

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 4, 2019

1:32 p.m.

**MEMBERS PRESENT**

Senator Shelley Hughes, Chair  
Senator Lora Reinbold, Vice Chair  
Senator Mike Shower  
Senator Peter Micciche  
Senator Jesse Kiehl

**MEMBERS ABSENT**

All members present

**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."

MOVED CSSSSB 12(JUD) OUT OF COMMITTEE

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."

- HEARD AND HELD

SENATE BILL NO. 35

"An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a

picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

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)	-- MEETING CANCELED --
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)	-- MEETING CANCELED --
03/01/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/01/19	(S)	Heard & Held
03/01/19	(S)	MINUTE(JUD)
03/04/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 34

SHORT TITLE: PROBATION; PAROLE; SENTENCES; CREDITS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/19	(S)	READ THE FIRST TIME - REFERRALS
01/23/19	(S)	STA, FIN
02/07/19	(S)	STA AT 3:30 PM BUTROVICH 205

02/07/19	(S)	Heard & Held
02/07/19	(S)	MINUTE(STA)
02/11/19	(S)	JUD REFERRAL ADDED AFTER STA
02/12/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/12/19	(S)	Heard & Held
02/12/19	(S)	MINUTE(STA)
02/14/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/14/19	(S)	Heard & Held
02/14/19	(S)	MINUTE(STA)
02/19/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/19/19	(S)	Heard & Held
02/19/19	(S)	MINUTE(STA)
02/21/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/21/19	(S)	Heard & Held
02/21/19	(S)	MINUTE(STA)
02/26/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/26/19	(S)	Heard & Held
02/26/19	(S)	MINUTE(STA)
02/28/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/28/19	(S)	Moved CSSB 34(STA) Out of Committee
02/28/19	(S)	MINUTE(STA)
03/01/19	(S)	STA RPT CS 3DP 1DNP SAME TITLE
03/01/19	(S)	DP: SHOWER, REINBOLD, MICCICHE
03/01/19	(S)	DNP: COGHILL
03/01/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/01/19	(S)	Scheduled but Not Heard
03/04/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

JOHN SKIDMORE, Director  
Criminal Division  
Central Office  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the discussion of SB 12.

ERIK REED, representing himself  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SB 12 as the survivor of a DUI crash that killed his wife.

SYLVIA KENNEDY, Member  
49th Rising  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 12.

SCOTT CARSON, representing himself  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 12 to strengthen laws.

DOROTHY KOEROK, representing herself  
Palmer, Alaska

**POSITION STATEMENT:** As a former victim, testified in support of SB 12.

KEELEY OLSON, Executive Director  
Standing Together Against Rape  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 12.

ELIZABETH WILLIAMS, representing self  
No More Free Passes  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 12 because it helps change the culture surrounding sexual abuse and to keep victims informed of plea agreements.

BETH FREAD, representing self  
Palmer, Alaska

**POSITION STATEMENT:** Testified in support of SB 12.

MARJORIE LONG, representing self  
Point Lay, Alaska

**POSITION STATEMENT:** Testified in support of SB 12, as a victim who wants to stop sexual assaults.

VICKI JO KENNEDY, representing herself  
Kodiak, Alaska

**POSITION STATEMENT:** Testified in support of SB 12.

CHRIS EICHENLAUB, representing self  
Eagle River, Alaska

**POSITION STATEMENT:** Testified in support of SB 12.

LISA ELLANNA, Concerned Citizen  
Nome, Alaska

**POSITION STATEMENT:** Testified in support of SB 12.

CARMEN LOWRY, Executive Director  
Alaska Network on Domestic Violence & Sexual Assault (ANDVSA)  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 12.

JANELLE MANCHESTER, representing herself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of SB 12.

JOHN SKIDMORE, Director  
Criminal Division  
Central Office  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Testified and answered questions during the discussion of SB 34.

JENNIFER WINKELMAN, Director  
Division of Probation and Parole  
Department of Corrections  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of SB 34.

#### **ACTION NARRATIVE**

[1:32:00 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 Reinbold, Shower, Micciche, and Kiehl and Chair Hughes.

#### **SB 12-ASSAULT; SEX OFFENSES; SENTENCING CREDIT**

[1:33:10 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."

[Before the committee was the committee substitute (CS) for SSSB 12, work order 31-LS0263\0.1, referred to as Version 0.]

[1:33:58 PM](#)

CHAIR HUGHES made opening remark and reviewed the process taken on SB 12, including that public testimony was previously taken and is now closed.

1:34:19 PM

SENATOR KIEHL made a motion to adopt Amendment 1 to SB 12, work order 31-LS0263\0.1, Radford, 2/28/19.

**AMENDMENT 1**

OFFERED IN THE SENATE BY SENATOR KIEHL  
TO: CSSSSB 12(JUD), Draft Version "O"

Page 2, line 26, through page 3, line 7:

Delete all material and insert:

"\* **Sec. 3.** AS 12.55.027(d) is amended to read:

(d) A court may grant credit against a sentence of imprisonment for time spent under electronic monitoring if

(1) the person has not committed a criminal offense while under electronic monitoring;

(2) the electronic monitoring is ordered in connection with an offense that is not a sex offense as defined in AS 12.63.100; and

(3) the court imposes restrictions on the person's freedom of movement and behavior while under the electronic monitoring program, including requiring the person to be confined to a residence except for a

(A) [(1)] court appearance;

(B) [(2)] meeting with counsel; or

(C) [(3)] period during which the person is at a location ordered by the court for the purposes of employment, attending educational or vocational training, performing community volunteer work, or attending a rehabilitative activity or medical appointment."

ReNUMBER the following bill sections accordingly.

Page 8, line 31:

Delete "AS 12.55.027(g) "

Insert "AS 12.55.027(g) (3) "

Page 9, lines 4 - 5:

Delete "repealed and reenacted"

Insert "amended"

Page 9, line 5:

Delete "AS 12.55.027(e), as amended by sec. 4 of this Act,"

Page 9, line 6:

Delete "sec. 5"

Insert "sec. 4"

Delete "sec. 6"

Insert "sec. 5"

Page 9, line 7:

Delete "sec. 7"

Insert "sec. 6"

Page 9, line 8:

Delete "sec. 8"

Insert "sec. 7"

Delete "sec. 9"

Insert "sec. 8"

Page 9, line 9:

Delete "AS 12.55.027(g) by sec. 10"

Insert "AS 12.55.027(g) (3) by sec. 9"

SENATOR MICCICHE objected for discussion purposes.

[1:34:39 PM](#)

At-ease.

[1:35:18 PM](#)

CHAIR HUGHES reconvened the meeting.

[1:35:34 PM](#)

SENATOR KIEHL explained that Amendment 1 relates to credits for electronic monitoring called Nygren credits [based on Nygren v. State (1980)]. This provision would remove the opportunity to receive credit for time spent on electronic monitoring if the offender is ultimately convicted of a sex offense. However, credit for time spent on electronic monitoring would be available for those who are ultimately convicted of crimes other than sex offense crimes. He offered his belief that [credit for electronic monitoring for non-sex offenders] is a much bigger policy question than SB 12 was intended to address. The underlying bill is a good bill since it would close loopholes in the Justin Schneider case and address some sex offense issues.

He explained that under Amendment 1, anyone accused of a sex offense would not get credit for time spent on electronic

monitoring during the pretrial phase. He surmised that non-sex offenders who receive credit for time served are more likely to succeed in society. For example, one scenario previously discussed in committee pertained to offenders who are off their medications and need mental health treatment. If these offenders could obtain electronic monitoring credits, it might be possible for them to retain their jobs, continue their treatment, and stay connected to their families, and stay out of prison. He pointed out that currently Lemon Creek Correctional Facility (LCCF) does not offer drug treatment programs. If these same offenders in the scenario described are incarcerated, they will be subjected to the adverse aspects of criminals who clearly need to be imprisoned.

He emphasized that under Amendment 1, a sex offender, such as Justin Schneider, would be incarcerated and would not be eligible to receive credit for electronic monitoring, but the amendment would not go beyond that, he said.

[1:38:19 PM](#)

CHAIR HUGHES remarked that medications are administered within the prison system so the idea of someone who is incarcerated having to be off their medication is not accurate. In speaking with the Commissioner Designee for the Department of Corrections, the department intends to expand drug treatment within the prison system. Further, pre-sentence drug treatment is counted as good time, she said.

She expressed concern that Amendment 1 would reinstate electronic monitoring for all crimes except sex crimes. She pointed out that this includes a disturbing set of crimes, including crimes involving domestic violence as defined in AS 18.66.990, an offense involving delivering a controlled substance to a minor in AS 11.71, burglary in the first degree, and arson in the first degree under AS 11.46.400, and a felony crime against a person under AS 11.41. She reminded members that AS 11.41 is the cite that includes strangulation and the enhanced sentencing structure for offenses involving strangulation.

CHAIR HUGHES said that to say that the bill goes beyond the scope of its original intent by not allowing credit for electronic monitoring is completely inaccurate. Mr. Skidmore put on the record that defendants are purposefully stretching out their time on electronic monitoring in order to avoid incarceration. She emphasized that this section speaks directly to what allowed many criminals, including Justin Schneider to

avoid jail time. As the committee heard from many testifiers, the time for free passes has to end. She said the committee will hear testimony from a man whose wife was killed in a DUI [Driving while Under the Influence] and that person has been out on an ankle electronic monitor. This man and his son suffer daily, but the man who killed his wife has been enjoying the luxury of being in his own home on an ankle monitor, free to watch television, and to eat what he wants to eat. She offered her belief that this pre-sentence credit does not seem right or fair to the victims. She reiterated that many of these crimes listed are very serious crimes. She said she will not support [Amendment 1.]

[1:42:00 PM](#)

SENATOR MICCICHE remarked that another thing to consider is that electronic monitoring can be part of a sentence post-conviction. This removes the credit for pretrial time, but it does not eliminate post-conviction credits. Further, [Amendment 1] also assumes that sex crimes result in convictions, but often sex crimes are a product of other crimes, such as burglaries and domestic violence. He said that someone could still obtain electronic monitoring credit even if the person was convicted of the other crimes. He maintained his belief that the direction taken in [Version 0] is the right one. Finally, this would essentially be giving the same rights to someone convicted of a very serious crime as to someone who is proven innocent. He said that he cannot support Amendment 1. He said that the courts have discretion for special cases. This language removes the incentive for defendants to stretch out their cases, he said. He pointed out that the Justin Schneider case was delayed six times at the request of defense counsel, and five times pending negotiation, which delayed sentencing to just beyond the one-year timeframe. The reality is that Justin Schneider was given credit for the year on electronic monitoring and suspended the remaining one-year sentence, which mean "he walked." He offered his belief that it is appropriate in this case and in other cases where sexual assault might not be proven, so for those reasons he cannot support [Amendment 1].

[1:45:01 PM](#)

CHAIR HUGHES said she appreciates that an innocent person pre-conviction must bear the loss of time whereas the person who is convicted would obtain a benefit from electronic monitoring credit.

[1:45:52 PM](#)

JOHN SKIDMORE, Director, Criminal Division, Central Office, Department of Law, Anchorage, stated that the points that the sponsor and Chair Hughes made are well founded. He said that [Amendment 1] would allow individuals to obtain additional credit towards their sentences. He directed attention to current AS 12.55.027, such that the amount of credit for electronic monitoring is limited for certain types of crimes, but for other crimes is unlimited. In the felony DUI case mentioned earlier, the person will get credit for all of the time spent on electronic monitoring pretrial no matter the length of the DUI sentence. The murder aspect would be limited to one year, but the other aspects would not, he said. He pointed out that the Justin Schneider case would receive electronic monitoring credit under Amendment 1 because he did not commit a sex crime since he committed the crime of strangulation. He directed attention to other crimes that offenders could receive electronic monitoring credit for, including misconduct involving weapons or a drive by shooting. A person could receive unlimited credit while on electronic monitoring pretrial or for promoting contraband, such as bringing weapons or drugs into prison facilities. He related that misconduct involving a corpse, cruelty to animals, misconduct involving controlled substances, and interference with constitutional rights are crimes in which offenders could serve their entire jail on electronic monitoring, he said. He characterized this as the type of policy call that members face when considering Amendment 1.

[1:49:01 PM](#)

SENATOR KIEHL wondered if the public defender could speak to Amendment 1.

CHAIR HUGHES responded that the person is not online.

[1:49:41 PM](#)

SENATOR KIEHL said that he appreciated the discussion and the information that with the remainder of the bill that the Justin Schneider crime would fall within sex crimes and he would not have been allowed to be on electronic monitoring. He said that is important since it matches with his intent. Some of the arguments did not resonate with him, such as watching television on electronic monitoring, since correctional facilities also have television. He also pointed out that a person who is in prison awaiting trial who is ultimately found innocent would also have lost time that the individual could not get back.

He said that prosecutors testify that changing the law benefits the defense and defense attorneys testify that it tilts the

table in favor of the prosecution. He emphasized that his interest lies with individuals who need mental health treatment, such as 90 meetings in 90 days outpatient drug and alcohol treatment. He reminded members that individuals who [are arraigned] have a constitutional right to a trial by a jury of their peers. He expressed concern that these people are less likely to get back on the straight and narrow. He directed attention to the first line of Amendment 1 and said the court "may" not "shall" grant credit against a sentence, which gives the courts discretion. He offered his belief that it is a worthwhile tool that should be kept outside of the realm of sex crimes. He suggested that in this instance discretion has the potential to reduce crime and that should be the focus. He encouraged a "yes" vote on [Amendment 1].

[1:52:23 PM](#)

CHAIR HUGHES said she appreciates that the sponsor of Amendment 1 is interested in having offenders "get back on the straight and narrow" since it helps keep communities safe. In her view, nothing in the crime package would try to change that goal since to goal is to have safe communities. She stated that she is working with the DOC to make changes within the system. She said that inmates can receive mental health treatment while incarcerated. She explained her concern about offenders on electronic monitoring is that they choose what to watch, but correctional officers have control over the remote control. She emphasized that offenders on electronic monitoring have substantially more freedom.

[1:53:39 PM](#)

SENATOR MICCICHE offered to clarify his comments. He said if an individual is accused of a crime and spends a year on electronic monitoring, and is not guilty, they lose the year they spent on electronic monitoring. If someone else is accused of a crime and spends a year on electronic monitoring [and is found guilty], that person is given credit for serving the same amount of time as the innocent person. The Constitution of the State of Alaska requires community condemnation or "paying" the price to society for that crime. Electronic monitoring spent in a luxury home on Kachemak Bay in his view is not paying a price to society for that crime. He emphasized that he believes in rehabilitation and helping the offender to succeed once the person has done so. However, [one] problem with Senate Bill 91 is that it seemed to forget that there is a price to be paid for crimes against others.

He said that someone in a low-level crime who is not likely to benefit from incarceration can pay that price in some other way. The courts can still use electronic monitoring post-conviction to avoid incarceration. He characterized Amendment 1 as a means to default to electronic monitoring as a means of paying the sentence, whereas [SB 12] uses electronic monitoring in special cases to manage sentencing if it meets very narrow qualifications. He said that is the only difference.

[1:56:04 PM](#)

SENATOR MICCICHE maintained his objection.

[1:56:14 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 1 and Senators Reinbold, Shower, Micciche, and Hughes voted against it. Therefore, Amendment 1 failed by a 1:4 vote.

[1:56:47 PM](#)

CHAIR HUGHES opened public testimony on SB 12.

[1:57:12 PM](#)

ERIK REED, representing himself, Wasilla, stated that his wife, Brandy Jean Reed, died on December 13, 2017 due to drunk driving crash. He and his son survived. The man responsible for his wife's death has been out for over a year on electronic monitoring, first with his family, girlfriend and children and now with a childhood best friend. He said that the offender is free to live his life. He said he has tried to maintain an attitude of forgiveness so he can teach his son how to abstain from a life of revenge.

He said that it has been hard and traumatic. Time and time again he must relive it and he is not being compensated. He characterized the process as a continuous one and said he does not attend the pre-trial conference proceedings because he does not want to "pay the man back for the life that he took and the lives that he destroyed." He said his wife had four children and a large family and friends in the Mat-Su Valley. He said it is unjust to say that the offender could do anything that would help preserve her memory and bring her back. It would be a slap in the face if the offender receives any credit for time served on electronic monitoring for pretrial or post-trial because the family will never get Brandy Jean Reed back ever. He said he must live the life he has been given to live. He must abide by the laws and be an upstanding member of society. He hopes the committee will take into consideration that victims exist. He

related that people talk about reform, reformation of criminals, finances, money, but no one talks to the victims.

1:59:20 PM

CHAIR HUGHES remarked that she was sorry for his loss.

1:59:29 PM

SYLVIA KENNEDY, Member, 49th Rising, Anchorage, stated that she has friends that have suffered crimes and this type of crime is one that can be traced back to biblical times. She said that people are often not punished for their crimes. She said she did not think sexual offenders should use electronic monitoring and all sex offenders need to be registered. She said that the Justin Schneider case was a travesty and she hoped that SB 12 passes the legislature.

2:01:03 PM

SCOTT CARSON, representing himself, Juneau, said he has worked in law enforcement for 20 years. He spoke in support of SB 12 since it will close loopholes and strengthen laws in the state. He said that Alaska leads the nation as one of the most dangerous states in terms of sex crimes. He related that from his work experience, sexual assaults are some of the most damaging for victims and families.

2:02:19 PM

DOROTHY KOEROK, representing herself, Palmer, said that in 2017 she was hired for a mining project. She said she was not welcome and was dishonored. She continually had to wrestle with inappropriate comments. She said that she was drugged and sexually assaulted, and it was reported to her immediate supervisor. She said once she was off the boat [she dealt with various agencies], including the Alaska State Troopers, the United States Coast Guard, the Office of Victims' Rights, and the Human Rights Commission. During this process she felt she was shamed, that staff wanted to know what motivated the men to put her in an altered state of consciousness. She said her throat was damaged in the process. In response to Chair Hughes, she responded that she supports SB 12 in reference to strangulation and use of a dangerous object.

2:06:38 PM

KEELEY OLSON, Executive Director, Standing Together Against Rape, Anchorage, testified in support of all the changes to the law except for Senator Kiehl's amendment in response to credit for electronic monitoring. She appreciated the advocacy by the bill sponsor and the committee.

[2:08:06 PM](#)

ELIZABETH WILLIAMS, representing self, No More Free Passes, Anchorage, spoke in support of the revision that will require prosecutors to consult with the victim. She said some former prosecutors serve on her organization's board and that prosecutors already consider it to be the best practice to affirmatively reach out to victims. However, some victims say this does not always happen. This change is important because the expectation is in law that the prosecutor "shall" reach out to the victim. Currently, the victim shall request that the prosecutor confer with the victim regarding a plea agreement. This bill would shift the burden to the state to reach out to the victim. Although it may not seem like a big change, legislation shapes culture. She listed the number of things a victim must do throughout the judicial process if the individual is sexually assaulted. She said that she is very pleased with this change.

[2:10:44 PM](#)

BETH FREAD, representing self, Palmer, expressed her support for SB 12 especially related to electronic monitoring. She said she missed the "marriage" portion of the crime bill. She thanked members for the opportunity to testify.

CHAIR HUGHES referred to another bill that addresses sexual crimes, which is SB 35, and that bill contains the provision she mentioned on marriage.

[2:11:54 PM](#)

MARJORIE LONG, representing self, Point Lay, said she was sexually assaulted by a family member. She said that she is speaking out because she heard that this person has assaulted another person. At the time of her assault, the village did not have any village public safety officers (VPSOs). She did not have any support or way of handling rape. She said she lives in a community where many women carry a burden like this one. She said that she supports the bill so that more women will not be choked during a sexual assault.

[2:13:26 PM](#)

CHAIR HUGHES thanked her for her bravery in speaking up.

[2:13:35 PM](#)

VICKI JO KENNEDY, representing herself, Kodiak, said she is glad strangulation was included [as a crime] in the bill because it is difficult to prove since it often does not leave marks. She

said she was sexually assaulted in 2013. She sought help from the Kodiak Women's Resource and Crisis Center. She emphasized the need to "put teeth in this bill" and remove Alaska as the state with the highest number of sexual offenses in the nation per capita. She testified in support of SB 12.

[2:15:32 PM](#)

CHRIS EICHENLAUB, representing self, Eagle River, testified in support of SB 12. He thanked members for working to close the loopholes. He said that perpetrators typically strike more than once. He said he hopes the bill passes. He suggested that members might talk about castration down the road.

[2:16:33 PM](#)

LISA ELLANNA, Volunteer Advocate, Concerned Citizens, Nome, said that she works as a volunteer for sexual and domestic violence victims in the region. She said several years ago some women started meeting informally to share their experiences and discovered that many of their situations were not being properly handled. She spoke in support of SB 12. She referred to a 2014 Alaska Victimization Survey in the Nome area conducted by the University of Alaska Justice Center, which showed that 51 percent of adult women have experienced intimate partner violence, sexual violence or both in their lifetime and of those, 11 percent have experienced that violence in the past year.

She said the State of Alaska reports that one in three Alaska Native women have experienced sexual violence at some point in their lives. One out of two Alaska Native women have experienced sexual violence other than rape. The U.S. Department of Justice estimates that nationally only 30 percent of rapes are reported. She offered her belief that a much smaller percentage of rapes are reported in Alaska, in part, due to isolated communities and that law enforcement does not exist in many villages. She said telling someone that sexual assault has happened is very hard and she wanted to honor the victims, as survivors, who come forward to allow them to seek justice. She expressed gratitude to the committee for putting this bill forward since it will tighten up loopholes. In addition, she thanked the legislature for its focus on this human rights issue. Not only does it affect the Bering Strait Region, but it affects the entire state, so she is glad the state has taken strides to make Alaska a safer place. This issue extends nationally and internationally to give resources to enforce the laws. As the state moves forward to tighten up loopholes, it is also important to provide the resources necessary to enforce the laws. The region needs

more public safety, including Alaska State Troopers and Village Public Safety Officers (VPSO) in rural areas.

CHAIR HUGHES thanked her for sharing her perspective.

[2:20:49 PM](#)

SENATOR REINBOLD thanked her for her advocacy and activism in her community. She acknowledged the high incidence of sexual assault in her area. She asked for clarification if she was saying her area has more unreported sexual assault.

MS. ELLANNA answered that way fewer people report sexual violence occurrences to public safety officers than the national rate.

[2:21:54 PM](#)

SENATOR REINBOLD solicited her comments on how the legislature can make a difference.

CHAIR HUGHES stated that written testimony can be submitted to [senate.judiciary@akleg.gov](mailto:senate.judiciary@akleg.gov)

[2:22:56 PM](#)

CARMEN LOWRY, Executive Director, Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), echoed that victims and survivors are grateful for the leadership and effort to make these crimes so much more public. One testifier spoke about culture and how laws can change culture. She said that surrounding sexual violence is a culture of silence and many people think this refers to victims not speaking out, but much of it is because the rest of the people do not speak out. It could be teachers, parents, or people in religious places who do not speak out. As policy makers and legislators speak out, as a survivor she is grateful. She said she hoped that as Alaska is creating a safer place it may result in more reporting. The ANDVSA network is in very much in support of SB 12. She directed attention to Section 9, previously discussed, that the prosecuting attorney "shall make a reasonable effort" to confer with the victim. The ANDVSA would like to see "a reasonable effort" defined. She expressed an interest in ensuring that systems are in place for victims to be involved in reporting their experiences in a safe way.

SENATOR MICCICHE acknowledged that a legal definition of a "reasonable" effort was partially explained by Mr. Skidmore. This bill came about because of Judge Michael Corey. It is not a judge's role to push prosecutors to have a greater level of

input from the victim. In this particular case it may have resulted in the victim being willing to step forward. If that had happened perhaps a more substantial case could have been made against Justin Schneider and he would be in prison paying for his crimes. He explained that the crimes were multiple even if these offenses were not recognized in existing law. He said prosecutors will reach out, with the goal being to encourage victims to engage and participate and help put offenders who are guilty of heinous crimes behind bars for an appropriate amount of time. He acknowledged in some instances the victims will accept the plea agreement because they do not want to go through the courtroom proceedings. The legislature is not going to force them to go through that process. That will be up to them.

[2:26:47 PM](#)

CHAIR HUGHES remarked that prosecutors consider it as a best practice to keep victims informed, but it has been inconsistent. She asked Mr. Skidmore to indicate what reasonable effort means.

MR. SKIDMORE answered that reasonable is a term used throughout the law and in statute. However, it is not specifically defined. He stated that the DOL would consider reasonable efforts to mean reaching out to the victim by using contact information in the case file. He said in some instances, additional steps can be made, particularly in more egregious cases, to try to make contact with them from a last known address, or to go to an employer to attempt to contact the victim. He said the department would not do that in every case, that it would be an exception. He said that the department emphasizes getting good contact information and tries to stay in touch with victims throughout the process. He envisioned that would be the process the department would use.

[2:28:22 PM](#)

SENATOR KIEHL said that he was very interested in Ms. Lowry's perspective and recommendation on "reasonable effort." He expressed concerns since the statute indicates that a prosecutor "has a duty to confer" with the victim. He said he is hearing the department indicate it needs good contact information to meet "reasonable effort."

MS. LOWRY said that a connection with the local program or advocacy service provider can help to bridge that gap. For example, the Anchorage area has advocates. She suggested making sure that the network works with the prosecutor to reach out to the victim. She said that making sure that victim advocates understand what that means would be helpful to provide

additional support to victims. She also suggested ensuring that the victim knows what is entailed if the victim talks to the prosecutor.

2:30:19 PM

CHAIR HUGHES asked whether the department would develop internal policies that might include victim advocacy groups who may have contact information for the victim.

MR. SKIDMORE said that the Department of Law's practice already includes reaching out to victim advocacy groups and shelters when it is known that the victim has sought out their assistance and services. He said that is certainly one of the steps the department would try to undertake and is part of the typical contact information the department acquires. In addition, the department may have a personal cell phone, e-mail address, home or work phone, or advocacy shelter phone number. This all falls within the gamut of what would be considered as reasonable steps. These are all steps the Department of Law currently tries to undertake. He said this language would just provide an additional incentive to require the department, by law, to record the information in the department's files.

2:31:58 PM

JANELLE MANCHESTER, representing herself, Fairbanks, stated her support for SB 12 as it closes the loopholes related to semen and strangulation. She said that she appreciates that it increases sentences for all assaults that involve strangulation, and it disallows time spent on electronic monitoring counting as compliance credit. She also supports that prosecutors must make a reasonable effort to consult with victims.

2:33:02 PM

CHAIR HUGHES, after first determining no one wished to testify, closed public testimony on SB 12.

2:33:15 PM

SENATOR REINBOLD moved to report the committee substitute (CS) for SSSB 12, work order 31-LS0263\0, referred to as Version 0, from committee with individual recommendations and attached fiscal note(s).

SENATOR MICCICHE objected. He said he appreciated the time the committee spent on this bill since some things were overlooked. One was the required interaction [with victims] on plea agreements. Another consideration was the discussion of increasing penalties for strangulation in the commission of a

sex crime. This bill has identified and remedied the loopholes in the Justin Schneider case and that is what this bill is about. The public was appalled at the outcome, as was he. He recapped the bill, that it redefines a sex crime by adding unwanted contact with semen. It would require registering as a sex offender for the offenses that Justin Schneider committed. It would increase penalties for strangulation in the commission of a sex crime and no longer allows credit for time spent on electronic monitoring. Finally, it requires that prosecutors consult with victims for plea agreements.

[2:35:10 PM](#)

SENATOR REINBOLD said this is one step, but an important one. She said that a judge did not get reelected because of the fallout from loopholes in the law. She thanked Senator Micciche for bringing this forward. She appreciated having changes to the bill presented as individual amendments. She said that she can support the committee substitute. She hoped to continue to work on this issue and strengthen criminal laws.

[2:36:08 PM](#)

CHAIR HUGHES thanked the sponsor for bringing this forward. She thanked Judge Corey because he brought Section 9 to the sponsor, which is an important addition. She also thanked the governor and the Department of Law for their support and efforts to make this a solid bill. She said the committee took time to ensure the issues were addressed. She said she is pleased with the committee substitute. She said one of the ways this bill can help make communities safer is that it provides information to the public that perpetrators will be held accountable for their crimes. She offered her belief that the reporting statistics will improve as a result.

[2:37:42 PM](#)

SENATOR MICCICHE removed his objection.

There being no further objection, CSSSSB 12(JUD) was reported from the Senate Judiciary Standing Committee.

[2:37:57 PM](#)

At-ease.

**SB 34-PROBATION; PAROLE; SENTENCES; CREDITS**

[2:41:10 PM](#)

CHAIR HUGHES reconvened the meeting and announced that the final order of business would be 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."

[2:42:35 PM](#)

JOHN SKIDMORE, Director, Criminal Division, Central Office, Department of Law, Anchorage, stated that this bill considers probation and parole and tries to improve on the system. He summarized it as an attempt to return appropriate discretion to probation officers, judges, and to the parole board. He said that the bill touches on five major areas, including caps for technical violations, earned compliance credits and how the state uses them for probation and parole. It also considers early termination and when it should be recommended or required, discretionary parole in terms of eligibility and the presumptions for discretionary parole, and whether good time should be allowed when offenders are serving time on electronic monitoring.

He offered to transition to the sectional analysis of SB 34.

[2:44:06 PM](#)

MR. SKIDMORE turned to pages 1-2, to Sections 1 and 2 of SB 34.

Section 1: Eliminates language related to caps on technical violations of probation under AS 12.55.110.

Section 2: Eliminates language related to caps on technical violations of probation under AS 12.55.110.

He said that these are conforming amendments for technical violations.

[2:44:36 PM](#)

CHAIR HUGHES asked for further clarification on parole and probation and to define discretion versus mandatory for the public.

[2:45:32 PM](#)

MR. SKIDMORE answered that probation and parole relates to offenders who are sentenced in Alaska to serve a period of time in jail. The offender can be released from jail earlier for

parole. For example, if offenders are sentenced for three years to serve, the individuals would be eligible for the parole board to consider eligibility for discretionary parole after serving one year. Once offenders reach the two-year mark, they shift from discretionary parole, where the parole board considers applications and determines whether candidates are a good risk to be released into the community to begin the transition to a productive member of society. Mandatory parole is also referred to as good time, which relates to the concept that individuals in a Department of Correction's facility who have followed the rules and behave or are "good," and then they are released after they have served approximately two-thirds of the sentence. He recapped that describes discretionary parole, and mandatory parole also known as good time. That is juxtaposed or in contrast to probation.

MR. SKIDMORE explained that probation refers to individuals who have served all of their sentence in a correctional facility or while on parole and the court has also suspended time. For example, a judge may sentence offenders to five years, with two years suspended, with three years to serve. He said that offenders with three years to serve, as just described, would be placed on parole. Once the individuals are back into the community and off parole, they are on probation.

He highlighted that the probationary period could range from one to five years, depending on the offense and the allowable probation time by law. During probation, using the above scenario, the two years that were suspended is the potential sanction that could be imposed. Each time a probation officer files a petition to revoke probation, the court would hold an arraignment. The court would hear the allegations, hold an adjudication or fact-finding phase, and ultimately would hold a disposition hearing and impose a sanction if a violation is found. It is the imposition of this sanction that would amend some or all of the two-year period. The court can also impose additional sanctions, including amending or altering probation conditions. For example, the court may add additional reporting requirements or other requirements. He acknowledged parole and probation are two different concepts.

[2:49:48 PM](#)

CHAIR HUGHES summarized that she thinks of parole as being in lieu of jail time and probation as in addition to jail time.

MR. SKIDMORE agreed.

[2:50:24 PM](#)

SENATOR MICCICHE asked whether it would be possible for someone to be released early for discretionary or mandatory parole but still have probation associated with a suspended sentence.

MR. SKIDMORE answered yes.

[2:50:56 PM](#)

CHAIR HUGHES, with respect to probation and parole provisions in SB 34, asked him to estimate the percentage of repeal of Senate Bill 91.

MR. SKIDMORE answered that the provisions in Senate Bill 91 related to probation and parole are touched on and most are repealed. One exception is for earned compliance credits that did not exist prior to Senate Bill 91, he said. He added that in SB 34 the amount of earned compliance credits is reduced but not eliminated.

CHAIR HUGHES asked whether geriatric parole is maintained.

MR. SKIDMORE answered that parole for those who are incarcerated who reach an advanced age and have certain medical conditions is maintained. In response to Chair Hughes, he estimated about 95 percent of the 2016 crime bill is rolled back or repealed.

[2:53:17 PM](#)

MR. SKIDMORE turned to Section 3 of the sectional analysis for SB 34 and referred to pages 2-3 of the bill.

Section 3: Makes the recommendation of a probation officer for early termination of probation permissive and at the discretion of the probation officer. Also eliminates the timeline for when such a recommendation must be made. Maintains requirement that the probationer is in compliance with their conditions of probation and has completed all of the required treatment programs. Also maintains the prohibition on unclassified felony, sexual felony, and domestic violence offenders from being recommended for early termination.

He explained that prior to Senate Bill 91, the probation officer could recommend a minimum supervision bank or recommend the court end probation. He explained that Senate Bill 91 changed it from a recommendation to a mandatory requirement. This removed probation officers' discretion and required them to make a

"recommendation" to the court that someone's probation be ended after 12-18 months if the person had met certain conditions. This removed the case-by-case consideration, but SB 34 will return it to the probation officers' discretion. He pointed out that crimes such as assault, drug, sexual, and theft cases have a wide range of conduct that can occur. Further, the offenders vary substantially, in terms of ages, prior criminal histories, support networks and other factors, so it is important that probation officers have discretion to consider these factors. He recapped that Section 3 allows probation officers to make a true recommendation about when someone should be terminated from probation early.

[2:56:17 PM](#)

SENATOR KIEHL asked for further clarification on training probation officers on identifying recidivism and community risk and to assess how the training works and is delivered.

[2:57:04 PM](#)

JENNIFER WINKELMAN, Director, Division of Probation and Parole, Department of Corrections (DOC), Juneau, answered that probation officers must do a risk needs assessment called an LSI-R [Level of Service Inventory-Revised] to identify the caseload risk needs. She explained that probation officers receive training through the academy and ongoing training to ensure the risk assessments are being addressed appropriately.

SENATOR KIEHL asked whether statistical data or reviews inform the department on how well that works.

MS. WINKELMAN answered that the Department of Corrections (DOC) just received the results of a validation study in the last few weeks that examined the risk needs assessment of the Alaska population. She said this is normed to the Alaska population and ensuring an inter-rater officer reliability amongst the officers and in terms of recidivism.

[2:59:12 PM](#)

SENATOR KIEHL asked whether the recommendations are made to the court or to the parole board.

CHAIR HUGHES commented that probation is involved with the court and the parole board is the decision maker. She asked Mr. Skidmore if that was correct.

MR. SKIDMORE answered yes. He said that probation [recommendations are made] to the court and parole [recommendations are made to the parole board.

[3:00:09 PM](#)

SENATOR KIEHL asked where the discretionary loss has occurred if lawyers are coming before the court just as they did previously. He asked for further clarification on the reason for this change.

CHAIR HUGHES paused to asked members to hold questions and dig in later to allow Mr. Skidmore to continue with the sectional analysis.

MR. SKIDMORE answered that the discretion being discussed in this section is not the discretion of the court but of the probation officer, who would determine whether a recommendation is appropriate. Currently, the law requires probation officers to make a recommendation even if the officer does not think it is a good idea. This change would return the discretion to the probation officer.

[3:02:13 PM](#)

MR. SKIDMORE turned to Section 4 of SB 34.

Section 4: Reduces amount of time that a probationer may decrease their length of probation for good behavior to one day for every three days without a violation.

MR. SKIDMORE said this section relates to earned compliance credits for probation. Prior to Senate Bill 91 earned compliance credits did not exist. Offenders were placed on probation and served the probation period unless the probation officer recommended early termination. He said that earned compliance credits provides the concept of a carrot in addition to a stick. He explained this is designed to provide an incentive to behave. For example, for every 30-day period that individuals did not incur any violations, probation could be reduced by an equal 30-day period. Essentially, those who served the first half of their probation without any violations would be off probation. This section would shift the calculation from one day for each day to one day for every three days without a violation. It would also require the DOC to consult with the Department of Law (DOL) and the Department of Public Safety (DPS) in establishing an earned compliance credit program. In response to Chair

Hughes, he agreed that a third could be shaved off instead of half of the probation time.

CHAIR HUGHES pointed out that earned compliance credit is time off from probation and parole, but good time credit is time trimmed from the jail sentence.

MR. SKIDMORE agreed.

[3:04:09 PM](#)

SENATOR KIEHL asked for further clarification on the calculation and if it would be the same if it read 10 days for each 30 days or if it works differently.

MR. SKIDMORE said it is similar, but it is altered to one to three days to assist the DOC in its calculations.

[3:04:48 PM](#)

MR. SKIDMORE turned to Section 5.

Section 5: Prohibits a sex offender from earning credit against their period of probation. Also mandates that a probationer lose all of the credits they have accrued if they are found in violation of probation, requiring the accrual to start over.

MR. SKIDMORE said this also relates to earned compliance credits for probation. This provision would first limit earned compliance credits so as not to apply to sex offenses. He explained that the department uses a containment model for probation to carefully monitor offenders, but it only works while the offender is on probation. However, earned compliance credits allow a probationer to be removed from probation earlier for compliance. In other types of cases this is appropriate; however, for sex offenses the department wants to maintain the containment model as much as possible to reduce recidivism.

He said that it would also consider when a person has accrued earned compliance credits over time for time without violations. If the person violates, the person would still retain all of the earned compliance credits that had accrued up to that point. This provision would mandate that the probationer would lose all of the credits that had accrued if the person had a subsequent probation violation. He explained that this would keep the incentive building to stay in compliance. In response to Chair Hughes, he said that earned compliance credits would not apply to sex offenders, but it would apply to everyone else.

[3:07:10 PM](#)

SENATOR MICCICHE said some people have expressed concern. It does not seem to have a scale about the type of offense. He related a scenario that a probationer could have two years of probation and at the end of probation, perhaps the probation officer did not like the person, if the probationer had a slight violation, the probationer could lose all credits. He asked whether it would be possible to identify the types of violations to avoid abuse.

MR. SKIDMORE explained that the committee could discuss this issue and the Department of Law would review any suggested language. He this concept is that any violation would be determined by the court, not the probation officer. He agreed if a probationer had a violation, the person would lose all credit. He has heard concepts or proposals discussed to allow the court to decide. However, the bill is not currently drafted in that way, but he understands the concept.

SENATOR MICCICHE suggested that he would review the concept of a model prisoner who has a reset for a minor violation to see if it is worth evaluating.

[3:09:29 PM](#)

MR. SKIDMORE turned to pages 4-5, to Section 6.

Section 6: Amends duties of a probation officer to require that a probation officer consider recommending early termination of probation. Also eliminates the requirement to use administrative sanctions before filing a petition to revoke.

MR. SKIDMORE said this requires probation officers to consider if early termination should be considered at any point in time.

[3:10:12 PM](#)

MR. SKIDMORE turned to Section 7.

Section 7: Requires an application for discretionary parole to be submitted to the parole board before a person can be considered for discretionary parole.

MR. SKIDMORE stated that this is the point in the bill that shifts from probation to parole. Previous to Senate Bill 91, if an inmate wanted to be released on discretionary parole, the person would apply to the parole board. He explained that under

Senate Bill 91, the requirement that an inmate apply for parole was removed and it required that the parole board automatically hold parole hearings. This resulted in a significant increase in the number of parole hearings, which made it difficult for the board. This provision would ensure the inmate is interested in applying for parole.

[3:11:39 PM](#)

MR. SKIDMORE turned to Section 8.

Section 8: Returns discretionary parole eligibility to where it was prior to January 1, 2017. Makes the following crimes ineligible:

- Non-sex class A felonies (Robbery 1, Assault 1, Arson 1);
- B felonies if the person had one or more prior felony convictions;
- C felonies if the person had two or more prior felony convictions; and
- B and C sex felonies (Sexual Assault 2, Sexual Abuse of a Minor 2, Distribution of Child Pornography).

MR. SKIDMORE explained that the law was expanded in Senate Bill 91 in terms of the types of crimes for discretionary parole. He likened it to the scenes in Shawshank Redemption in which the character comes before the board time and time again. Some crimes simply are not eligible for discretionary parole, which he read.

[Due to technical difficulties the testifier was disconnected.]

[3:12:33 PM](#)

At-ease.

[3:12:57 PM](#)

CHAIR HUGHES reconvened the meeting.

[3:13:11 PM](#)

SENATOR KIEHL asked whether an increase has occurred for a percentage of parolees who committed crimes and made new victims.

[3:13:36 PM](#)

At-ease.

[3:14:47 PM](#)

CHAIR HUGHES said the committee was experiencing technical difficulty.

[SB 34 was held in committee.]

3:15:16 PM

CHAIR HUGHES reviewed upcoming committee announcements.

3:15:46 PM

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:15 p.m.