

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

April 19, 2019

1:38 p.m.

MEMBERS PRESENT

Senator Shelley Hughes, Chair
Senator Peter Micciche
Senator Jesse Kiehl
Senator Lora Reinbold, Vice Chair (via teleconference)

MEMBERS ABSENT

Senator Mike Shower

COMMITTEE CALENDAR

SENATE JOINT RESOLUTION NO. 4

Proposing amendments to the Constitution of the State of Alaska prohibiting the establishment of, or increase to, a state tax without the approval of the voters of the state; and relating to the initiative process.

- HEARD & HELD

SENATE BILL NO. 33

"An Act relating to pretrial release; relating to sentencing; relating to treatment program credit toward service of a sentence of imprisonment; relating to electronic monitoring; amending Rules 38.2 and 45(d), Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 3

Proposing an amendment to the Constitution of the State of Alaska relating to the membership of the judicial council.

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SJR 4

SHORT TITLE: CONST. AM: STATE TAX; INTIATIVE

SPONSOR(s) : RULES BY REQUEST OF THE GOVERNOR

01/30/19	(S)	READ THE FIRST TIME - REFERRALS
01/30/19	(S)	STA, JUD, FIN
03/26/19	(S)	STA AT 1:30 PM BUTROVICH 205
03/26/19	(S)	Heard & Held
03/26/19	(S)	MINUTE(STA)
03/27/19	(S)	STA AT 6:00 PM BUTROVICH 205
03/27/19	(S)	Heard & Held
03/27/19	(S)	MINUTE(STA)
03/28/19	(S)	STA AT 3:30 PM BUTROVICH 205
03/28/19	(S)	Moved CSSJR 4(STA) Out of Committee
03/28/19	(S)	MINUTE(STA)
03/29/19	(S)	STA RPT CS 5NR SAME TITLE
03/29/19	(S)	NR: SHOWER, REINBOLD, MICCICHE, COGHILL, KAWASAKI
04/01/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/01/19	(S)	Scheduled but Not Heard
04/03/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/03/19	(S)	Heard & Held
04/03/19	(S)	MINUTE(JUD)
04/03/19	(S)	JUD AT 6:00 PM BELTZ 105 (TSBldg)
04/03/19	(S)	Heard & Held
04/03/19	(S)	MINUTE(JUD)
04/15/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
04/15/19	(S)	Heard & Held
04/15/19	(S)	MINUTE(JUD)
04/17/19	(S)	JUD AT 6:00 PM BELTZ 105 (TSBldg)
04/17/19	(S)	CONST.AM: APPROP. BILL FOR PUBL EDUCATION
04/19/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 33

SHORT TITLE: ARREST;RELEASE;SENTENCING;PROBATION

SPONSOR(s) : RULES BY REQUEST OF THE GOVERNOR

01/23/19	(S)	READ THE FIRST TIME - REFERRALS
01/23/19	(S)	STA, JUD, FIN
02/07/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/07/19	(S)	Heard & Held
02/07/19	(S)	MINUTE(STA)
02/14/19	(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)
03/12/19	(S)	STA AT 3:30 PM BUTROVICH 205
03/12/19	(S)	Heard & Held
03/12/19	(S)	MINUTE(STA)
03/14/19	(S)	STA AT 3:30 PM BUTROVICH 205
03/14/19	(S)	Heard & Held
03/14/19	(S)	MINUTE(STA)
03/19/19	(S)	STA AT 3:30 PM BUTROVICH 205
03/19/19	(S)	Moved CSSB 33(STA) Out of Committee
03/19/19	(S)	MINUTE(STA)
03/20/19	(S)	STA RPT CS 3DP 2AM NEW TITLE
03/20/19	(S)	DP: SHOWER, REINBOLD, MICCICHE
03/20/19	(S)	AM: COGHILL, KAWASAKI
03/21/19	(S)	STA AT 1:30 PM BUTROVICH 205
03/21/19	(S)	<Bill Hearing Canceled>
03/25/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/25/19	(S)	Heard & Held
03/25/19	(S)	MINUTE(JUD)
04/19/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

WILLIAM MILKS, Attorney
 Labor & State Affairs
 Civil Division
 Department of Law
 Juneau, Alaska

POSITION STATEMENT: Answered questions during the discussion of SJR 4.

EMILY NAUMAN, Deputy Director
 Legislative Legal Services
 Legislative Affairs Agency
 Juneau, Alaska

POSITION STATEMENT: Testified and answered questions during the hearing on SJR 4

MIKE BARNHILL, Policy Director
 Office of Management and Budget
 Office of the Governor
 Juneau, Alaska

POSITION STATEMENT: Answered questions on SJR 4 on behalf of the administration.

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

POSITION STATEMENT: Answered questions during the hearing on SB 33.

BUDDY WHITT, Staff
Senator Shelley Hughes
Alaska State Legislature
Juneau, Alaska.

POSITION STATEMENT: Explained the changes in SB 33, Version U, on behalf of the committee, Senator Shelley Hughes, Chair.

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

POSITION STATEMENT: Testified and answered questions during the discussion of SB 33.

ACTION NARRATIVE

[1:38:38 PM](#)

CHAIR SHELLEY HUGHES called the Senate Judiciary Standing Committee meeting to order at 1:38 p.m. Present at the call to order were Senators Micciche, Kiehl, and Chair Hughes. Senator Reinbold participated via teleconference.

SJR 4-CONST. AM: STATE TAX; INTIATIVE

[1:39:10 PM](#)

CHAIR HUGHES announced that the first order of business would be SENATE JOINT RESOLUTION NO. 4, Proposing amendments to the Constitution of the State of Alaska prohibiting the establishment of, or increase to, a state tax without the approval of the voters of the state; and relating to the initiative process.

[Before the committee was CSSJR 4(STA), Version U].

CHAIR HUGHES made opening remarks.

[1:40:35 PM](#)

WILLIAM MILKS, Attorney, Labor & State Affairs, Civil Division, Department of Law, Juneau, stated that the Department of Law provided a memo to the committee dated April 15, 2019, that addresses certain issues raised by the Legislative Legal Services, Legislative Affairs Agency. The first question relates to the administration's intent related to the definition of new taxes and increased tax rates. The changes to deductions, exemptions, or credits from an existing state tax would not be covered by SJR 4, so it would not trigger a vote by the people, he said. The department has one suggested change that will be considered by the committee later, which would insert the word "nominal" in front of tax rate to clarify that the intent is not to increase the nominal tax rate or an individual's tax rate. He related an example, that if the number was 10 that changes to it would trigger the constitutional amendment.

1:42:33 PM

CHAIR HUGHES related her understanding that an initiative to change tax credits or deductions would effectively change the tax rate, but [SJR 4] would not apply.

MR. MILKS answered that is correct. He said that questions arose regarding various scenarios and how this provision would work if a bill created several new taxes as well as a regulatory program. If a bill were to pass the legislature that creates multiple taxes, each of the new taxes would be presented to the voters to consider separately. Since this resolution focuses solely on taxes, only the portion related to taxes would be subject to the provisions of SJR 4 if a program was passed by law that created a new tax or increased an existing tax that had regulatory changes.

MR. MILKS said another question that was raised related to the circumstance in which a bill decreased a tax and a referendum by the voters rejected it. This would mean the state would revert to an existing tax. This circumstance would not be covered by SJR 4, which does not speak to a referendum in that circumstance. Instead, it would speak to a tax rate or a new tax passed by the legislature or by the voters via an initiative, he said.

MR. MILKS said that two additional issues were raised that the committee will consider. One concerned Article IX Section 1, which is a specification related to the effective date of an initiative law. He said that initiative laws become effective pursuant to constitutional provision in Article XI, Section 6, except for subjects related to tax changes. In those

circumstances SJR 4 would govern, which means the initiative law would not become final law 90 days later, but it would be subject to the process by which the legislature would review the law.

[1:46:26 PM](#)

MR. MILKS said that another issue was to clarify questions related to the tax year when establishing a new tax. He said that the department suggests amending SJR 4 to change the effective date to January 1 of the following fiscal year to avoid a new tax becoming effective mid-year.

MR. MILKS related that a question was raised as to whether the legislature's Uniform Rules would need to be modified if SJR 4 were to pass. He said it is possible, but he did not think it would impact SJR 4. [Uniform Rules] would not be addressed in SJR 4, he added.

MR. MILKS said that the memo outlines the department's response to technical issues and further explanations, reiterating the scope of SJR 4.

[1:47:35 PM](#)

CHAIR HUGHES noted that the memo from the Legislative Legal Services, Emily Nauman, legal counsel, brought up important issues to consider. She said that one of the issues she raised is the effect of SJR 4 on a new group of taxpayers or product.

MR. MILKS related his understanding that SJR 4 would apply if a new tax would be applied to a new product.

CHAIR HUGHES asked whether SJR 4 would apply to a new group of taxpayers.

MR. MILKS answered that SJR 4 would also apply to the new group of taxpayers.

[1:49:16 PM](#)

SENATOR MICCICHE related his understanding Ms. Nauman believes that SJR 4 is not an amendment [but is a revision] to the Constitution of the State of Alaska.

[1:49:29 PM](#)

EMILY NAUMAN, Deputy Director, Legislative Legal Services, Legislative Affairs Agency, Juneau, responded that is correct.

SENATOR MICCICHE asked whether this would make a political statement or if it does not matter. In this case it is a substantial shift and the power of taxation should never be surrendered or contracted away. He offered his belief that the legislature would be surrendering and contracting away the power of taxation and [SJR 4] would result in a tax being implemented sooner. He said he has put on the record that the only people losing rights in SJR 4 are the people of Alaska in the initiative process. He said, "On a bumper sticker this sounds like a really good idea for conservatives that think they're gaining something but the reality of it is they're losing substantially."

CHAIR HUGHES suggested that one of the amendments will address his concern a bit. She said that the Senate Finance Standing Committee could also consider the matter. She said that SJR 4 would really just move up the timeline instead of having the two-year delay in place with an initiative.

[1:51:16 PM](#)

CHAIR HUGHES moved to adopt Amendment 1, work order 31-GS1070\U.2, Nauman, 4/5/19.

AMENDMENT 1

OFFERED IN THE SENATE
TO: CSSJR 4(STA)

BY SENATOR HUGHES

Page 1, line 3, following "state;":

Insert "**relating to effective dates of laws;**"

Page 1, following line 4:

Insert a new bill section to read:

"* **Section 1.** Article II, sec. 18, Constitution of the State of Alaska, is amended to read:

Section 18. Effective Date. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date. **This section does not apply to a law establishing a state tax or increasing a state tax under Section 1(b) of Article IX.**"

Page 1, line 5:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 1, line 11:

Delete "Notwithstanding Section 18 of Article II,
a"

Insert "A"

Page 2, lines 2 - 3:

Delete "the later of ninety days after"

Insert "January 1 of the fiscal year following
the fiscal year in which"

Page 2, lines 3 - 4:

Delete "or an effective date provided for by
concurrence of two-thirds of the membership of each
house"

Page 2, line 12:

Delete "ninety days after approval"

Insert "January 1 of the fiscal year following
the fiscal year in which the initiated law is
approved"

SENATOR MICCICHE objected for discussion purposes.

[1:51:34 PM](#)

MR. WHITT explained that Amendment 1 speaks to the issue the Department of Law raised and would address concerns related to the effective date. Amendment 1 would add a line to Article II, sec. 18 of the Constitution of the State of Alaska to read, "This section does not apply to a law establishing a state tax or increasing a state tax under Section 1(b) of Article IX." It would also change the effective date to January 1 of the fiscal year following the statewide voter [initiative]. He explained the timeline, that following a November statewide election when the legislature reconvenes in January, it would make a decision regarding the [initiated law]. Thus, the effective date would be the following January 1. In response to Chair Hughes, he agreed it related to a voter initiative. He said this would provide nearly a year for the administration to take actions to administer the new tax.

[1:53:15 PM](#)

SENATOR KIEHL said Amendment 1 is cleaner than the original draft. He related a scenario with seasonal activities and industries that occur in the winter. However, January 1 falls in

the middle of the season. He asked whether any provision exists for the legislature or voters to adjust to a different start date.

MR. WHITT surmised that provisions would be in place for agencies and businesses to gear up to implement a new tax that would begin on January 1 and run through December 31. This would not be the first time a new tax was implemented.

CHAIR HUGHES added that she thought this reflects a fairly typical January 1 to December 31 timeframe.

[1:55:25 PM](#)

MIKE BARNHILL, Policy Director, Office of Management and Budget, Office of the Governor, Juneau, stated that Amendment 1 would establish the effective date on January 1. For example, a new Heli-ski company whose season begins on October 1 would be tax free for three months. He did not envision any tax administrative issues, but rather that the division would use its standard practice to implement the new tax.

[1:56:01 PM](#)

SENATOR KIEHL said he was hoping for more. He asked for further clarification on the mechanics of Amendment 1. He recalled that the legislature has sometimes implemented retroactive changes to the tax code. He further recalled that the Alaska Supreme Court has said "that retroactivity is not an effective date." He asked whether it would be available under the language in Amendment 1.

MR. BARNHILL deferred to the Department of Law.

CHAIR HUGHES offered to follow up with the department on that specific question.

[1:57:00 PM](#)

SENATOR MICCICHE said that Amendment 1 would make it impossible for the legislature to respond to a substantial drop in the price of oil. He said that assuming the legislature puts a full dividend in the Constitution of the State of Alaska, an "x" amount of revenue flows in, but the state is not always going to have \$17 billion in the earnings reserve account (ERA). There may not be anything in the CBR [Constitutional Budget Reserve] or the ERA. In order to keep the state operating, the state may need to implement a tax one day. He emphasized that he does not currently support implementing a tax. However, this language makes it so the legislature is always in session because the approval process would take a year. Even if the legislature held

a special session, the tax would not become effective until January 1 of the following year, he said.

SENATOR MICCICHE said Amendment 1 would create a completely unmanageable financial situation and there is a reason why the legislature retains taxing power. Although the state has not had to do so for generations, one day the legislature may need to [implement taxes] in order to provide basic services people cannot afford to do on their own, such as troopers and schools. Extending the date would mean waiting to see if something passes on November 2 and managing it if it doesn't. That would mean holding a special session, immediately holding a special election, and waiting until the following year for a correction on the next January 1. Although it sounds good, he did not think this has been adequately thought through.

[1:59:39 PM](#)

CHAIR HUGHES pointed out that he is speaking more generally about the resolution, but Amendment 1 and the trigger date is before the committee. She pointed out that Colorado has done this. If the legislature were to pass a tax, it would require public education and a mutual agreement that taxes were necessary to continue to provide services.

MR. BARNHILL said, "Just briefly, Madam Chair, and with respect to Senator Micciche, I think there's a difference between making the enactment of new tax or an increase in the tax rate more difficult, which this certainly does, and impossible, which this does not."

CHAIR HUGHES asked whether he maintained his objection.

[2:01:14 PM](#)

At-ease.

[2:06:42 PM](#)

CHAIR HUGHES reconvened the meeting.

[2:06:47 PM](#)

SENATOR MICCICHE made a motion to adopt Conceptual Amendment [1] to Amendment 1, on page 2 to delete lines 4-6.

CHAIR HUGHES, referring the language on page 2, asked for clarification from Mr. Whitt. She asked if the committee would like the possibility of concurrence of two-thirds as another option, if it should "delete" the word "delete" or whether all of lines 4-6 in the amendment should be deleted.

MR. WHITT responded that either language would have the same effect.

CHAIR HUGHES acknowledged that the language is in the resolution.

[2:07:35 PM](#)

There being no objection, the Conceptual Amendment [1] to Amendment 1 was adopted.

CHAIR HUGHES said that Amendment 1, as amended, was before the committee.

SENATOR MICCICHE removed his objection.

There being no further objections Amendment 1, as amended, was adopted.

[2:07:56 PM](#)

CHAIR HUGHES moved to adopt Amendment 2, work order 31-GS1070\U.3, Nauman, 4/10/19.

AMENDMENT 2

OFFERED IN THE SENATE
TO: CSSJR 4(STA)

BY SENATOR HUGHES

Page 2, lines 7 - 14:

Delete all material and insert:

"(c) Unless rejected by the legislature under this subsection, a law enacted by voters through the initiative process under Article XI that establishes a tax or increases the rate of an existing tax takes effect January 1 of the fiscal year following the fiscal year in which the law is enacted by voters. The legislature shall have sixty days of the next regular session beginning after the initiative election, or a full session if of shorter duration, to reject the initiated law. The law must be rejected by resolution concurred in by a majority of the members in joint session. If the legislature rejects the initiated law, the initiated law does not take effect."

SENATOR MICCICHE objected for discussion purposes.

[2:08:02 PM](#)

MR. WHITT explained Amendment 2, would replace language on page 2, lines 7-14. Senator Micciche raised the concern that the resolution would be removing power from the people. After discussions with the Department of Law, the language in Amendment 2 mirrors Article III of the Constitution of the State of Alaska under executive powers. The current language in SJR 4 states that the legislature must, by resolution, approve an initiative with a majority vote. If it does not approve the initiative, the initiative would die, he added. Under Amendment 2, by resolution, the legislature would reject an initiative [by a majority vote]; otherwise the initiative would automatically become law. This process is similar to an executive order, he said.

CHAIR HUGHES pointed out that if the legislature does nothing, the initiative would also become law. Amendment 2 would require the legislature to go on record, after the people have weighed in [by passing an initiative]. She envisioned that it would be more demanding for the legislature to go on record to oppose [a vote] by the people.

[2:09:55 PM](#)

SENATOR MICCICHE clarified that [Amendment 2] does not replace that right, that the public has lost the right to initiative. The current constitutional language provides the legislature the right to tax, but the people can remove the tax through an initiative process or a referendum process. The people also have the right to create a law by initiative and the legislature must honor that law for two years. After two years, it is more difficult to change the law because people remember they voted to create it. All Amendment 2 does is to document how [legislators] voted when [the legislature] takes away the right to initiative for two years.

CHAIR HUGHES agreed that it documents the vote, but it also makes it a higher bar and more difficult [for the legislature] to overturn the law since the people passed it by initiative. She said that legislators might be hesitant to go against a law the people have asked for [via the initiative vote]. The way the resolution currently reads, one would never really know who was in agreement or who was not in agreement. She characterized it as "somewhere in between."

[2:11:26 PM](#)

SENATOR KIEHL offered his belief that Amendment 2 would make a smaller reduction in the people's authority to pass an initiative, but it would still be a reduction.

CHAIR HUGHES asked whether he would agree it was a slight improvement.

SENATOR KIEHL indicated it was a small one.

SENATOR MICCICHE removed his objection.

There being no further objection, Amendment 2 was adopted.

[2:12:25 PM](#)

CHAIR HUGHES moved to adopt Amendment 3, work order 31-GS1070\U.4, Nauman, 4/16/19.

AMENDMENT 3

OFFERED IN THE SENATE
TO: CSSJR 4 (STA)

BY SENATOR HUGHES

Page 1, line 12, following "the":
Insert "nominal"

Page 2, line 8, following "the":
Insert "nominal"

SENATOR MICCICHE objected for discussion purposes.

[2:12:35 PM](#)

MR. WHITT reviewed Amendment 3, which would specify "nominal." He said the language on page 1, line 12 would read, "... the nominal rate of an existing state tax ...". He said that the Department of Law described it as cleanup language per its memo.

SENATOR MICCICHE said he was not positive that it resolves the issue. For example, a 35 percent base tax rate on oil taxes also has a \$5 per barrel tax. One might say that the 35 percent is a nominal rate. However, it is not the nominal rate because it is inherently a part of the tax that results in a nominal outcome. While he understands the argument, it would be very easy to challenge in court since taxes are not a base rate. They are a function of exclusions, deductions, and other levers that are designed for a specific outcome, he said. In this instance, nominal is not what one would think it is. He said that it just

means if the state decides it is "nominal" and the people decide it is not, it would go to a vote of the people. He said it is not a huge deal to him, but it is something to think about.

CHAIR HUGHES suggested that the record would reflect the committee's intent and that the committee's discussion is related to the 35 percent and not the deductions or other things. She asked Mr. Barnhill if "nominal tax rate" is a standard term used to refer to the base rate and that it does not include other calculations that occur above the line.

[2:15:28 PM](#)

MR. BARNHILL said that he did not know if it was a standard tax term. He said that the record could reflect that the 35 percent rate in the state's production tax statutes is the nominal rate. In order to trigger [SJR 4,] the legislature would need to change the nominal rate from 35 percent to some another number.

CHAIR HUGHES suggested the committee adopt [Amendment 3] and ask the Senate Finance Standing Committee to determine if this is a standard tax term that could be relied upon.

MR. BARNHILL offered to research it.

[2:16:17 PM](#)

SENATOR KIEHL said that it is a fairly standard term. He acknowledged that Senator Micciche is correct. He said he does not think this provision would be triggered if the legislature passed a law to apply a credit of minus \$5 on every barrel of oil. Although it is not the nominal rate, it raises the taxable value for tax purposes by \$5 and collects 35 percent, he said. The legislature could change the nominal rate and what Senator Micciche said was "spot on," he said. He characterized it as a can of worms that is wriggling and hard to grab.

MR. BARNHILL responded that Amendment 3 tries to provide clarity for future cases that are litigated. He said that broad terms are used in constitutional language and it leaves it up to the courts to ultimately decide.

SENATOR MICCICHE said the legislature has been known to find "work arounds." He acknowledged that it is popular to require voter approval but adding "nominal" creates a work around. He brought up the \$5 per barrel tax example to illustrate it. He said the legislature could find another way to change the tax rate without voter approval. He understood Amendment 3 is an attempt to achieve clarity, but it may work the other way.

MR. BARNHILL responded that the administration is trying to strike a balance, so everything does not need voter approval and to create a dividing line. Some things will need voter approval and others will not, and some gray areas will occur, he said. Adding words like "nominal" may help reduce the ambiguity in certain cases, and if so, the committee should do so. He said the record should be clear that the administration is not trying to amend the Constitution of the State of Alaska by sending every tax fee, deduction, or question to the people [for voter approval]. [Under Amendment 3], some things will require voter approval, such as an increase in the "nominal" rate of tax or to create a new tax. However, certain things will not require voter approval, such as fees, deductions, or implied changes to the rate of tax that do not change the nominal rate of existing state tax.

[2:20:26 PM](#)

SENATOR REINBOLD [via teleconference] said she appreciated hearing the discussion.

[2:20:39 PM](#)

SENATOR MICCICHE said he opposes the legislature telling people it is doing something that it is not really doing. For example, the Constitution of the State of Alaska has a spending limit. The minutes reflect that the legislature put into place something that sounded like a spending limit, yet it was a "big joke," and the legislature knew it was not going to have any effect on spending.

He acknowledged that this may be uncomfortable to discuss. However, he views Amendment 3 as a work around and people should understand that there are not any corporate taxes, fish taxes, fuel taxes, or marijuana taxes in place that the legislature cannot find a work around. He said that the committee could create a "purer" approach, or it could make the process more flexible, which might bring out creativity by the legislature.

[2:21:52 PM](#)

SENATOR MICCICHE withdrew his objection.

There being no further objection, Amendment 3 was adopted.

[2:22:10 PM](#)

CHAIR HUGHES moved to adopt Amendment 4, work order 31-GS1070/U.5, Nauman, 4/16/19.

AMENDMENT 4

OFFERED IN THE SENATE
TO: CSSJR 4 (STA)

BY SENATOR HUGHES

Page 2, line 19:

Delete "**Section 1**"

Insert "**Section 1(c)**"

SENATOR MICCICHE objected for discussion purposes.

[2:22:21 PM](#)

MR. WHITT explained Amendment 4 is a "carve out" for Article IX, Section 1(c), which relates to the enactment provisions in Amendment 2. Thus, except as provided in Section 2 of Article IX, the enactment would follow the provisions in Section 1(c) of SJR 3.

[2:23:05 PM](#)

SENATOR MICCICHE removed his objection.

There being no further objections, Amendment 4 was adopted.

[SJR 4 was held in committee.]

SB 33-ARREST; RELEASE; SENTENCING; PROBATION

[2:23:24 PM](#)

CHAIR HUGHES announced that the final order of business would be SENATE BILL NO. 33, "An Act relating to pretrial release; relating to sentencing; relating to treatment program credit toward service of a sentence of imprisonment; relating to electronic monitoring; amending Rules 38.2 and 45(d), Alaska Rules of Criminal Procedure; and providing for an effective date."

[2:23:37 PM](#)

At-ease.

[2:26:04 PM](#)

CHAIR HUGHES reconvened the meeting.

[2:26:31 PM](#)

SENATOR MICCICHE moved to adopt the committee substitute (CS) for SB 33, work order 31-GS1030\U, Radford, 4/17/19, Version U, as the working document.

CHAIR HUGHES objected for discussion purposes.

[2:26:48 PM](#)

BUDDY WHITT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, referred to a document in members' packets, titled "Explanation of Changes in Committee Substitute for CSSB 33, Version M to U."

[2:26:52 PM](#)

MR. WHITT turned to the first change.

Title Changes: The following has been added to the title in order to conform to changes and added provisions

- relating to the duties of a prosecuting attorney

[2:27:09 PM](#)

MR. WHITT reviewed Section 1.

Section 1: Adds the intent of the legislature that the court may consider the self-improvement efforts of the defendant while in a pre-trial status when imposing a sentence of imprisonment. (Page 1, Line 12 through Page 2, Line 3)

Adds intent language that Department of Corrections develop and report back to the legislature, a plan to track and measure the effectiveness of evidenced based programs on offenders. (Page 2, Lines 4-7)

He said the intent language was requested by Department of Corrections related to developing a plan to track and measure the effectiveness of evidenced-based programs on offenders and report its progress to the House and Senate Judiciary Committees during the Second Regular Session of the Thirty-First Alaska State Legislature.

[2:28:10 PM](#)

MR. WHITT reviewed Section 7.

Section 7: Amends AS 12.30.011(e) by directing the department of corrections to keep in detention anyone that is legally under the influence (may to shall). (Page 7, Line 19)

MR. WHITT said that Section 7 repeals and reenacts AS 12.30.011, related to pre-trial releases, which would direct that the department "shall" detain a person until the person is no longer intoxicated before being released on bail. The language previously read "may" detain, he said.

CHAIR HUGHES directed attention to page 7, line 19 and asked for clarification on why "may" does not appear.

MR. WHITT explained that the entire section is repealed and reenacted so the prior language is not visible.

2:30:00 PM

MR. WHITT reviewed Section 9.

Section 9: Amends AS 12.30.021(c)(2) that a third-party custodian may not have been convicted of a crime under AS 11.41 and may not have been unconditionally discharged in the previous five years. (Page 8, Lines 8 - 10)

MR. WHITT explained that this change would make it a little more difficult for a convicted felon to be a third-party custodian. This language was suggested by several committee members. It places restrictions on third-party custodians. They may not have been convicted of a crime under AS 11.41, crimes against a person, been unconditionally discharged within the previous five years for a felony, have committed a crime under AS 41, crimes against a person, or similar crimes in this or another jurisdiction. The Chair met with the Department of Corrections (DOC), the Department of Law (DOL), and Legislative Legal Services to address concerns that these restrictions might make it difficult for offenders to obtain third-party custodians. However, if offenders need these services, the department has a pretrial division to provide supervision. The goal is to avoid "a bad actor" from being released, he said.

CHAIR HUGHES said the purpose of this is to provide custodians, who oversee offenders, with a better role model. She asked for further clarification on the difference in the language from "convicted" and "unconditionally discharged". She said someone who has been convicted and has served two years and nine months could be released and would qualify as a third-party custodian.

2:32:44 PM

MR. WHITT explained that "unconditionally discharged," which is informally considered "off paper" means offenders who are

completely off parole and probation and have completed their sentences.

CHAIR HUGHES referred to her previous scenario, which means the person would only have been outside Department of Corrections (DOC) custody for three months, which is not adequate time to prove the person could stay clean. This provision adds language that the individual must have followed the law for a five-year period. This individual would make a better role model as a custodian, she said.

[2:33:34 PM](#)

SENATOR MICCICHE agreed with the change. He said he is aware of some instances where people use their roles as third-party custodians to supervise offenders for less honorable reasons. He characterized Section 9 as a huge improvement. Previously, a person who had completed three years in custody and was just released would be eligible to be a third-party custodian. Although this is a much better change, he said he is still not a fan of third-party custodian program, so he hopes the court will be strict in its use.

CHAIR HUGHES said that the goal of the committee is justice for victims for the sake of public safety and to ensure that offenders have every opportunity to turn their lives around. This change fits in with that goal, she said.

[2:35:12 PM](#)

SENATOR KIEHL said parts of the changes in Section 9 make sense. He referred to the scenario in which a person is released from custody after three years. The person would almost certainly be on probation and a probationer would not be eligible under paragraph (4) of this subsection. He characterized the shift by extending the length of time from three to five years as a significant change in terms of when the clock starts. He asked for an estimate of the number of people this would affect who could not be third-party custodians.

MR. WHITT answered that the number of people who could not be third-party custodians was not a concern, but rather to ensure that the third-party custodians were not the type of people that should not serve in that role. He deferred to the Department of Corrections for further comments.

[2:37:24 PM](#)

JENNIFER WINKELMAN, Director, Division of Probation and Parole, Department of Corrections, Juneau, stated that the department is

satisfied with Mr. Whitt's response and that it would be an unconditional discharge from probation after they were done.

SENATOR MICCICHE asked whether everyone released from prison is on probation.

MS. WINKELMAN answered no. She said it would depend on the judgment or if they were released on mandatory parole.

[2:38:10 PM](#)

SENATOR KIEHL said that the shift to unconditional discharge may make sense but starting the clock later and including all felonies even if the crimes are not crimes against a person is another big shift. He expressed concern on the restrictions for third-party custodians since they provide supervision but are not specifically selected to be role models. He suggested it may limit access to those offenders who could be released and adequately supervised for a lack of "boy scouts."

CHAIR HUGHES said that "role model" may not be the best way to describe third-party custodians. These are people who have proven they can be responsible outside the constraints of Department of Corrections (DOC) oversight. They have proven themselves, she said. She suggested that being clean and sober for five years is an important way to show readiness to provide supervision.

SENATOR MICCICHE said he appreciated the change.

[2:40:09 PM](#)

MR. WHITT reviewed Section 10.

Section 10: Amends AS 12.55.025 by adding a new section directing the court to verbally describe on the record the sentence imposed as required in (a)(3) of this section. (Page 8, Lines 21 - 26)

MR. WHITT explained that this is referred to as the "Truth in Sentencing Act." The court would need to verbally describe the sentence imposed, the minimum amount of time that the offender would serve based on mandatory parole.

[2:41:47 PM](#)

CHAIR HUGHES referred to AS 12.55.025.

Sec. 12.55.025. Sentencing procedures.

(a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report that includes the following:

(1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;

(3) a clear statement of the terms of the sentence imposed; if a term of imprisonment is imposed, the statement must include

(A) the approximate minimum term the defendant is expected to serve before being released or placed on mandatory parole if the defendant is eligible for and does not forfeit good conduct deductions under AS 33.20.010; and

(B) if applicable, the approximate minimum term of imprisonment the defendant must serve before becoming eligible for release on discretionary parole;

CHAIR HUGHES focused on two provisions, and read:

... the court shall prepare, as a part of the record, a sentencing report that includes the following ...

(3) a clear statement of the terms of the sentence imposed; if a term of imprisonment is imposed, the statement must include

(A) the approximate minimum term the defendant is expected to serve before being released or placed on mandatory parole if the defendant is eligible for and does not forfeit good conduct deductions under AS 33.20.010; and

(B) if applicable, the approximate minimum term of imprisonment the defendant must serve before becoming eligible for release on discretionary parole;

She said that the court already prepares these approximate sentencing reports. They are furnished in writing to the

defendant, the Department of Law (DOL), and the Department of Corrections (DOC). When applicable they are also sent to the Parole Board and the Alcoholic Beverage Control Board. She said that the approximate minimum sentences are not part of the sentence imposed nor do they provide a basis for review or appeal of the sentence imposed or provide a defendant with a right to any specific term of imprisonment or supervisory release on mandatory parole. She said the judge would use the language "may" and "approximate," so it does not provide an avenue for a case and allow defendants to be back in court.

[2:44:15 PM](#)

CHAIR HUGHES said Ms. Meade provided a copy of the form that allows the court to fill in and check off specific provisions. She pointed out that the form needs to be updated since it currently only lists discretionary parole.

She remarked that sometimes the public and victims are outraged when they realize that convicted offenders do not have to serve their entire sentence. An offender may be sentenced to serve 20 years, with five years suspended, but if the offender is eligible for mandatory parole, it reduces the sentence to 10 years. If the offender is also eligible for discretionary parole, the offender would only serve five years. She emphasized that the report needs to reflect mandatory parole to inform the public. She said that the media is often in the courtroom during high-profile cases, so it will be helpful to give the report orally, which will improve the "Truth in Sentencing Act."

[2:46:45 PM](#)

SENATOR KIEHL asked whether the forms are currently filled out and sent to the parties. He further asked whether the judge would have time during the hearing to accurately calculate and assess the time since the judge would be listening to parties at the time of sentencing.

CHAIR HUGHES said that the oral remarks are for informational purposes and the judge would use the language "may" and "approximate." She said it can be complicated in some instances. However, the language is written to avoid "bogging down the courts" if the calculations are not correct.

SENATOR KIEHL emphasized the need to avoid having a judge having a vague sentence in mind and at the time of sentencing the judge determines a different sentence. However, if the math is complicated, the judge might stick with the original sentence.

CHAIR HUGHES offered her belief that the intent of AS 12.55.025 is to inform people of the actual incarceration time. This information is important for the victim and the public to know, she said.

[2:49:04 PM](#)

MR. WHITT reviewed Section 15.

Section 15: Amends AS 12.61.015 by adding a new subsection (d) that adds a requirement for victim notification by the prosecutor when an offender is discharged from a treatment program for non-compliance. The victim contact is for sexual crimes and crimes involving domestic violence. (Page 10, Lines 1 - 4)

MR. WHITT explained that Section 15 relates to the notification of when an offender is discharged from a treatment program for noncompliance while in pretrial. She said a number of committee members suggested this change. This specifically relates to crimes involving domestic violence and sex crimes. He pointed out an amendment will be offered to clarify this pertains to an offender in pretrial status. It currently would apply to anyone on probation, parole or pretrial.

[2:50:46 PM](#)

SENATOR REINBOLD stated that she supports this change.

[2:51:17 PM](#)

CHAIR HUGHES removed her objection. There being no further objection, the proposed committee substitute (CS) for SB 33, Version U was before the committee.

[2:51:33 PM](#)

SENATOR KIEHL moved to adopt Amendment 1, work order 31-GS1030\U.1, Radford, 4/18/19.

AMENDMENT 1

OFFERED IN THE SENATE

BY SENATOR KIEH

TO: CSSB 33(JUD), Draft Version "U"

Page 2, line 10:

Delete "**48** [24]"

Insert "24"

Page 10, line 11:

Delete "**48** [24]"
Insert "24"

CHAIR HUGHES objected for discussion purposes.

[2:52:03 PM](#)

SENATOR KIEHL made a motion to adopt Conceptual Amendment 1 to Amendment 1 on page 2 of Version U. He stated that this would restore the 24-hour deadline for a person to appear before a judge or magistrate. He referred to page 2, line 10, and stated that Conceptual Amendment 1 would add "absent compelling circumstances" after "arrest". On page 2, lines 16-18 would reinstate the sentence, "The hearing before the judge or magistrate may not take place more than 48 hours after arrest." He said that Conceptual Amendment 1 to Amendment 1 is necessary because otherwise the amendment is more restrictive than the current language. He characterized it as bad policy.

SENATOR MICCICHE objected. He said that extenuating circumstances already exist. He said he does not support the Conceptual Amendment 1 to Amendment 1.

SENATOR KIEHL pointed out that the language for compelling circumstances is being removed in Version U and it needs to be reinstated to have the 24-hour timeframe be workable. The 48 hours in the underlying bill creates a pretty hard cap.

SENATOR MICCICHE said that the Department of Law made it clear that currently it must notify the court when it will exceed the 24-hour period. The department tries to bring people before a judge prior to the 24-hour period but sometimes it is not possible. Extending it to 48 hours would provide adequate time for other things to happen that might currently be rushed under the 24-hour requirement.

CHAIR HUGHES related her understanding that 95 percent of cases are currently heard within 24 hours. She pointed out that extending the time to 48 hours would address some staff retention issues since it would avoid people working on weekends and holidays.

[2:55:19 PM](#)

CHAIR HUGHES said the Conceptual Amendment 1 to Amendment 1 is before the committee. She said that she will also oppose it.

[2:55:41 PM](#)

SENATOR KIEHL said that Conceptual Amendment 1 is necessary to have a serious discussion on Amendment 1. He said that if the committee is not interested in making Amendment 1 a functional amendment, he will withdraw both. Therefore, Conceptual Amendment 1 to Amendment 1 and Amendment 1 were withdrawn.

[2:56:04 PM](#)

SENATOR KIEHL moved to adopt Amendment 2, work order 31-GS1030\U.2, Radford, 4/18/19.

AMENDMENT 2

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: CSSB 33(JUD), Draft Version "U"

Page 3, lines 4 - 12:

Delete "[UPON REVIEW OF THE CONDITIONS, THE JUDICIAL OFFICER SHALL REVISE ANY CONDITIONS OF RELEASE THAT HAVE PREVENTED THE DEFENDANT FROM BEING RELEASED UNLESS THE JUDICIAL OFFICER FINDS ON THE RECORD THAT THERE IS CLEAR AND CONVINCING EVIDENCE THAT LESS RESTRICTIVE RELEASE CONDITIONS CANNOT REASONABLY ENSURE THE

(1) APPEARANCE OF THE PERSON IN COURT; AND

(2) SAFETY OF THE VICTIM, OTHER PERSONS,

AND THE COMMUNITY.]"

Insert "Upon review of the conditions, the judicial officer shall revise any conditions of release that have prevented the defendant from being released unless the judicial officer finds on the record by a preponderance of the [THAT THERE IS CLEAR AND CONVINCING] evidence that less restrictive release conditions cannot reasonably ensure the

(1) appearance of the person in court; and

(2) safety of the victim, other persons, and the

community."

CHAIR HUGHES objected for discussion purposes.

[2:56:30 PM](#)

SENATOR KIEHL said that Amendment 2 would provide an opportunity to request a judicial review of the conditions of release when someone is unable to meet them. The Department of Law (DOL) indicated that the clear and convincing standard is challenging.

He said that rather than deleting the standard entirely, Amendment 2 would change it to a preponderance of the evidence. The legislature would continue to provide some guidance to the court, which provide the least restrictive conditions that reasonably ensure the 1) appearance of the person in court; and (2) safety of the victim and other persons in the community. By leaving a standard in place it opens up the opportunity for the prosecution to make the case, but it would still provide some guidance to the court. This effectively would handle the public safety concern and restore some discretion the department seeks without saying, in essence, "whatever goes."

[2:58:32 PM](#)

JOHN SKIDMORE, Director, Criminal Division, Central Office, Department of Law, Anchorage, said Amendment 2 would create a problem because when the court sets bail and establishes conditions for bail, it states the judicial officer "shall" revise the conditions unless the court finds by a preponderance of the evidence that it cannot reasonably do so. He agreed that setting the preponderance of the evidence standard is correct. However, the judge has already made a determination after considering all of the factors. This would essentially suggest that judges must second guess their original determinations. He would argue that is inappropriate, that a subsequent bail hearing should occur, but only if new information comes to light.

[3:00:25 PM](#)

SENATOR KIEHL pointed out the underlying bill does not remove the ability to have conditions reviewed, so reconsideration remains in the underlying bill. He offered his belief that this would apply in threshold cases. He explained that it should be clear to the judge when the case is reviewed under the preponderance of the evidence as to whether the offender should be on the street. Amendment 2 would leave in place an opportunity for the judge to take another look as long as the person does not pose a threat to the public.

[3:02:05 PM](#)

MR. SKIDMORE said the language in Amendment 2 that states "judicial officer shall revise any conditions of release unless" is superfluous language that tends to create confusion to the existing standards. It would shift the presumption from "has new information arisen that should change the court's opinion" to "the fact that the person has not been released means that the court should release them." That is not the appropriate standard, he said. The appropriate standard is that the person

is entitled to another bail hearing when new information arises, although it does not mean that the judge must release the person. The judge would stand by the original ruling made at the bail hearing, which set out appropriate conditions.

[3:04:03 PM](#)

SENATOR HUGHES maintained her objection.

[3:04:09 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 2 and Senators Micciche and Hughes voted against it. Therefore, Amendment 2 failed by a 1:2 vote.

CHAIR HUGHES acknowledged that Senator Reinbold could not hear the vote.

[3:04:40 PM](#)

At-ease.

[3:04:48 PM](#)

CHAIR HUGHES reconvened the meeting. She asked the secretary to void the roll call vote. The roll call vote was voided.

[3:05:03 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 2 and Senators Reinbold (via teleconference), Micciche and Hughes voted against it. Therefore, Amendment 2 failed by a 1:3 vote.

[3:05:49 PM](#)

SENATOR KIEHL moved to adopt Amendment 3, work order 31-GS1030\U.3, Radford, 4/18/19.

AMENDMENT 3

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: CSSB 33(JUD), Draft Version "U"

Page 3, lines 24 - 25:

Delete "**does not include** [INCLUDES] the person's inability to post the required bail;"

Insert "includes the person's inability to post the required bail **if the person can show that the person made a good faith effort to post the required bail;**"

Page 3, lines 30 - 31:

Delete "[; HOWEVER, A PERSON MAY RECEIVE ONLY ONE BAIL REVIEW HEARING SOLELY FOR INABILITY TO PAY]"

Insert "however, a person may receive only one bail review hearing solely for inability to pay"

CHAIR HUGHES objected for discussion purposes.

[3:05:55 PM](#)

SENATOR KIEHL reviewed Amendment 3, such that it restores language removed to clarify that the person must make a good faith effort to post the required bail. When the bill was presented, concern was expressed that people might clog up the system. He envisioned this provision would only apply to someone who has made a good faith effort to post bail. The person would be limited to one bail review hearing. The judge would not be required to amend the bail, but to allow the person an opportunity for a bail review hearing.

[3:08:28 PM](#)

MR. SKIDMORE said that he appreciated the attempts to limit the application. He referred to page 6 of Version U, which outlines four factors that require a judge to consider a person's ability to pay when bail is initially set. Once the bail is set, the bail should not be changed based on the person's assets or employment history. Therefore, the Department of Law does not support Amendment 3.

CHAIR HUGHES maintained her objection.

[3:09:58 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 3 and Senators Micciche, Reinbold (via teleconference) and Hughes and voted against it. Therefore, Amendment 3 failed by a 1:3 vote.

[3:10:31 PM](#)

SENATOR KIEHL moved to adopt Amendment 4, work order 31-GS1030\U.4, Radford, 4/18/19.

AMENDMENT 4

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: CSSB 33(JUD), Draft Version "U"

Page 7, following line 22:

Insert a new subsection to read:

"(f) In determining the conditions of release under this chapter, the court may consider the pretrial risk assessment provided by a probation officer acting as a pretrial services officer."

Page 13, line 3, following "needs":

Insert ";

(4) conduct a pretrial risk assessment using an instrument approved by the commissioner for all defendants detained in custody in a correctional facility following arrest and for any defendant for whom the prosecution requests to have a pretrial risk assessment at the next hearing or arraignment"

Page 13, lines 15 - 16:

Delete "[; PRETRIAL DEFENDANT RISK LEVEL AND CHARGE;"

Insert "; pretrial defendant risk level and charge [;"

CHAIR HUGHES objected for discussion purposes.

[3:10:38 PM](#)

SENATOR KIEHL explained that Amendment 4 would restore the pretrial risk assessment as an optional tool. He recalled earlier testimony from the Alaska Judicial Council about the usefulness of the pretrial assessment tool in reducing some of the concerning differentials in the criminal justice system. He said that some of the initial results of the pretrial assessment tools are promising. He acknowledged that some perceived deficits exist, but by making this an optional factor, a judge can consider providing one additional objective measure to use.

MR. SKIDMORE said this concept is very intriguing and the department would be interested in it. However, he has not had an opportunity to review Amendment 4, so the department has no position at this time on Amendment 4.

[3:13:01 PM](#)

SENATOR MICCICHE said that he does not see any advantage. He only sees irresponsible releases in many communities throughout the state of people who continue to offend. He said he does not support the pretrial risk assessment. He does not support the criteria of the assessment being outside of the realm of the legislature. He suggested that it was created using the wrong

criteria and was extremely generous in its release factors. He said he will not support Amendment 4.

CHAIR HUGHES stated she does not support Amendment 4. She did not think the pretrial risk assessment has been working. She said that the constant cost factors would create a need to constantly update this so it would trigger a fiscal note.

[3:14:29 PM](#)

SENATOR REINBOLD echoed the comments made by Senators Micciche and Hughes and said she will be a no vote.

[3:14:41 PM](#)

CHAIR HUGHES maintained her objection.

[3:14:41 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 4 and Senators Micciche, Reinbold (via teleconference), and Hughes voted against it. Therefore, Amendment 4 failed by a 1:3 vote.

[3:15:17 PM](#)

SENATOR KIEHL moved to adopt Amendment 5, work order 31-GS1030\U.5, Radford, 4/18/19.

AMENDMENT 5

OFFERED IN THE SENATE

BY SENATOR KIEHL

TO: CSSB 33(JUD), Draft Version "U"

Page 9, line 30:
Delete "180"
Insert "360"

CHAIR HUGHES objected for discussion purposes.

[3:15:27 PM](#)

SENATOR KIEHL explained Amendment 5. This relates to a limit on a court granting credit on a sentence of imprisonment for inpatient treatment. He stated that some inpatient treatment programs exceed 180 days. Amendment 5 would increase the cap to 360 days, so it would not create a disincentive.

[3:16:10 PM](#)

CHAIR HUGHES said the maximum treatment program she found was 180 days and most are shorter programs. She said she does not support Amendment 5.

CHAIR HUGHES maintained her objection.

[3:16:17 PM](#)

A roll call vote was taken. Senators Kiehl voted in favor of Amendment 5 and Senators Micciche, Reinbold (via teleconference), and Hughes voted against it. Therefore, Amendment 5 failed by a 1:3 vote.

[3:16:42 PM](#)

SENATOR KIEHL moved to adopt Amendment 6, work order 31-GS1030\U.6, Radford, 4/18/19.

AMENDMENT 6

OFFERED IN THE SENATE BY SENATOR KIEHL
TO: CSSB 33(JUD), Draft Version "U"

Page 1, line 4:
Delete "**Rules 38.2 and 45(d)**"
Insert "**Rule 38.2**"

Page 15, line 19, through page 17, line 8:
Delete all material.

Renumber the following bill sections accordingly.

Page 18, line 14:
Delete "Sections 24 - 26"
Insert "Sections 24 and 25"
Delete "secs. 24 - 26"
Insert "secs. 24 and 25"

CHAIR HUGHES objected for discussion purposes.

[3:16:58 PM](#)

SENATOR KIEHL explained Amendment 6 would relate to a court rule change that would allow an attorney to consent to a delay on behalf of his/her client. He said he has a philosophical objection to this. If a defendant wants to risk the case by running a trial against his/her attorney's advice, it should be allowed.

[3:17:36 PM](#)

SENATOR MICCICHE said he does not support Amendment 6. He suggested that Mr. Skidmore would be able to point out specific sections of the bill and why the change is important.

MR. SKIDMORE said that Amendment 6 does as described. This would allow the defendant to decide if a case can be continued. It relates to a tactical decision by the attorney in the case, which is the reason it would allow the attorney to speak on the case without allowing the defendant to weigh in. He said the philosophical opposition does not take into consideration the additional downstream consequences to the legal system, including all of the additional work associated with giving a defendant this ability, which can be substantial. He said that he opposes Amendment 6 because the current language makes the criminal justice system more efficient.

CHAIR HUGHES maintained her objection.

[3:19:07 PM](#)

A roll call vote was taken. Senator Kiehl voted in favor of Amendment 6 and Senators Micciche, Reinbold (via teleconference), and Hughes voted against it. Therefore, Amendment 6 failed by a 1:3 vote.

[3:19:46 PM](#)

CHAIR HUGHES said that was the final amendment. She explained that a majority of the committee was not available to move the bill.

[SB 33 was held in committee.]

[3:19:57 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:19 p.m.