ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
1:32 p.m.
March 1, 2019

MEMBERS PRESENT

Senator Shelley Hughes, Chair
Senator Mike Shower
Senator Peter Micciche
Senator Jesse Kiehl

MEMBERS ABSENT

Senator Lora Reinbold, Vice Chair

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 12
"An Act relating to crime and criminal procedure; relating to assault and sexual assault; relating to harassment; relating to credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring; and providing for an effective date."

- HEARD AND HELD

SENATE BILL NO. 34
"An Act relating to probation; relating to a program allowing probationers to earn credits for complying with the conditions of probation; relating to early termination of probation; relating to parole; relating to a program allowing parolees to earn credits for complying with the conditions of parole; relating to early termination of parole; relating to eligibility for discretionary parole; relating to good time; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 12
SHORT TITLE: ASSAULT; SEX OFFENSES; SENTENCING CREDIT
SPONSOR(s): SENATOR(s) MICCICHE

01/16/19 (S) PREFILE RELEASED 1/7/19

01/16/19	(S)	READ THE FIRST TIME - REFERRALS
01/16/19	(S)	JUD, FIN
02/13/19	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/13/19	(S)	JUD, FIN
02/13/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/13/19	(S)	Heard & Held
02/13/19	(S)	MINUTE(JUD)
02/15/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/15/19	(S)	Scheduled but Not Heard
02/18/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/18/19	(S)	Heard & Held
02/18/19	(S)	MINUTE(JUD)
02/22/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/22/19	(S)	CRIMES;SEX CRIMES;SENTENCING; PAROLE
02/25/19	(S)	JUD WAIVED PUBLIC HEARING NOTICE,RULE 23
02/28/19	(S)	JUD AT 5:00 PM BELTZ 105 (TSBldg)
02/28/19	(S)	-- Public Testimony <Time Limit May Be Set> --
03/01/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

BUDDY WHITT, Staff
Senator Shelley Hughes
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented the changes in the committee substitute for SSSB 12 on behalf of the Chair.

REGINA LARGENT, Staff
Senator Shelley Hughes
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented the changes in the committee substitute for SSSB 12 on behalf of the Chair.

JOHN SKIDMORE, Director
Criminal Division, Central Office
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Testified and answered questions during the discussion of SSSB 12.

JENNIFER WINKLEMAN, Director
Division of Probation and Parole/Pretrial

Department of Corrections
Juneau, Alaska
POSITION STATEMENT: Answered questions during the discussion of SSSB 12.

ACTION NARRATIVE

1:32:19 PM
CHAIR SHELLEY HUGHES called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kiehl, Micciche, Shower, and Chair Hughes.

SB 12-ASSAULT; SEX OFFENSES; SENTENCING CREDIT

1:32:45 PM
CHAIR HUGHES announced that the first order of business would be SPONSOR SUBSTITUTE FOR SENATE BILL NO. 12, "An Act relating to crime and criminal procedure; relating to assault and sexual assault; relating to harassment; relating to credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring; and providing for an effective date."

1:33:00 PM
CHAIR HUGHES reviewed the action previously taken on the bill.

1:33:43 PM
SENATOR MICCICHE moved to adopt the proposed committee substitute (CS) for SSSB 12, work order 31-LS0263\O, Radford, 2/27/19, referred to as Version O, as the working document of the committee.

CHAIR HUGHES objected for discussion purposes.

1:34:25 PM
REGINA LARGENT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, on behalf of the sponsor of SSSB 12, introduced herself.

1:34:48 PM
BUDDY WHITT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, on behalf of Chair Hughes, reviewed the changes in the proposed committee substitute (CS) for SSSB 12, Version 0. He said that Section 1 is unchanged from the previous version of the bill and recapped Sections 1-2:

Section 1: Amends AS 11.41.200(a), assault in the first degree, to add new subsection 5, which adds a person "knowingly causes another to become unconscious by means of a dangerous instrument" and defines "dangerous instrument" in accordance with the definition in AS 11.81.900. (Page 1, line 6 – Page 2, line 5)

Section 2: Adds "knowingly causing a victim to come into contact with semen" to the definition of "sexual contact" in AS 11.[8]1.900(b)(60). (Page 2, lines 6 – 25)

1:35:52 PM
MR. WHITT explained that the prior version of the bill removed the word "semen" from the definition of the crime of harassment in the first degree, so the entire Section 3 was removed from the bill. He reviewed Section 3, which relates to pretrial.

Section 3: Repeals AS 12.55.027(d) and re-enacts to specify that a court may not grant credit against a sentence for time in private residence or on electronic monitoring. (Page 2, Lines 26 – 28)

1:36:34 PM
MR. WHITT reviewed Section 4 of the sectional analysis and stated that this provides a conforming change to AS 12.55.027(e).

Section 4: Amends AS 12.55.027(e) to remove "electronic monitoring" as an option for claiming credit toward a sentence of imprisonment. (Page 2, line 29 – Page 3, line 7)

MR. WHITT explained that the next few sections relate to enhanced sentencing structure and Ms. Largent will answer questions on those sections.

1:37:15 PM
SENATOR KIEHL directed attention to Section 2 and offered his belief that this is an excellent approach. He asked for clarification on the effect of leaving the language "contact with semen" in the harassment statute as well as in Section 2. He recalled an attorney had used the phrase, the principle of leniency or the precept of leniency. He would like to ensure that the prosecutor would have to charge non-consensual "contact with semen" as harassment rather than charge the offender with

the appropriate sex crime, such as the offense in the Schneider case.

MR. WHITT deferred to Mr. Skidmore, Department of Law to address that specific issue in his testimony.

1:38:41 PM
SENATOR KIEHL referred to Section 3 of SSSB 12 and the topic of not allowing credit for time spent under electronic monitoring. He asked whether the subsection [AS 12.55.027(d)] being repealed and reenacted was specific to sex offenses or if it was more broadly applied.

MR. WHITT related his understanding that this would take away any credits for electronic monitoring during the pretrial phase regardless of the crime; however, he deferred to Mr. Skidmore to further address this subsection during his testimony.

CHAIR HUGHES asked Mr. Skidmore to be prepared to address this.

MR. WHITT turned to Section 5 of the sectional analysis for SSSB 12 and asked Ms. Largent to cover any questions related to Sections 5-8 of the bill.

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

1:39:57 PM
REGINA LARGENT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, on behalf of the sponsor of SSSB 12, said that Section 5 relates to an existing sentencing enhancement in AS 12.55.125(c)(1)-(2) for crimes such as sexual assault in the first degree, unlawful exploitation of a minor, and unclassified and Class A felonies. Currently, an existing sentence enhancement exists for a first felony when a dangerous instrument is used. She referred to AS 12.55.125(c), which is a subsection of dangerous instruments statutes. She referred to the definition under [AS 11.81.900](b)(15)(B), which states that a dangerous instrument means, "hands or other objects when used to impede normal breathing or circulation of blood by applying pressure on the throat or neck or obstructing the nose or the mouth." She returned to Sections 5, 6, and 7, which apply to assault in the first degree, assault in the second degree, and assault in the third degree:

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

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

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

MS. LARGENT explained that when an object is used to impede normal breathing or circulation under these subsections, the offender would be subject to enhanced sentencing. This would have a cascading effect in recognition of the seriousness of the crime. She said that in some jurisdictions this could be considered attempted murder since death can easily occur or it places a person in fear of death. She recalled from previous testimony that most strangulations in Alaska are charged as assault in the second degree; however, the crime of strangulation is a more serious and potentially deadly crime than assault.

1:42:52 PM
MS. LARGENT continued.

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

She explained that this takes the current statute for a first felony that includes use of a dangerous instrument to enhance the sentence in a consistent manner creating cascading sentences down to AS 12.55.125(i(3)&(4). This would apply to sexual assault in the first degree, unlawful exploitation of a minor, online enticement of a minor, and attempted and conspiracy or solicitation of sexual assault in the first degree, or sex trafficking in the first degree.

She noted that this would not apply to a few crimes, for example, distribution of pornography, since use of a deadly instrument would not apply. She said this would apply to the first felony that includes use of a dangerous instrument to enhance the presumptive sentencing in [paragraph] (3), which includes sexual assault in the second degree, sexual abuse of a minor in the second degree, online enticement and under [paragraph] (4), attempt, conspiracy, or solicitation of sexual assault in the second degree, second degree sexual assault of a minor, or unlawful exploitation of a minor, incest, or indecent exposure in the first degree.

1:44:58 PM
CHAIR HUGHES asked for further clarification on the first three sections that did not apply to sexual crimes but would be subject to enhanced sentences. She asked whether Ms. Largent would give the committee information on the number of years that would be added under the enhanced sentencing. She stated that this would give members and the public a better understanding of how adding the subset of strangulation would impact the sentence and the amount of time an offender would serve.

MS. LARGENT related her understanding that the Chair was interested first in enhanced sentencing for assault and then for sexual assault. She stated that the current sentencing for a first offense of assault in the first degree [AS 11.41.200], a class A felony, is three to six years. This provision would increase the presumptive range to five to seven years for the first offense.

She stated that the current presumptive sentence range for the first offense of assault in the second degree [AS 11.41.210], which is a class B felony, is zero to two years. She pointed out that Justin Schneider was convicted of assault in the second degree. This bill would increase the presumptive range to one to three years.

MS. LARGENT stated the current presumptive sentence range for assault in the third degree, which is a class C felony, is zero to two years and this would change that to one to three years.

1:46:48 PM
CHAIR HUGHES asked for the penalties for an offender who committed a second and third felony in each of those categories since she understood the presumptive sentences would also be increased.

MS. LARGENT answered yes. The second felony conviction of assault in the first degree [AS 11.41.200], a class A felony, is currently eight to 12 years; it would increase to nine to 13 years. A third felony conviction is currently 13-20 years; it would increase to 14-20 years.

She related that a second felony conviction for assault in the second degree [AS 11.41.210], a class B felony, is currently two to five years and that would increase to four to six years under the bill. The third felony conviction for a class C felony is currently four to 10 years, and it would increase to seven to 10 years under the bill.

She related that a second felony for assault in the third degree [AS 11.41.220], which is class C felony, is currently one to four years and would be increased to two to five years. The current range for a third felony conviction is two to five years and would be increased to three to five years.

1:48:34 PM
CHAIR HUGHES asked her to review the presumptive sentencing for sexual assault.

MS. LARGENT referred again to Section 8 and stated that the current presumptive sentence range under AS 12.55.125(i)(3), which includes sexual assault in the second degree, sexual [abuse] of a minor in the second degree, and online enticement of a minor is five to 15 years. This would increase to 10-25 years under CSSSSB 12, Version O. She clarified that refers to those sex crimes that included the use of a dangerous instrument or serious injury. In response to Chair Hughes, she acknowledged that a dangerous instrument does include strangulation. This would close a gap by applying this to assault, sexual assault, and strangulation to the point of unconsciousness.

1:50:17 PM
MS. LARGENT related the presumptive sentencing under [paragraph] (4), which applies to the crimes of attempt, conspiracy, or a solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, incest, indecent exposure in the first degree, currently is two to 12 years. Under the bill, the presumptive range would be increased from to seven to 12 years.

1:50:50 PM
MR. WHITT reviewed Section 9 of the sectional analysis.

Section 9: Adds AS 12.61.015(d), a new subsection that requires the prosecuting attorney to make a reasonable effort to confer with the victim of a sexual felony (or their legal guardian) to ascertain if they agree with the proposed plea agreement. The victim is not required to respond; however, a record is required of the consultation. A prosecutor in not bound by the agreement or disagreement to the proposed plea agreement (Page 8, lines 23 - 30)

He said that this change was suggested by the sponsor.

1:51:57 PM
SENATOR KIEHL asked how this would change the current practice of consultation with victims.

CHAIR HUGHES related that Mr. Skidmore, Department of Law would address this.

1:52:20 PM
MR. WHITT turned to Section 10 of the sectional analysis.

Section 10: Repeals AS 12.55.027(g), which conforms to section 3 to end sentencing credits for time spent on electronic monitoring.

He explained that this section is specific to pretrial credit for time served limited to felony crimes against a person under AS 11.41, domestic violence crimes, sex offenses, delivery of controlled substances to a minor, burglary in the first degree, and arson in the first degree. Current law allows the court to grant up to 360 days of credit for an offender on electronic monitoring who has been charged with those crimes. This would repeal that section and remove all pretrial credit for time served on electronic monitoring, he said.

1:53:41 PM
MR. WHITT continued.

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

Section [12]: Effective date clause. (Page 9, line 11)

He suggested the bill sponsor may wish to address Section 9.

1:54:14 PM

SENATOR MICCICHE said that current law contains a requirement for consultation, but a gap currently exists for recording and documenting the consultation and whether the victim supports the plea agreement. He suggested that under this language a better outcome may have occurred [in the Justin Schneider case].

He was under the assumption that it would be difficult for a victim to agree to a plea bargain. However, in sexual assault cases, many victims do not want to relive their experiences in the courtroom and often will support the plea agreement. It is a much simpler process and would not require their presence in the courtroom, he said. He offered his belief that his bill may drive more discussions and consultations, but he was unsure that it will result in much of a change from the current practice. He said that sometimes the plea agreement is the best that one can get, which may be best for the victim. The goal of this legislation is to do what is best for the victim.

CHAIR HUGHES said some victims do not want to relive the experience and the victims may not respond or they may decide not to appear in court. However, if the victims are asked to review the plea bargain, they may be more apt to review it, and in doing so, the victims may decide to become more involved. She thought that aspect was important to bring appropriate justice.

1:56:47 PM
SENATOR KIEHL said he likes the goal but just wanted to understand how it will work in the district attorney's office and in the courtroom.

1:57:13 PM
JOHN SKIDMORE, Division Director, Criminal Division, Central Office, Department of Law, Anchorage, explained how this change in the law would impact the criminal division's practices. Currently, the department consults with victims when the department can contact them. Further, the department's policy is to record all contacts in the file, but this would require them to do so. He characterized this provision as the "gold standard," which is something the department would support, he said.

1:58:10 PM
SENATOR KIEHL asked what the language "shall make a reasonable effort" means in practice and whether the department would be concerned about losing cases if a court said it did not make sufficient effort.

MR. SKIDMORE said he was not concerned about that. He explained that the courts are adept in interpreting this term. He interpreted this to mean that the department should contact victims if contact information is available. The department will often go beyond those methods and in some instances will use law enforcement to contact victims. Thus far the department has not encountered any issues with the term "reasonable."

CHAIR HUGHES asked for further clarification at what point in the process does the prosecutor reach out to the victim and if it is initially when the case begins or if it would be during the plea bargain process.

MR. SKIDMORE answered that the department contacts victims at various times throughout the process, when a case is initiated, often prior to arraignment, and during plea changes, depending on the degree that victims have indicated they want to be involved. He acknowledged that the department is not perfect, but its goal is to reach out to victims prior to plea agreements being reached. The department also has obligations to inform victims of hearings and to ensure that if they wish to appear in any sentencing hearing to provide them with an opportunity to participate.

2:01:07 PM
CHAIR HUGHES recapped that the DOL's current general practice is that it reaches out to victims on multiple times, including at the point of a plea bargain agreement being reached, but it may not be perfect. She asked whether putting this language in statute will mean it will be done more consistently, even though it may not always be possible to reach them.

MR. SKIDMORE said that placing the language in statute certainly provides added incentive since the department will want to comply with the law.

CHAIR HUGHES said her goal is that it will be done consistently.

2:02:11 PM
SENATOR KIEHL referred to the question of including "semen" in the definition of sexual contact and leaving it in the crime of harassment to ensure that the DOL will have the tools to charge crimes, such as the Justin Schneider case, as a sex crime and not be bound by the principle of leniency to charge a lesser crime because it contains the same basic element.

MR. SKIDMORE said the Department of Law (DOL) had those concerns initially when drafting legislation. However, the DOL believes that different elements will allow that distinction to be made. When considering a sexual assault case, the term "without consent" is a term that many people may use in conversations, but it is different when used in statute and law. In law, the concept requires "the use of coercion and force." He related the distinction, such that an inmate who flings bodily fluid at a correctional officer does not do so through coercion and force. However, that situation is very different from the Justin Schneider case, in which coercion and force was used.

2:04:34 PM
SENATOR KIEHL turned to pretrial credit for time spent on electronic monitoring. He said he was not generally of the opinion that sex offenders should be out pretrial. He asked for further clarification on electronic monitoring. For example, he acknowledged that the legislature wants offenders with an addiction problem to be in treatment programs. He asked whether the incentive structure is being changed to make Alaskan safer.

CHAIR HUGHES asked Mr. Skidmore to also discuss the administration's reason to put it in [one] of the crime bills.

2:05:55 PM
MR. SKIDMORE answered that electronic monitoring was also addressed in SB 33. He referred to page 2, Section 3, AS 12.55.127(d), of SSSB12, which relates to electronic monitoring in a private residence; however, it does not relate to credit for being in a treatment program. He emphasized that this provision would not change the ability for someone to obtain credit while in a treatment program. He said that if this bill were to pass, a person would still receive credit during a treatment program. The reason that electronic monitoring is problematic is two-fold. First, when someone is sentenced for committing a crime, the person is committed to the Department of Corrections and the department conducts a risk assessment analysis to determine how to classify the offender. For example, the department will assess on a case by case basis, whether the offender needs to be in minimum or maximum security, and the person's classification based on any offense the person committed, among other factors. This is different than the decision on whether a person should be released pretrial. He emphasized the difference is that in one case, pretrial, the person is presumed innocent, but once the person is convicted, the presumption of innocence no longer applies since the person has been found guilty. The pretrial assessment only evaluates

whether the person is a flight risk or if the person is a danger to the community. The classification that the Department of Corrections (DOC) uses is far more complex when it determines how to house offenders. He deferred to the DOC to provide more details. He said the determinations are very different.

2:09:02 PM
MR. SKIDMORE said the pretrial population in prison has increased significantly over the years. He recalled that when Senate Bill 91 was passed the figure was about 81 percent over ten years. The pretrial population is determined by the length of time a person is in a DOC facility awaiting the determination of the case, whether it is done by plea or by trial. It seems that an 81 percent statistical increase must mean that a significant number of people are being admitted. However, he cautioned that the 81 percent increase is not just vertical, but also horizontal, since these figures also include increase in the timeframe from arraignment until the case is resolved. Speaking from his 20 years of experience, he said that the increase in pretrial delay contributes significantly to problems in managing the prison population.

He offered to connect this to the bill. When offenders in pretrial status can obtain credit for time on electronic monitoring, it provides an incentive to delay resolving their cases. The longer defendants can delay their cases, the less time they will serve if convicted, he said. This statute removes the determination by the DOC and puts offenders in jail, based on their pretrial risk.

MR. SKIDMORE emphasized that these concepts are different ones. He offered his belief that delays always favor the defendant and never the victims. Victims who go to court must take time off from work or school and rearrange their lives to attend court proceedings, only to see the case has been delayed, which can happen repeatedly. This provision removes that incentive for pretrial delays. The same scenario he just described is not limited to sex offenses, but also applies to property offenses, including vehicle theft, physical assault, or burglaries.

2:13:01 PM
SENATOR KIEHL asked for clarification that after sentencing the DOC determines who goes to jail, since he thought judges make that decision.

MR. SKIDMORE agreed. He clarified that the DOC determines how to classify someone and where they serve their sentence. He

explained that the legislature passed a statute that allows certain people to be released on electronic monitoring to serve their sentences. He said a series of factors exist, which is different than pretrial. He asked whether it is it possible to serve a sentence on electronic monitoring and said the answer is yes, but the judge determines the length of time. The DOC ultimately decides if the person is a good candidate for electronic monitoring.

2:14:11 PM
SENATOR SHOWER asked if pretrial delays should be considered in SB 33.

MR. SKIDMORE responded that the concept in SB 12 is the same one that is found in SB 33. He was unsure which bill will pass but having the provision in both bills would be helpful.

2:15:25 PM
SENATOR MICCICHE said that Senator Kiehl framed his question on substance abuse. He said that this bill would return first time drug possession to a felony. He asked for further clarification on the benefits of suspended imposition of sentence (SIS) to complete their treatment outside the facility. He suggested it would tend to serve the same purpose in a treatment plan to provide credit for time served on electronic monitoring.

MR. SKIDMORE said those are two different concepts, but he agreed both achieve the same goal. He said a provision in statute, in AS 12.55.127, authorizes credit against an ultimate sentence that is imposed for time spent in a residential treatment program. In addition, one of the tools Senator Micciche just mentioned is an SEJ, suspended entry of judgment. He explained that an SEJ allows the prosecution and the defense to agree that a defendant should complete a set of conditions, similar to probation. The defendant who completes the conditions can avoid a conviction on the person's record. For example, a person who has an addiction and is charged with possession of drugs would be charged. However, the case could be resolved if the person agreed to treatment for six months or more than a year. The statute does not limit the prosecution or the defense's ability to decide on the length of treatment. The one in statute would be court ordered. Ultimately, if the client is convicted, the time spent in a residential treatment program can be credited towards the person's sentence. This is different than a SEJ since it lacks a conviction since a sentence is not imposed. The third concept is a suspended imposition of sentence or an SIS, which would apply to someone who is convicted, but

the sentence is suspended while the person is on probation. If the person meets the conditions, the sentence would be set aside, and the person would not serve jail time. He recapped that under an SIS a person who is convicted must meet certain conditions, and if so, would not go to jail. Under an SEJ the conviction is never entered. The third way to reduce a sentence is to go to a residential treatment program pretrial.

2:19:28 PM
CHAIR HUGHES declared a conflict of interest because a family member has a relationship to the therapeutic court in prescribing certain medication.

MR. SKIDMORE agreed a fourth option exists for someone struggling with addiction. Several therapeutic court programs exist in Alaska. The idea is to find individuals who enter the criminal justice system because of substance abuse problems. The court monitors them, instead of a probation officer. The offender would sign agreements and if the person successfully completes the requirements, it results in a reduced sentence or avoiding conviction. He said the difference between the therapeutic court and the SEJ is that the therapeutic court is monitored and managed by a judge and an SEJ is an agreement between two parties. These are all options within the criminal justice system that work towards the same goal.

2:21:10 PM
CHAIR HUGHES asked whether a person can be ordered to treatment and be on electronic monitoring.

MR. SKIDMORE said he has not encountered it, but he was unsure. He said one statute says an offender cannot get credit for being on electronic monitoring, but another one states that the person is entitled to credit for attending a treatment program. He said that a court may not grant credit against a sentence of imprisonment for time spent in a private residence or on electronic monitoring. The person would not get credit for time spent on electronic monitoring but would be eligible for credit for time spent in a treatment program. He offered his belief that this statute would not interfere in that circumstance and should not have an impact.

CHAIR HUGHES said that if necessary, it could be addressed in SB 33.

2:22:40 PM

SENATOR KIEHL wanted to think about how it would affect those with mental health problems. He acknowledged the role of providing incentives. He expressed concern about the risk of re-offense. He related a scenario in which someone is on electronic monitoring on medication. He asked for further clarification on the public safety benefit to imprison someone who goes off medication and commits a crime of threatening someone with a pool cue, since it removes them from all the predictors of success.

MR. SKIDMORE said the mistake is the presumption that someone goes to prison. He said that in the circumstance described, the judges would have discretion. He said that it is important that law enforcement, prosecutors, judges, and probation and parole officers all have discretion. He said a wide range of offenses exists, and within that range, a wide range of individuals commit the offenses. He agreed that Senator Kiehl laid out a circumstance in which the person should not go to prison or if so, just for a short period of time. The DOC still has the ability to conduct classifications to determine if the person really needs to be in a "hard bed" or should serve the remaining sentence on electronic monitoring. He personally has seen lots of cases with people being placed on probation or having suspended sentences. He acknowledged some people would go to prison.

2:26:03 PM
SENATOR KIEHL pointed out that Section 7 would make it a presumptive sentence of one to three years under assault in the third degree with a dangerous instrument.

MR. SKIDMORE said that in his hypothetical he mentions a pool cue. He referred to page 5 to Section 7, which defines a dangerous instrument in 11.81.900(b)(15)(B), which relates to strangulation using hands or other objects. He said the one to three years would not apply in that circumstance. However, if the pool cue was used to strangle someone, the one to three years is a presumptive term, which does not mean the court would need to impose one to three years. He said there are statutory mitigators that could be applied that would allow a court to go below the one year. The person has options that could keep them out of jail, he said.

2:27:35 PM
CHAIR HUGHES asked for further clarification on whether someone in prison could be on medication.

JENNFER WINKELMAN, Director, Division of Probation and Parole, Department of Corrections, Juneau, answered that is correct.

CHAIR HUGHES recalled that the Department of Corrections commissioner related that in the goal to reduce recidivism. For those not on an ankle monitor but in the prison system that it might deter the things that would help that person. The person might be more apt to become a habitual offender and repeat crimes upon exiting prison. She asked whether she would briefly discuss ways the DOC will change things to help ensure recidivism goals are met, and the person can become a productive citizen.

MS. WINKELMAN said that within the institution, the DOC will place the offender in the least restrictive housing that is necessary. She said the risk assessment will determine where the person will be placed. Once the person is out on probation or parole the DOC's mission, by statute, is to do everything to work towards rehabilitation. She said that this can be accomplished by giving the department the discretion to assess each person's needs for placement in the facility and how to work with them when they are out on the street.

CHAIR HUGHES said SB 34 will be before the committee next week. She expressed an interest in having the department inform the Senate Judiciary Standing Committee on how it will be different. She agreed that Senator Kiehl is correct that those in jail were more apt to recommit crimes and how these bills will change that paradigm. She wanted the record to reflect that the goal is to have people exiting the criminal justice system in better shape to help ensure safety in our communities.

2:31:27 PM
CHAIR HUGHES turned to Section 9. She said over 7,000 sexual offenses happen each year. She asked whether victims who felt uncomfortable attending sentencing would be able to provide the feedback without appearing at the proceeding.

MR. SKIDMORE answered yes. He said that multiple ways exist for a victim to provide information. First, victims can avail themselves to the Office of Victim's Rights, which is a group of attorneys who help victims understand the system and their rights. He said that the organization can appear and speak on behalf of the victim. Secondly, any victim can write a letter to the judge. A third option is that the victim can talk to the Department of Law, who can speak on behalf of the victim at the sentencing. He said that the DOL is clear to identify when they

are speaking on behalf of a victim rather than as a prosecutor. Finally, the victim could participate in the proceeding telephonically, he said.

2:34:03 PM
SENATOR KIEHL referred to Section 1, adding dangerous instrument to the definition of strangulation. He asked whether forearms, knees, or other parts of body are covered in the definition.

MR. SKIDMORE agreed that those are covered.

2:35:05 PM
CHAIR HUGHES removed her objection. She said that the committee substitute, work order 31-LS0263\O, Version O, has been adopted as the working document.

[SB 12 was held in committee.]

2:35:43 PM
CHAIR HUGHES reviewed upcoming committee announcements.

2:35:48 PM
There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 2:35 p.m.