony DUI, the current law currently stated a person would permanently lose a driver's license. In Section 96 of the bill, there was a path back for a person after being convicted of a felony DUI and not having a conviction for ten years.

Mr. Skidmore apologized for misspeaking earlier. He noted that subsection "v" was in the amendment itself. The amendment would indicate a person was not eligible to have a license restored after a period of ten years if convicted of five or more DUI offenses. Whether or not the DUI offenses were felonies was dependent upon the amount of time between offenses, and the amendment did not address the matter.

Mr. Skidmore stated that the amendment did not conflict with Section 96.

[3:42:33 PM](#)

Senator Wilson questioned whether a person was reformed after being imprisoned for five years for a felony DUI. He mentioned experience with an agency that had many DUI offenders, and thought many people managed to not be caught for offenses.

Co-Chair von Imhof did not think anyone was suggesting that DUIs were not a serious issue in the state. She did not particularly understand current laws sufficiently to vote on the amendment. She thought if the concept was brought up later in committee the topic could be considered more fully.

Senator Wilson noted that laws were being amended and he was not comfortable with allowing a person to have a driver's license reinstated after having an unlimited number of DUI offenses.

Senator Micciche was willing to work on the topic over the interim. He thought the amendment brought up an important point but did not evaluate different consequences such as off-road vehicle or lawnmower. He would not support the amendment.

Co-Chair von Imhof MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Wilson, Olson, Wielechowski

OPPOSED: Shower, Bishop, Hoffman, Micciche, VonImhof, Stedman

The MOTION FAILED (3/6).

[3:46:12 PM](#)

Senator Bishop MOVED to ADOPT Amendment 4.

Co-Chair von Imhof OBJECTED for discussion.

Senator Bishop spoke to the amendment, which inserted language that directed the DOC commissioner to work with DEED and DOL to help strengthen the rehabilitation section of the bill.

Co-Chair von Imhof WITHDREW her objection. There being NO further OBJECTION, it was so ordered.

Senator Bishop MOVED to ADOPT Amendment 5.

Co-Chair von Imhof OBJECTED for discussion.

Senator Bishop spoke to the amendment, which pertained to the commissioner of DOC. There had been no timeline on the regulation package, and stakeholders had agreed the regulation package would need to be written and adopted within 15 months after the effective date.

Senator Shower asked if DOC was consulted.

Senator Bishop answered in the affirmative.

Co-Chair von Imhof WITHDREW her objection. There being NO further OBJECTION, it was so ordered.

Co-Chair von Imhof MOVED to ADOPT Amendment 12.

Co-Chair Stedman OBJECTED for discussion.

Co-Chair von Imhof explained that LAW had requested additional technical changes.

Co-Chair Stedman WITHDREW his OBJECTION.

[3:48:53 PM](#)

AT EASE

[3:49:30 PM](#)

RECONVENED

Co-Chair von Imhof informed that Senator Shower wanted to hear from LAW on the amendment.

Mr. Skidmore asked for a motion to delete line 1 through line 3 of them amendment.

Senator Wielechowski asked for an explanation of Mr. Skidmore's proposal. He wondered if the change would affect the bill in a substantive way.

Mr. Skidmore explained that the lines referred to the crime of sharing images of genitalia. The change would correct the statutory reference. The change would provide clarity.

Senator Wilson MOVED to ADOPT a conceptual amendment to Amendment 12. There being NO OBJECTION, it was so ordered.

There being NO further OBJECTION, it was so ordered. Amendment 12 passed as AMENDED.

Co-Chair Stedman MOVED to ADOPT Amendment 13.

Co-Chair von Imhof OBJECTED for discussion.

Co-Chair von Imhof explained that the amendment would correct presumptive terms for distribution of child pornography, ensuring that repeat offenses would receive higher sentence ranges. The amendment was brought forward by LAW.

Co-Chair von Imhof WITHDREW her OBJECTION. There being NO further OBJECTION, it was so ordered.

[3:52:58 PM](#)

Co-Chair Stedman MOVED to ADOPT Amendment 15.

Co-Chair von Imhof OBJECTED for discussion. She explained that the intent of the amendment was a technical correction related to administrative sanctions. The amendment was brought forward by LAW.

Co-Chair von Imhof WITHDREW her objection. There being NO further OBJECTION, it was so ordered.

Senator Wielechowski MOVED to ADOPT Amendment 6.

Co-Chair von Imhof OBJECTED for discussion.

Senator Wielechowski noted that he discussed the topic of the amendment with LAW. He recalled that in 2007, the legislature passed a bill that allowed municipalities in the state the ability to impound a person's vehicle if they

had over \$1,000 in outstanding moving violations. He recounted that he had a constituent that had been severely injured by a driver that had numerous unpaid tickets. The municipality of Anchorage posted a list of people with unpaid citations and the amount that was owed. He noted that the number one person on the list had 78 citations with \$9,473 in outstanding fines.

Senator Wielechowski continued to discuss Amendment 6. He detailed that there were thousands of citations and thousands of dollars in outstanding fines. The total amount of fines in Anchorage (counting people owing more than \$1,000) was \$6.1 million. The rest of the state had a total of \$16.3 million in outstanding moving violations. He stated that the amendment would allow the Division of Motor Vehicles (DMV) to revoke a license after a person did not pay over \$1,000 in unpaid fines for moving violations. He noted that there was a payment plan available. He believed the amendment was supported by LAW. He had sent the amendment to DMV, and it had supported the cancellation of licenses.

Co-Chair von Imhof WITHDREW her objection. There being NO further OBJECTION, it was so ordered.

[3:56:28 PM](#)

Senator Wielechowski MOVED to ADOPT Amendment 7.

Co-Chair von Imhof OBJECTED for discussion.

Senator Wielechowski explained that under current law, the first-time and second-time offense for drug possession required no jail time. The third offense had jail time. The previous version of the bill made the first two offenses class A misdemeanors, with jail time. The CS had the first offense as a felony, which he thought was harsh. He thought the amendment was an attempt to find a middle ground. He thought a first offense charged as a felony could create problems with housing, employment, and possibly child custody.

Co-Chair von Imhof asked if the amendment provided a misdemeanor for the first offense, but with jail time potential of zero to 365 days in jail.

Senator Wielechowski clarified that the first offense would be a class A misdemeanor punishable by up to 365 days in jail. The second offense would be a class C felony.

[3:59:13 PM](#)

Senator Micciche referenced the serious issue of drug abuse, addition, and drug trafficking. He asked about the probability of LAW giving some jail time to have a person take a first offense seriously. He asked how Mr. Skidmore felt about the change proposed in Amendment 7.

Mr. Skidmore stated that current law stated that a person convicted of possession was always a misdemeanor and the first two times had zero jail time associated with it. The proposed amendment would require that a first-time offender face up to a year in jail, and at a second conviction (within ten years) that it would constitute a felony. He thought the amendment proposed a significant change in law and was more aggressive than what was in the bill that came from the House. He thought the one year in jail was a substantial tool to work with. The department was not opposed to the concept.

Senator Micciche wanted to ask DPS if it would arrest a person for possession of heroin or methamphetamine if the first charge was a misdemeanor. He wanted to know that troopers would arrest and prosecute a person for the first offense.

Ms. Howell affirmed that troopers would arrest for misdemeanor possession.

Senator Hoffman believed, given Mr. Skidmore's testimony, that the amendment made sense. He thought a disincentive would still exist. He thought that the state would still be viewed as tough on crime, and he supported the amendment.

Senator Olson thought it had been pointed out by Senator Micciche that people would or would not be prosecuted, and troopers would not necessarily be aware of how many times a person had been charged. He had many close friends in rural Alaska that had been convicted of a felony. He spoke to the many burdens that came with being a felon. He was in favor of the amendment.

[4:03:48 PM](#)

Senator Bishop supported the amendment. He thought the possibility of zero to 365 days in jail was a big disincentive. He looked forward to the following year and consideration of rehabilitation services that would be examined in a forthcoming bill.

Senator Shower associated himself with Senator Bishop's comments. He suggested that it would be possible to enact harsher penalties in the future if needed. He mentioned the huge problem of drugs in the state. He thought the amendment was a step in the right direction. He did not think the amendment took tools from law enforcement. He supported the amendment. He thought the amendment was a good compromise.

Co-Chair von Imhof WITHDREW her objection. There being NO OBJECTION, it was so ordered. Amendment 7 was adopted.

[4:05:31 PM](#)

Senator Wielechowski MOVED to ADOPT Amendment 8.

Co-Chair von Imhof OBJECTED for discussion.

Senator Wielechowski stated that the amendment dealt with the issue of bail. He cited that 40 to 45 percent of people in prison were pre-trial and had not been convicted of a crime. He acknowledged that some were there because some individuals would be offered no bail and were a severe danger to society. He discussed a huge percentage of people were in jail due to not being able to afford bail. He discussed the disparity between individuals with and without financial resources. The amendment tried to mitigate the situation. He acknowledged that there were persons that were a danger to society, at which time a judge would set a high bail or no bail.

Senator Wielechowski explained the amendment would give a judge the ability to reevaluate the conditions of bail. The amendment was an attempt to deal with inequality in the legal system.

Co-Chair von Imhof thought Senator Wielechowski proposed to allow a judge to look at bail again to decide whether a change was needed.

Senator Wielechowski answered in the affirmative. He stated that a person (after making a good faith effort) could ask a judge for reconsideration.

[4:08:56 PM](#)

Senator Micciche thought the amendment was a creative approach. He reminded that the bail issue was not necessarily only applicable to disadvantaged people. He thought some individuals sometimes exhausted resources through addiction behavior. He thought judges generally took individuals' ability to pay when setting bail. He mentioned repeat offenders. He did not support the amendment.

Senator Bishop asked about line 10 and line 11 of Amendment 8; and wondered if the amendment only addressed one time when a person could request reconsideration of bail conditions.

Senator Wielechowski affirmed that the amendment proposed to give a person one more time to convince a judge. He explained that the amendment would give judges discretion.

Senator Olson discussed the potential for harmful exposure to bad elements while a personal was held in prison. He acknowledged that a judge had the opportunity to consider different bail conditions rather than waiving bail. He supported the amendment on the grounds that it would keep people out of jail while awaiting trial.

[4:12:11 PM](#)

Senator Hoffman thought the amendment addressed a one-time chance to reevaluate bail conditions after a good faith effort. He thought there was a serious problem with jail overcrowding. He supported the amendment.

Senator Shower asked to hear an opinion from LAW.

Senator Olson asked if the courts were available as well.

Mr. Skidmore addressed Amendment 8. He thought Senator Wielechowski had done a good job explaining that the amendment. The way the bill was drafted, it modified current law to allow the inability to pay and having shown good effort as a basis for new information for a subsequent

bail hearing one time. He stated that LAW did not have a position on the amendment and would leave it to the discretion of the committee.

Senator Micciche asked to clarify that the amendment allowed for reevaluation of bail conditions for one time per charge. He thought some individuals were repeat offenders.

Mr. Skidmore affirmed that the amendment would allow for one time per case, regardless of how many charges were in the case. He thought Senator Micciche was pointing out that individuals would pick up a second case, and the proposed change would apply to the second case as well.

[4:15:08 PM](#)

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM (via teleconference), stated that the Court System did not have a position on the amendment. She agreed with Mr. Skidmore's description of the effect of the amendment.

Senator Wilson asked how many potential additional bail hearings would be added to the court system.

Ms. Meade stated that there had been slight increase in bail hearings as a result of SB 91 (where the inability to pay did result in giving a person a right to a bail hearing), but not so many as that was difficult to absorb and accommodate. She thought the passage of the amendment would likely have the effect of allowing a few more bail hearings, and she did not anticipate more than the court system could absorb.

Co-Chair von Imhof thought it seemed like the amendment would not going to necessarily require a judge to change bail, but rather to hear it again and decide.

Co-Chair von Imhof WITHDREW her objection.

Senator Micciche OBJECTED for discussion.

Senator Wielechowski asked if a public defender could speak to the amendment.

[4:17:26 PM](#)

JAMES STINSON, OFFICE OF PUBLIC ADVOCACY, DEPARTMENT OF ADMINISTRATION (via teleconference), stated that the Office of Public Advocacy would support the amendment. He thought the amendment was a reasonable balance and would provide for individuals making a good faith effort.

Senator Micciche MAINTAINED his OBJECTION. A roll call vote was taken on the motion.

IN FAVOR: Wilson, Olson, Wielechowski, Bishop, Hoffman, Shower, Steadman, von Imhof

OPPOSED: Micciche

The MOTION PASSED (8/1). Amendment 8 was ADOPTED.

Senator Wielechowski made a motion to WITHDRAW Amendment 9. There being NO OBJECTION, it was so ordered.

Senator Wielechowski MOVED to ADOPT Amendment 10.

Co-Chair von Imhof OBJECTED for discussion.

Senator Wielechowski spoke to the amendment. He noted that the amendment was a bit technical and related to marriage as a defense against certain crimes. He noted that the bill being considered rightfully did away with the defense for most encounters. He thought it was inadvertent, but cited a provision relating to engaging in sexual relations with a person that was in custody of DOC.

Senator Wielechowski explained that the way the bill was written, it was possible to use marriage as a defense; and there was a total of six different where marriage could still be used as a defense, and the amendment would add the requirement of consent. The amendment also addressed the issue where a spouse that had Alzheimer's could consent if lucid. He thought it was a sensitive issue. He thought the amendment was a better solution than what was in the bill and was a nuanced change.

[4:21:16 PM](#)

SONJA KAWASAKI, STAFF, SENATOR BILL WIELECHOWSKI, discussed the intent of Amendment 10. She explained that the amendment attempted to address concerns expressed by members relating to sexual contact with persons who were

mentally capable (generally unacceptable that should be prohibited); and whether there should be two exceptions. The amendment provided an affirmative defense in which a spouse could prove that the other person was lucid at the time of the contact.

Co-Chair von Imhof asked about the ability to prove lucidity.

Ms. Kawasaki stated that on page 3, lines 7 through 12; the amendment provided a mechanism that was an affirmative defense. Normally, a prosecutor would have to disprove the elements of the defense; which the amendment shifted the burden of proof to the person charged. By preponderance of the evidence, the defendant would have to prove that the elements of the defense existed. She explained that preponderance of the evidence was typically the probable truth based on the evidence presented and was a lower circumstance than reasonable doubt.

[4:24:18 PM](#)

Co-Chair von Imhof asked for an explanation of the amendment in layman's terms. She asked what the bill did in its current form, and what the amendment tried to fix.

Ms. Kawasaki stated that in four places in the state's criminal code, a person could be charged for sexual penetration or sexual content if a victim was mentally incapable, incapacitated, or unaware when the act was committed. The bill current would not allow any defense to any of the three circumstances. She thought there had been concerns about the term "mentally incapable" as defined in law, could mean that a person suffering from dementia or Alzheimer's, in which case there could be periods of lucidity and possible consent. The amendment would allow for a spouse to be able to prove that there was clarity and judgement and consent during the time of the sexual contact.

[4:26:28 PM](#)

Senator Olson asked Senator Wielechowski to explain the remedy that the amendment proposed. He was concerned about the possibility of a family dispute.

Senator Wielechowski had heard that the situation was becoming a more common occurrence. He discussed scenarios related to the subject. The way the CS was written, a prosecutor would have to prove mental incapacity. He thought there had been different legal opinions as to how the remedy was interpreted. The amendment gave a spouse the ability to assert that the other spouse was lucid at the time of the event in question and provide an affirmative defense. There was also a jury instruction regarding the affirmative defense.

Senator Wielechowski asserted that the amendment strove to protect both spouses. The public defender's office had supported the concept. He relayed that LAW had no objection to the proposal. He noted that the amendment required for consent in the five instances of marital defense.

[4:30:37 PM](#)

Co-Chair von Imhof asked how Co-Chair von Imhof pictured one spouse proving lucidity of the other spouse at another time.

Senator Wielechowski suggested that circumstantial evidence such as testimony of neighbors and others could go towards proof of lucidity. He explained that total deletion of the marriage defense would make it harder to have such evidence admissible.

Co-Chair Stedman asked to hear from LAW. He asked if the department would support the amendment.

Mr. Skidmore stated that the department was not in a position to support the amendment but did not object to it. He explained the concept of allowing marriage as an affirmative defense. He reminded that the question was whether or not a person was capable of consenting at the time of the sexual activity.

Co-Chair Stedman did not feel that the testimony gave him guidance.

Mr. Skidmore stated that LAW had provided a letter to the committee that analyzed its position on the way the law was drafted (copy on file). Some had disagreed with the department's assessment.

4:35:00 PM

Senator Shower asked if the marriage defense (if there was a case of spousal rape) would still be eliminated as proposed in the bill if the amendment was to pass.

Mr. Skidmore explained that if the amendment passed the affirmative defense would apply to when a victim was mentally incapable and under the care of the defendant and was limited to spouses. He continued that the amendment differentiated by adding language about consent. He had indicated consistently that it was most important that there was consent between both parties.

Mr. Skidmore thought the amendment did not do harm to the elimination of the marriage defense as the administration had advocated.

4:38:24 PM

Senator Olson asserted that the legislature was responsible for policymaking. He asked about Mr. Skidmore's reference to individuals in his family that had experienced dementia or Alzheimer's, and the advice he had given his grandfather.

Mr. Skidmore clarified that he had testified on May 1, 2019; and his remarks pertained to his grandmother who had suffered from Alzheimer's, and after which time that she was no longer lucid. He emphasized the importance of choosing words carefully.

Senator Olson apologized if he misspoke. He asked if Mr. Skidmore would agree if the amendment cleared up the issue.

Mr. Skidmore reiterated that the amendment would allow for someone to argue in the affirmative that someone had consented. His previous testimony and the memo in analysis of the law said that those elements were required to show under the defense already.

Senator Micciche asked Mr. Skidmore's opinion was that the amendment did not hurt either way.

Mr. Skidmore did not believe the amendment softened the elimination of the marriage defense, and thought it was

another way of describing the very concept that he had been testifying to from the beginning.

Senator Micciche asked if there was something on page 2 Section 7 that was changed under the amendment.

[4:42:19 PM](#)

Senator Wielechowski addressed Senator Micciche's question. He thought the amendment strengthened the bill and made it so there had to be consent for the act for which the defendant was charged.

Mr. Skidmore relayed that AS 11.41.432 currently made it a defense when a person was married. The amendment on Section 7, page 2, lines 14-22 would add back in the concept of consent in the circumstance considered in the bill. He asserted that the law would say that one could not engage in the conduct when employed or the person was under supervision; but marriage would be a defense under the circumstances. He considered that the particular provisions were not addressing incapacitation, being unaware, or mentally incapable. He thought consent was already in the law because sexual penetration without consent (regardless of employment) was unlawful and marital status did not apply. He understood what the amendment was trying to accomplish but did not think it was necessary.

[4:45:35 PM](#)

Senator Wielechowski asked for a brief statement from the Office of Public Advocacy (OPA).

Mr. Stinson stated that OPA supported the marriage defense provision as an affirmative defense - he understood Mr. Skidmore's point, but thought the amendment would put people at ease in a very particular circumstance. He thought largely everyone was in agreement over repeal the marriage defense as it currently existed. He thought the amendment seemed like a reasonable accommodation.

Co-Chair von Imhof WITHDREW her objection. There being NO further OBJECTION, it was so ordered. Amendment 10 was ADOPTED.

[4:47:20 PM](#)

AT EASE

[4:48:26 PM](#)

RECONVENED

Co-Chair von Imhof stated that the committee would consider three additional amendments and would also make a motion to rescind Amendment 2.

Senator Wielechowski MOVED to ADOPT Amendment 11.

Co-Chair von Imhof OBJECTED for discussion.

Senator Wielechowski spoke to the amendment. He explained that the amendment was on page 74 line 13 and was in a new section. The new section would require that decisions, orders, and conditions of the parole board were not confidential and would be posted. The amendment proposed that confidential medical information would not be provided.

Co-Chair von Imhof understood that Senator Wielechowski was stating that the non-inclusion of information would conform to Health Insurance Portability and Accountability Act (HIPAA) laws.

Senator Micciche was curious if the amendment sponsor believed that if substance abuse treatment was part of a sentence, if it should be redacted.

Senator Wielechowski thought it was possible that treatment information was HIPAA-related. He stated that the amendment was conceptual and was open to re-writing it if there was a better way.

Senator Micciche preferred that the amendment specified "HIPAA-related" information, not to include treatment that was part of a sentence. He agreed that personal medical and mental-health information should not be published.

[4:52:13 PM](#)

Senator Wilson stated that medical and mental health information fell under HIPAA regulations, but substance abuse fell under another regulation, which was similar to HIPAA but more stringent.

Co-Chair von Imhof thought Senator Wilson was stating that substance abuse treatment information was already protected as confidential by state or federal law.

Senator Wilson affirmed that the information was already protected.

Co-Chair von Imhof gleaned that the amendment was accurate as written.

Senator Micciche assumed that substance abuse treatment information was different than information on the length of treatment. He noted that some sentences required a certain amount of treatment, and thought the information was important for victims.

Co-Chair von Imhof asked Senator Wielechowski (if the amendment was passed) to work with LAW and OPA to include specifically what information was protected and not protected, including substance abuse treatment.

Senator Wielechowski agreed.

Co-Chair von Imhof WITHDREW her objection. There being NO further OBJECTION, it was so ordered. Amendment 11 was ADOPTED.

[4:54:54 PM](#)

AT EASE

[4:55:53 PM](#)

RECONVENED

Co-Chair Stedman MOVED to ADOPT Amendment 16.

Co-Chair von Imhof OBJECTED for discussion.

Co-Chair von Imhof explained that the technical amendment was an attempt to make additional technical changes as requested by LAW to remove repealers associated with administrative sanctions.

Co-Chair von Imhof WITHDREW her OBJECTION. There being NO further OBJECTION, it was so ordered.

Co-Chair von Imhof noted that after passing Amendment 2, it had come to the committee's attention that DOC had to be removed from the amendment.

Co-Chair Stedman MOVED to RESCIND the committee's action on Amendment 2.

Co-Chair von Imhof OBJECTED for discussion.

[4:57:43 PM](#)

AT EASE

[4:58:04 PM](#)

RECONVENED

Co-Chair von Imhof WITHDREW her objection. There being NO further OBJECTION, it was so ordered. The committee's action on Amendment 2 was rescinded.

Co-Chair Stedman MOVED to ADOPT a conceptual Amendment to Amendment 2.

Co-Chair von Imhof OBJECTED for discussion. She explained that the intent of the conceptual Amendment to Amendment 2 was to remove the reference to DOC.

Co-Chair von Imhof WITHDREW her objection. There being NO further OBJECTION, it was so ordered. The conceptual Amendment to Amendment 2 was ADOPTED.

[4:59:24 PM](#)

AT EASE

[4:59:40 PM](#)

RECONVENED

Co-Chair Stedman MOVED to ADOPT Amendment 2 as amended. There being NO OBJECTION, it was so ordered.

Senator Wielechowski MOVED to ADOPT Amendment 14.

Co-Chair von Imhof OBJECTED for discussion.

Senator Wielechowski spoke to the amendment. He thought there might need to be conforming changes. He explained that the amendment dealt with probation and parole, and technical violations. Technical violations could include

things like showing up late for a meeting with a probation/parole officer or consuming alcohol. He emphasized that the amendment addressed technical violations rather than a new crime. He reported that there had been 21,000 technical violations in the previous two years.

Senator Wielechowski continued to speak to Amendment 14. He noted that the Senate had created a provision to give probation/parole officers the ability to handle technical violations with administrative sanctions. He spoke to the idea of immediate ramifications and giving a probation/parole officer the ability to impose immediate ramifications. The version of the bill that came to the committee asserted that if administrative sanctions weren't working, it was possible to go to a judge and there would be tiered penalties.

Senator Wielechowski continued to speak to Amendment 14. He explained that the CS would allow a judge discretion to impose any penalty at all. The amendment would allow for a judge to impose a penalty of zero to three days the first time. The hope was that the penalty would be enough of a deterrent that the penalty would not impact a job and not throw a person back into a negative cycle. He noted that LAW did not support the amendment and wanted the judge to have the ability to impose as much time as desired. He thought it was a mistake in policy and thought up to three days was a significant punishment, after which there would be greater penalties.

Co-Chair von Imhof asked if the issue was addressed in SSTA or SJUD.

Senator Shower answered in the affirmative. He thought it might be useful to have someone from the department testify.

[5:05:37 PM](#)

JEN WINKELMAN, DIRECTOR OF PROBATION AND PAROLE, DEPARTMENT OF CORRECTIONS, stated that DOC probation officers used administrative sanctions for swift and effective responses to violations. She continued that by the time the issue came before the court, there had already been sanctions and the court could determine the amount of time to impose as a

sanction. The department was in support of the CS the way it was written without the amendment.

Co-Chair von Imhof asked about the function of the amendment.

Ms. Winkelman explained that the amendment put the technical caps back in at a different level than was in the House version of the bill.

Senator Olson asked about scenarios under which a person had a technical violation and could lose a job.

Ms. Winkelman supposed there could be a situation where an individual could lose a job, but such cases were taking before a judge, who could consider the totality of circumstances.

Co-Chair von Imhof MAINTAINED her objection.

Senator Micciche clarified that DOC had tools for administrative sanctions before moving to a higher level of penalty.

Ms. Winkelman answered in the affirmative.

A roll call vote was taken on the motion.

IN FAVOR: Olson, Wielechowski

OPPOSED: Bishop, Hoffman, Micciche, Shower, Wilson, von Imhof, Stedman

The MOTION FAILED (2/7).

[5:09:57 PM](#)

Co-Chair Stedman MOVED to report SCS CSHB 49(FIN) out of Committee with individual recommendations and the accompanying fiscal notes. There being NO further OBJECTION, it was so ordered.

SCS CSHB 49(FIN) was REPORTED out of committee with a "do pass" recommendation and with forthcoming fiscal notes from the Department of Health and Social Services, the Department of Administration, the Department of Law, the Department of Public Safety, the Court System, and the

Department of Corrections; and one new previously published zero fiscal note: FN 1(DHS).

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ADJOURNMENT

5:11:31 PM

The meeting was adjourned at 5:11 p.m.