

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

January 27, 2023

1:00 p.m.

MEMBERS PRESENT

Representative Sarah Vance, Chair
Representative Jamie Allard, Vice Chair
Representative Ben Carpenter
Representative Craig Johnson
Representative David Eastman
Representative Andrew Gray
Representative Cliff Groh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 38

"An Act relating to an appropriation limit; relating to the budget responsibilities of the governor; and providing for an effective date."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 11

"An Act establishing the crime of assault in the presence of a child."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 38

SHORT TITLE: APPROPRIATION LIMIT; GOV BUDGET

SPONSOR(S): REPRESENTATIVE(S) STAPP

01/19/23	(H)	READ THE FIRST TIME - REFERRALS
01/19/23	(H)	JUD, W&M, FIN
01/27/23	(H)	JUD AT 1:00 PM GRUENBERG 120

BILL: HB 11

SHORT TITLE: CRIME: ASSAULT IN THE PRESENCE OF A CHILD

SPONSOR(S): REPRESENTATIVE(S) JOSEPHSON

01/19/23 (H) PREFILE RELEASED 1/9/23
01/19/23 (H) READ THE FIRST TIME - REFERRALS
01/19/23 (H) JUD, FIN
01/25/23 (H) SPONSOR SUBSTITUTE INTRODUCED
01/25/23 (H) READ THE FIRST TIME - REFERRALS
01/25/23 (H) JUD, FIN
01/27/23 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE WILL STAPP
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As prime sponsor, introduced HB 38 and co-provided a PowerPoint presentation, entitled "GDP-Based Spending Cap; An Appropriation Limit Linking Government Spending to Alaska's Productive Economy".

SENATOR JAMES KAUFMAN
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided introductory remarks on HB 38, as the prime sponsor of the companion bill in the Senate.

BERNARD AOTO, Staff
Representative Will Stapp
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions and co-provided a PowerPoint presentation, entitled "GDP-Based Spending Cap; An Appropriation Limit Linking Government Spending to Alaska's Productive Economy," during the hearing on HB 38, on behalf of Representative Stapp, prime sponsor.

MATTHEW HARVEY, Staff
Senator James Kaufman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions and co-provided a PowerPoint presentation, entitled "GDP-Based Spending Cap; An Appropriation Limit Linking Government Spending to Alaska's Productive Economy," during the hearing on HB 38, on behalf of Senator Kaufman.

REPRESENTATIVE ANDY JOSEPHSON
Alaska State Legislature

Anchorage, Alaska

POSITION STATEMENT: As prime sponsor, introduced SSHB 11.

ANNELIESE ROBERTS, Staff

Representative Any Josephson

Anchorage, Alaska

POSITION STATEMENT: Provided a PowerPoint presentation during the hearing on SSHB 11, on behalf of Representative Josephson, prime sponsor.

ACTION NARRATIVE

[1:00:30 PM](#)

CHAIR SARAH VANCE called the House Judiciary Standing Committee meeting to order at 1:00 p.m. Representatives Allard, C. Johnson, Eastman, Groh, Gray, and Vance were present at the call to order. Representative Carpenter arrived as the meeting was in progress.

The committee took an at-ease from 1:04 p.m. to 1:05 p.m.

HB 38-APPROPRIATION LIMIT; GOV BUDGET

[Contains discussion of HJR 2.]

[1:05:12 PM](#)

REPRESENTATIVE VANCE announced that the first order of business would be HOUSE BILL NO. 38, "An Act relating to an appropriation limit; relating to the budget responsibilities of the governor; and providing for an effective date."

[1:06:23 PM](#)

REPRESENTATIVE WILL STAPP, Alaska State Legislature, introduced HB 38, as the prime sponsor. He paraphrased the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

One of the most effective ways to ensure a stable economy is to apply common sense solutions to complex problems. An effective appropriation limit is the first of many commonsense solutions that is both uncontroversial and bipartisan.

This is not a new revelation. The State of Alaska had already identified the potential for overspending and imposed appropriation limits in 1982. However, that decision was tied to the economy of the time. An economy that was approaching peak oil production which allowed for a reasonable limit that was adjusted for population and inflation. The modern budget of Alaska has been operating without an effective appropriation limit for nearly 40 years, resulting in less than meaningful control of our state spending. HB 38 and its companion resolution HJR 2 work together to create a constitutional and statutory framework for how we limit appropriations.

The functional cap that is being proposed uses a factor based upon a five-year trailing average of our private sector economic performance. Specifically, Real GDP less government spending, which measures the value produced within our borders. The five-year averaging will moderate the effects of volatility, leading to stability. This proposal would set a spending cap roughly at current levels and would include a constitutional provision allowing flexibility in the case of unforeseen risks.

Our Permanent Fund is a tremendous asset, but it creates a risk that Alaska will be destined to become a "financialized" economy. Instead of maintaining our status as Alaskans that build, add value, and produce, we could become Alaskans that wait and passively watch the market while hoping for the best. A financialized government that is funded increasingly by some portion of the permanent fund will grow to have little to no interest in the private sector. A spending limit tethered to GDP creates a constructive link to our private sector and ensures that government does not outgrow the private sector that it is meant to support.

Spending limit reform is one of very few subject matters in which the Comprehensive Fiscal Plan Working Group unanimously agreed to be necessary. This legislation seeks to follow the recommendations of the working group by proposing a structured and flexible appropriations limitation to ensure a prosperous future for Alaska.

[1:07:23 PM](#)

The committee took a brief at-ease.

[1:07:29 PM](#)

REPRESENTATIVE STAPP directed attention to a PowerPoint presentation, titled "GDP-Based Spending Cap; An Appropriation Limit Linking Government Spending to Alaska's Productive Economy" [hard copy included in the committee packet]. He provided an overview of appropriation limits on slide 2, which read as follows [original punctuation provided]:

Structure of an appropriation limit

- o Exemptions List: Appropriations subject to the limit
- The Appropriation Limit: Define the calculation factor, starting point, growth rate, and other limit mechanisms
- o Other: Capital projects or other specific language

Current Appropriation Limit

- o Constitutional: Article IX, §16 (effective in 1982)
- o Statutory: AS 37.05.540(b)

Types of Appropriation Limits

Proposed Appropriation Limit (HJR 2 / HB 38)

[1:08:44 PM](#)

REPRESENTATIVE STAPP reviewed the current constitutional limit on slide 3, which read as follows [original punctuation provided]:

Constitutional: Article IX, §16 (effective in 1982)

"Appropriations from the treasury made for a fiscal year shall not exceed \$2,500,000,000 by more than the cumulative change, derived from federal indices as prescribed by law, in population and inflation since July 1, 1981. "

- o \$2.5 B plus inflation and population growth since 1982
 - Calculation for FY 21 would be about \$9.8 billion

At least 1/3 of limit reserved for Capital Projects and Loans

- o Can also break the limit for appropriations to Permanent fund, capital projects if signed by governor or approved by the voters, and a state of disaster

REPRESENTATIVE STAPP deferred to Senator Kaufman to provide additional context on the bill.

[1:09:51 PM](#)

SENATOR JAMES KAUFMAN, Alaska State Legislature, prime sponsor of [SB 20], the companion bill in the Senate, said the legislation was drafted to create a more beneficial process control around budgeting. He indicated that the purpose of HB 38, in combination with HJR 2, was to determine a beneficial percentage of the private sector's economic activity, which would represent responsible spending. He believed that subtracting government spending from state gross domestic product (GDP) was the most "holistic" expression of Alaska's economy. He indicated that the statutory limit, as drafted, would cap the appropriation limit at 11.5 percent of the calculated value. The constitutional amendment, as drafted in HJR 2, would cap the statutory limit at 14 percent of the calculated value. He said the two limits would work in tandem to create a "high limit" and an operating limit. He revealed that the bill would include a five-year trailing average to create stability and smooth out overspending when revenues were up. He described the graph on slide 9, indicating that the gold bars reflected spending affected by the cap; the blue line reflected the statutory limit proposed under HB 38; the black line reflected the constitutional limit proposed under HJR 2; and red line reflected the current constitutional limit. He reiterated that the intent was to determine beneficial spending ratios based on Alaska's economic activity averaged over five years to smooth out "boom and bust" fluctuations. He concluded by summarizing the spending that would be subject to the appropriation limit.

[1:14:26 PM](#)

REPRESENTATIVE STAPP directed attention to slide 10, which provided a side-by-side comparison of spending subject to and excluded from the limit. Slide 10 read as follows [original punctuation provided]:

Spending Subject to the Limit:

- o All UGF [unrestricted general fund] operating expenditures
- o all UGF Capital Expenditures
- o Retirement Payments

Not Limited by this Proposal:

- o Permanent Fund Dividends
- o Appropriations to the Alaska Permanent Fund/ PCE [Power Cost Equalization] Endowment
- o Appropriations to capitalize state retirement accounts
- o Direct spending on disaster declaration
- o Proceeds of bonds approved by the voters

[1:15:37 PM](#)

CHAIR VANCE invited questions from committee members.

[1:15:56 PM](#)

REPRESENTATIVE EASTMAN asked whether the bill would be functional without a constitutional amendment. Additionally, he pointed out that the current statutory limit was habitually ignored. He questioned whether the bill sponsor expected the proposed limit to be treated differently.

[1:16:21 PM](#)

The committee took a brief at-ease.

[1:16:33 PM](#)

SENATOR KAUFMAN reiterated that that the bill, in combination with HJR 2, would set a "high limit" and an operational limit. He confirmed that the bill required the constitutional amendment proposed under HJR 2, its companion resolution, to function as drafted.

[1:17:02 PM](#)

REPRESENTATIVE GRAY inferred that the statutory limit could be ignored whereas the constitutional limit would be "the true hard limit." He asked whether that was accurate.

REPRESENTATIVE STAPP stated that the goal was for both limits - the statutory limit and the constitutional limit - to work hand in hand.

SENATOR KAUFMAN pointed out that exceeding [the statutory limit] would require a two-thirds vote. He said the purpose was to implement a healthier "bandwidth" of capital spending. He discussed the boom-and-bust sequences of Alaska's economy and spending cycles.

REPRESENTATIVE GRAY asked why the Permanent Fund Dividend [PFD] was excluded from the spending cap proposal.

SENATOR KAUFMAN responded, "To avoid encroachment into too many areas." He opined that the dividend demanded its own economic and political solution. He suggested that a beneficial spending cap would act as a foundation for solving various issues by referencing the private sector economy and providing capital spending to build up the economy's capability.

[1:20:43 PM](#)

REPRESENTATIVE GROH pointed out that the Fiscal Policy Working Group (FPWG) had advocated for a comprehensive and simultaneous solution to Alaska's structural deficit. He said he had a number of questions about technical aspects and how the statutory and constitutional spending caps would fit into a comprehensive approach to resolving the deficit.

[1:22:49 PM](#)

The committee took a brief at-ease.

[1:23:49 PM](#)

REPRESENTATIVE GREY asked whether the governor's FY24 budget would fall underneath the proposed spending cap.

[1:24:01 PM](#)

BERNARD AOTO, Staff, Representative Will Stapp, Alaska State Legislature, shared his understanding that the governor's proposed budget would not fall under the spending cap.

REPRESENTATIVE GRAY sought to confirm that if HB 38 had been enacted, the governor would need to cut his proposed budget.

MR. AOTO indicated that if enacted by the legislature, the governor would need to follow the statutory spending cap.

[1:24:52 PM](#)

REPRESENTATIVE GROH asked why the legislature was proceeding with proposals for a statutory and constitutional spending limit when the FPWG had recommended a simultaneous and comprehensive solution.

[1:25:25 PM](#)

MATTHEW HARVEY, Staff, Senator James Kaufman, Alaska State Legislature, responded that the House was free to consider additional proposals. He added, "This is the proposal that's currently in front of the body."

REPRESENTATIVE GROH referenced the graphs on slides 6-7, which reflected the history of Unrestricted General Fund (UGF) spending. He explained that he had taken the liberty to have the graph updated and extended past FY19. He offered to provide this information to the committee. He sought to confirm that the state was not in a period of a peak spending.

MR. HARVEY said he had not had the chance to consider the graphic shared by Representative Groh.

REPRESENTATIVE GROH confirmed that Alaska was not in a period of peak spending, of which there been multiple in past years. He asked whether, based on the graphic, it appeared that overall spending in addition to spending on agency operations were the biggest issues in the state.

[1:29:10 PM](#)

REPRESENTATIVE CARPENTER pointed out that the graphic referenced by Representative Groh did not come from the Legislative Finance Division (LFD), Legislative Agencies and Offices. He asked where it came from.

REPRESENTATIVE GROH explained that in preparation for hearings on HB 38, he had arranged and paid for the work to be completed before session started. He noted that he had showed the graphic to Alexei Painter, Director of LFD, who analyzed and agreed with the information provided.

[1:29:59 PM](#)

CHAIR VANCE said she would allow some leniency today, as it was the first meeting of the House Judiciary Standing Committee; however, she advised members to, in the future, arrange the sharing of documents with her staff in advance. She emphasized the importance of citing sources of information.

1:30:45 PM

MR. AOTO returned attention to the PowerPoint presentation, noting that he would be covering the policy driven aspects while Mr. Harvey would cover the mechanical aspects of the legislation.

MR. HARVEY resumed the presentation on slide 4, which outlined the exemptions included in the current constitutional limit. Slide 4 read as follows [original punctuation provided]:

"Except for appropriations for Alaska permanent fund dividends, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a non-State source in trust for a specific purpose, including revenues of a public enterprise or a public corporation of the State that issues revenue bond... No other appropriation in excess of this limit may be made except to meet a state of disaster declared by the governor as prescribed by law."

Creates exemptions for fund sources as well as purposes

Current limit applies to all UGF, most statewide items, and some DGF items

Excludes PFDs, bond proceeds, debt service payments, non-State sources of revenue, public corporation revenues, and disaster declarations

School Bond Debt Reimbursement is excluded from the limit

MR. HARVEY reviewed the current statutory limit on slide 5, which read as follows [original punctuation provided]:

Enacted in 1986

Based on appropriations made in a fiscal year, not for a fiscal year

- o Counts supplementals in the year appropriated, not effective

Limits spending growth to population plus inflation plus 5%

- o The use of both factors to calculate the limit has caused the limit to outgrow effectiveness
- o The timing of data for calculation of this limit does not work well with the budget process. The limit is not known before the annual budget process

[1:33:39 PM](#)

MR. HARVEY turned to slide 6, which provided a graph of UGF spending history. Key milestones and peak spending periods, in addition to peak oil production, were noted on the graph. He continued to slide 7, which featured a graph of inflation and population adjusted UGF spending. He noted that the existing constitutional spending limit was passed during the highest rate of spending in Alaska's history.

[1:35:01 PM](#)

MR. AOTO outlined the proposed appropriation limit on slide 8, which read as follows [original punctuation provided]:

Calculated by subtracting government spending from historical State GDP values and adjusting for inflation

Stability is improved by averaging these values over the previous full five fiscal years

Constitutional amendment, as drafted, caps the statutory limit at 14% of the calculated value

Statutory limit, as drafted, caps appropriations at 11.5% of value

- o FY22 appropriations were roughly \$16 Million below 11.5% of the calculated value (the statutory limit)

MR. AOTO described the graph of the proposed appropriation limit featured on slide 9. He summarized the spending that would be subject to and excluded from the cap on slide 10, which the bill sponsor had reviewed earlier. He concluded by discussing the benefits of the proposal on slide 11, which read as follows [original punctuation provided]:

Effective and Reasonable

- o This proposal would set the cap roughly at current levels and would include a constitutional provision for some flexibility in the case of unforeseen risks

Stable and Predictable

- o The 5-year trailing average creates stability, smooths out overspending when revenues are up, allows government spending to fall much slower than GDP during poor years, and the limit is known before the budget process begins

Private-Sector Focused

- o Open the discussion to outcomes during the budget process

[1:38:39 PM](#)

REPRESENTATIVE ALLARD, referring to slide 11, highlighted the spending not limited by this proposal, specifically the proceeds of bonds approved by the voters. She asked, "Is there a reason you don't want this statute actually proposed and voted on by voters as well with the 11.5 percent?"

MR. HARVEY confirmed that the proceeds of a general obligation bond would not be subject to the limit. He explained that, because general obligation bonds were ratified by the voters, the bill sponsor did not want to limit the amount subject to the appropriation limit.

[1:41:10 PM](#)

REPRESENTATIVE JOHNSON posed several questions to be answered at a future hearing. He asked how GDP was figured and how "trailing it is to reality." He considered an example of the state granting a contract to a private individual for a road and surmised that the contract would be under the cap; however, he asked whether the money spent by the contractor would be figured

into GDP. He asked whether the state was effectually "double dipping" and artificially increasing the GDP with state money.

[1:42:02 PM](#)

REPRESENTATIVE GRAY requested examples of other states that had implemented a spending cap based on GDP.

MR. HARVEY reported that other states had enacted spending caps based on economic indicators and productive economy. He noted that over the last 10 years, the U.S. Bureau of Economic Analysis (BEA) improved its data quality by renewing the process for calculating GDP. He shared his understanding that states had been successful in implementing economic-based spending caps.

REPRESENTATIVE GRAY sought to confirm that Alaska would be the first to directly tie a state spending cap to GDP if HB 38 were to pass.

MR. HARVEY answered yes.

[1:43:34 PM](#)

REPRESENTATIVE GRAY emphasized his philosophical concern about this proposal. He explained that if [the legislature] wanted to increase spending to stimulate the economy during a recession that caused a dramatic drop in GDP, the proposed spending cap would "tie [the state's] hands" and require larger cuts.

MR. HARVEY responded by pointing out that if Alaska's GDP took a massive hit, the five-year trailing average would prevent the spending cap from being severely impacted. He indicated that the five-year trailing average would effectually produce lags and leads in the spending cap compared to private sector growth.

[1:45:39 PM](#)

REPRESENTATIVE GROH inquired about the difference between the exceptions proposed under [HJR 2] and HB 38.

[1:46:54 PM](#)

MR. HARVEY directed attention to Section 1 of the bill, noting that several exceptions were being added to those listed under AS 37.05.540(b): appropriations of general obligation bond proceeds; payment of principal and interest on revenue bonds;

appropriations to a state account or fund that requires a subsequent appropriation from that account or fund as prescribed by law, which includes appropriations to the Constitutional Budget Reserve (CBR) and appropriations to capitalize the Alaska Permanent Fund and retirement funds; and appropriations to meet a state of disaster declared by the governor, as prescribed by law.

REPRESENTATIVE GROH noted that he shared the concerns expressed by Representative Gray.

[1:48:28 PM](#)

CHAIR VANCE announced that HB 38 would be held over.

[1:49:01 PM](#)

The committee took a brief at-ease.

HB 11-CRIME: ASSAULT IN THE PRESENCE OF A CHILD

[1:49:09 PM](#)

CHAIR VANCE announced that the final order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 11, "An Act establishing the crime of assault in the presence of a child."

[1:51:13 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, introduced SSHB 11, as the prime sponsor. He contextualized the bill and paraphrased the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

HB 11 seeks to make the act of assault in the presence of a child a class A misdemeanor under Alaska law, following suit with Anchorage Municipal Code 8.10.050, Family Violence. Committing the crime of assault with the reckless disregard for the presence of a child or children can have a long lasting, negative impact. A child's involvement can range from overhearing or witnessing confrontations, to being physically injured during the course of an altercation.

A 2022 report by the Alaska Criminal Justice Commission shows 48% of adult women in Alaska have

experienced intimate partner violence in their lifetime, an increase from the rates reported in 2010 and 2015. While it's hard to quantify how many children are exposed to abuse, a 2020 report shows that five percent of mothers of three-year-old children reported that their child was present during a domestic violence assault. HB 11 addresses the critical need to protect children from the effects of heinous crimes which can influence all domains of child functioning, including social emotional, physical, cognitive, and behavioral health.

Under current law, domestic violence committed in the physical presence or hearing of a child under 16 years of age may result in a sentence above the presumptive range as provided for in AS 12.55.155(c)(18)(C). HB 11 adds an additional charge in hopes of deterring acts of violence, but specifically in the presence of a child or children. This bill is crucial for preventing and mitigating the trauma experienced by a child who witnesses assaultive behaviors. I urge you to support HB 11.

REPRESENTATIVE JOSEPHSON indicated that the proposed legislation would provide protection to children who had been traumatized by living with an abusive person and witnessed violence perpetrated against a parent or caretaker. He noted that the bill would not fix the problem of domestic violence in Alaska; nonetheless, he hoped it would send a serious public service announcement to those engaging in domestic violence. He discussed the felony sentencing code provided under AS 12.55.155 [Factors in aggravation and mitigation], explaining that the aggravator would be broadened under SSHB 11. He provided an example.

[1:58:29 PM](#)

REPRESENTATIVE JOSEPHSON reiterated that the bill was inclusive of domestic violence crimes but was not a domestic violence bill. He referenced mandatory arrests for crimes involving domestic violence, specifically the four-part test that the arresting officer must comply with. He said he had considered putting the four-pronged test into this legislation to guide overzealous officers on who to arrest in these circumstances. This idea stemmed from a concern about women - who appear to be the culprit but are actually the victim - that may, out of an eagerness to move on with their lives, take a no contest plea. Ultimately, he said, putting the four-part test into SSHB 11

would be redundant, as it already existed under Title 18 [Health, Safety, Housing, Human Rights, and Public Defender]. He discussed another issue regarding situations in which juveniles were charged. His response was that smart prosecutors and smart police officers would be reasonable regarding the application of the law.

[2:09:16 PM](#)

REPRESENTATIVE JOSEPHSON concluded by discussing the decision made in Linden v. Municipality of Anchorage. Ultimately, he said, it was about recognizing the emotional harm caused to children who witness such offenses.

[2:09:30 PM](#)

ANNELIESE ROBERTS, Staff, Representative Any Josephson, provided a PowerPoint presentation, titled "House Bill 11, 'An Act establishing the crime of assault in the presence of a child,'" on behalf of Representative Josephson, prime sponsor. Beginning on slide 2, she stated that the bill would establish a class A misdemeanor for assault in the presence of a child, similar to Municipal Code 8.10.050 - Family Violence. She noted that the existing aggravator was only applicable to a felony under current statute, whereas the aggravator in SSHB 11 would be applicable to either, as an additional charge. She continued to slide 3, which featured bar graphs showing domestic violence cases filed statewide. She highlighted the peak in domestic violence (DV) cases in FY 19. She explained that assault and DV often go hand-in-hand, as nearly 70 percent of assault cases include at least one DV charge. She discussed details of family violence on slide 4, which read as follows [original punctuation provided]:

A 2020 report showed 19.1% of adults being exposed to intimate partner violence of a parent when they were a child.

In a 2020 survey conducted with approximately 1,000 mothers, five percent reported that their three-year-old child saw violence or physical abuse.

From 2016 through 2018 the number of intimate partner violence victimizations in the United State increased 42%.

[2:11:43 PM](#)

MS. ROBERTS cited AS 47.17.290 on slide 5, noting that 43 states, including Alaska, included exposure to DV in the definition of maltreatment. Proceeding to slide 6, she reported that nine states consider DV in the presence of a child an "aggravating circumstance" in sentencing guidelines. "Aggravating circumstances" referred to the factors that increase the severity or culpability of a criminal act. Continuing to slide 7, she noted that six other states filed separate charges when a child witnesses DV or assault, similar to the intent of SSHB 11. She outlined the immediate reactions to intimate partner violence on slide 9, which read as follows [original punctuation provided]:

- Generalized anxiety
- Sleeplessness
- Nightmares
- Difficulty concentrating
- High activity levels
- Increased aggression
- Increased anxiety about being separated from a parent
- Intense worry about their safety or the safety of a parent

[2:12:15 PM](#)

MS. ROBERTS highlighted the long-term effects of intimate partner violence on slide 10, which read as follows [original punctuation provided]:

Physical health problems

Behavior problems in adolescence (e.g., delinquency, alcohol or substance abuse)

Emotional difficulties in adulthood (e.g., depression, anxiety, PTSD)

MS. ROBERTS proceeded to slide 11 and listed various reactions [to witnessing DV or assault] according to age. She concluded on slide 8, which outlined the following prosecutorial discretion [original punctuation provided]:

Can be charged with a felony or misdemeanor

Can be charged with multiple counts

Can be charged in lieu of aggravator
(12.55.155(c)(18)(C))

Applies to any type of assault under 11.41, not just domestic violence

Can be charged in any location if the crime of assault is committed in the presence of a child (in a park, for example)

[2:13:42 PM](#)

CHAIR VANCE asked whether data showed that engaging in DV or assault in the presence of a child would likely progress into victimizing that child with physical harm.

MS. ROBERTS answered not that she was aware of; however, she offered to analyze that question in further detail.

[2:14:39 PM](#)

REPRESENTATIVE CARPENTER inquired about the penalty for a first-time offender of a class A misdemeanor.

REPRESENTATIVE JOSEPHSON shared his understanding that a misdemeanor carried a maximum penalty of one year. He noted that it would also depend on the criminal history of the defendant.

REPRESENTATIVE CARPENTER inquired about the effect of excluding minors from the applicability of the proposed legislation.

REPRESENTATIVE JOSEPHSON said, in some respects, it wouldn't be that substantial.

[2:18:27 PM](#)

CHAIR VANCE asked how "presence" was defined. She considered a scenario in which a wall was separating the domestic violence from the child, or the child witnessed an assault on FaceTime.

REPRESENTATIVE JOSEPHSON said he had consulted with a former municipal prosecutor, in addition to DOL and Legislative Legal Services, on this question. He concluded that "presence" should be defined as physically present or within hearing.

CHAIR VANCE asked why the bill sponsor had taken a broader approach to that definition.

REPRESENTATIVE JOSEPHSON, referring to Municipal Code 8.10.050, argued that the proposed legislation more adequately framed the word "presence" in comparison.

[2:22:21 PM](#)

REPRESENTATIVE ALLARD recalled that Representative Josephson had stated that the crime did not have to take place at the home of the victim or the perpetrator. She asked whether that was accurate.

JOSEPHSON confirmed.

REPRESENTATIVE ALLARD considered several examples involving pornography and asked how they related to the bill.

REPRESENTATIVE JOSEPHSON pointed out that Representative Allard was describing pornography whereas the bill addressed the witnessing of an assault. He clarified that viewing pornography was not the same as witnessing an assault.

REPRESENTATIVE ALLARD considered an example in which two parents were arguing in front of a child. She asked whether that would be considered an [assault].

REPRESENTATIVE JOSEPHSON discussed "imminent physical threat of injury," explaining that the threat of violence could be considered an assault. He emphasized that that an individual could be assaulted without being touched; however, the scenario posed by Representative Allard did not sound like an assault, he opined.

REPRESENTATIVE ALLARD considered an example in which an altercation arose in the Municipality of Anchorage (MOA) Assembly chamber while children were present. She asked whether this scenario would fall underneath the behavior captured in SSHB 11.

REPRESENTATIVE JOSEPHSON reiterated that it could if one of the individuals involved in the altercation was charged with assault.

[2:26:04 PM](#)

RESPRESENTATIVE GRAY inquired about the typical sentencing ranges for assault in the first degree, second degree, third degree, and fourth degree. Additionally, he asked whether the sentences would be extended, and by how much, if SSHB 11 were to pass.

[2:27:26 PM](#)

CHAIR VANCE noted that the [degree of sentencing] would be addressed in a forthcoming hearing. She directed Representative Josephson to speak specifically to the purpose of criminalizing assault in the presence of a child and adding it to AS 11.41.

REPRESENTATIVE JOSEPHSON stated that the purpose of the law was to recognize the separate experience of children who witness assault. He added that the emphasis was on the protection of children. In response to Representative Gray, he clarified that the bill would not be adding to the underlying assault charge or increasing that in any way, as it existed in its own silo; however, the offender would face a secondary charge for acting on that behavior in front of a child. He reported that assault in the fourth degree resulted in a misdemeanor and no more than one year [in prison]; assault in the third degree resulted in a class C felony and no more than five years [in prison]; assault two resulted in a class B felony and not more than 10 years [in prison]; and assault in the first degree resulted in excess of 50 years.

[2:30:36 PM](#)

REPRESENTATIVE GRAY expressed concern about charging minors. He suggested that removing minors from the applicability could be a solution; nevertheless, he would still have concerns about two 18-year-olds who got into a fight in front of classmates.

REPRESENTATIVE JOSEPHSON pointed out that, legally, 18-year-olds were treated as adults. He reminded the committee that, as a matter of policy, under AS 12.55.155 [Factors in aggravation and mitigation], the law was concerned with children up to age 16 being exposed to crime. Further, he emphasized that the criminal code remained the same when applied to a child, adding "there's no 'murder in the first degree by a child,' there's just 'murder in the first degree.'" He said the differing factor in juvenile matters was how the cases were processed.

[2:33:04 PM](#)

REPRESENTATIVE C. JOHNSON shared his understanding that [assault in the presence of a child] could only be triggered if an underlying assault charge was brought against the offender. He pointed out that, absent charges being filed, children were still experiencing trauma. He suggested that the bill did nothing to address the trauma and asked whether the bill sponsor would consider making assault in the presence of a child independent of the underlying assault charges. He asked, "Why couldn't it be a crime if some charges aren't filed, but its in the presence of a child?"

REPRESENTATIVE JOSEPHSON indicated that effectually, the proposed legislation was criminalizing the existing behavior outlined in Title 47 [Welfare, Social Services, and Institutions], the maltreatment code. He pointed out that theoretically, the situation expressed by Representative C. Johnson could result in a call to the Office of Children's Services (OCS), Department of Family and Community Services (DFCS). However, he acknowledged that sometimes, offenses were unreported for a variety of reasons. He reiterated his belief that the MOA Assembly was correct in 2000 when they deemed assault in the presence of a child as a separate offense. He confirmed that the defendant was protected in that, to be convicted of assault in the presence of a child, there must be an underlying assault charge to begin with.

[2:35:59 PM](#)

REPRESENTATIVE GROH asked whether the new crime established under SSHB 11 would essentially be "trade bait" in discussions between prosecutors and defense attorneys for a charge to be dropped in exchange for a plea of guilty or no contest.

REPRESENTATIVE JOSEPHSON said that could be the effect; however, the intent of the bill was to protect children from exposure to the event.

REPRESENTATIVE CARPENTER agreed with the concern expressed by Representative Groh. He recommended drafting the bill so that the class A misdemeanor [assault in the presence of a child] would be independent of the underlying assault charge to emphasize that the behavior was unacceptable.

REPRESENTATIVE JOSEPHSON contended that the charge would not exist without a predicate assault. He said he liked the

sentiment shared by Representative Carpenter; however, he was unsure about the practicability of the suggestion.

[2:42:14 PM](#)

CHAIR VANCE asked why the new crime was classified as a class A misdemeanor.

REPRESENTATIVE JOSEPHSON opined that it would be unusual to classify the ancillary charge more severely than the underlying charge.

REPRESENTATIVE CARPENTER opined that two people fighting in the presence of a child was worse than if they were fighting alone or in front of adults and should be penalized as such. He suggested that the new crime should be classified as a felony to emphasize the value placed on children.

REPRESENTATIVE JOSEPHSON indicated that the decision would be a policy call. He theorized that if four children witnessed the assault, the offender could be charged with 5 counts: one count for the underlying assault and four additional counts for each child present.

[2:45:02 PM](#)

CHAIR VANCE requested additional information to be shared at the next bill hearing regarding the penalization for assaulting a child in comparison to assault in the presence of a child. She thanked the bill sponsor for his presentation.

[SSHB 11 was held over].

[2:46:49 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:46 p.m.