ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
January 19, 2005
8:36 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Gene Therriault
Senator Hollis French
Senator Gretchen Guess

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 56
"An Act relating to criminal law and procedure, criminal sentences, and probation and parole; and providing for an effective date."
HEARD AND HELD

SENATE BILL NO. 19
"An Act relating to the creation of a civil legal services fund."
HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 56
SHORT TITLE: CRIMINAL LAW/PROCEDURE/SENTENCING
SPONSOR(s): SENATOR(s) THERRIAULT

01/14/05	(S)	READ THE FIRST TIME - REFERRALS
01/14/05	(S)	JUD, FIN

BILL: SB 19
SHORT TITLE: CIVIL LEGAL SERVICES FUND
SPONSOR(s): SENATOR(s) SEEKINS

01/11/05	(S)	PREFILE RELEASED 12/30/04
01/11/05	(S)	READ THE FIRST TIME - REFERRALS
01/11/05	(S)	JUD, FIN
01/19/05	(S)	JUD AT 8:30 AM BUTROVICH 205

WITNESS REGISTER

Ms. Susan Parkes
Deputy Attorney General
Criminal Division
Department of Law
310 K St., Ste. 507
Anchorage, AK 99501
POSITION STATEMENT: Commented on SB 56

Ms. Portia Parker
Department of Corrections
431 N. Franklin, Suite 400
Juneau, AK 99801
POSITION STATEMENT: Commented on SB 56

Ms. Sidney Billingslea
Alaska Academy of Trial Lawyers
Anchorage, AK
POSITION STATEMENT: Testified in opposition of SB 56

Mr. Joe Mischel
Staff to Senator Seekins
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Introduced SB 19

Mr. Art Peterson
Alaska Legal Services Corporation
Juneau, AK
POSITION STATEMENT: Testified in support of SB 19

Mr. William Oberle
Alaska Academy of Trial Lawyers
Anchorage, AK
POSITION STATEMENT: Testified in opposition to SB 56; testified in support of SB 19

Mr. Andy Harrington
Alaska Legal Services
Anchorage, AK
POSITION STATEMENT: Testified in support of SB 19

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 8:36:21 AM. Senators Gene Therriault, Hollis French, and Ralph Seekins were present and Gretchen Guess was participating via teleconference.

SB 56-CRIMINAL LAW/PROCEDURE/SENTENCING

8:36:21 AM
CHAIR SEEKINS announced the committee was working from Version F of SB 56.

MS. SUSAN PARKES, Deputy Attorney General, Criminal Division, Department of Law (DOL), deferred to Ms. Portia Parker of the Department of Corrections to address changes made to Version F in response to members' questions about periodic sentencing and delegating probation conditions set by the judge to probation officers.

8:38:04 AM
MS. PORTIA PARKER, Department of Corrections (DOC), explained to members that regarding periodic sentencing, the assistant attorney general who works with the court system on that matter said its occurrence has been less frequent over the years. DOL has received 2 to 10 requests for periodic sentences per year. It has become less of a problem since the Court of Appeals decided the Felix case in 2002; however, some judges ignore that ruling. A Fairbanks judge recently ignored it and ordered the release of a prisoner on medical furlough for dental care.

8:39:36 AM
MS. PARKER believed the proposed amendment would provide clear statutory guidelines.

MS. PARKER said the second question had to do with the offender who was given a periodic sentence so that he could be released to commercial fish. That offender was given an 8-year sentence for sexual abuse of a minor in the second degree. He also had 5 prior convictions including attempted homicide, two assaults, and contributing to the delinquency of a minor, which is sexual abuse of a minor in the second degree under current law. He was given an 8-year sentence with 5 years suspended. DOC was required to release him repeatedly for several months over a 3-year period.

8:41:03 AM
SENATOR FRENCH asked if any consideration had been given to restricting periodic sentences to the lower end of the scale

according to the seriousness of the offense. He stated that he preferred that periodic sentences only be permissible for sentences of less than two years.

8:41:45 AM
CHAIR SEEKINS noted that issue was discussed the previous day and was one reason Ms. Parker gave her report today. He suggested that the committee could establish an upper limit. He then asked Ms. Parker about the justification for giving a presumptive sentence for the last case.

MS. PARKER said she hadn't read the entire court order but thought one reason for giving periodic sentences was to allow an offender to be employed.

8:42:45 AM
SENATOR THERRIAULT asked if Ms. Parker could suggest language to implement a limitation.

MS. PARKER said she worked with staff on language that reads, "pre-existing employment reasons that existed prior to sentencing and with a composite sentence of less than one year."

8:43:50 AM
CHAIR SEEKINS requested that a copy of the suggested language be distributed.

SENATOR FRENCH explained that he selected two years because his concern was with, for example, an offender whose only problem is drug addiction. If that person were “busted” for cocaine a second time, under the old scheme he would get a two-year presumptive sentence for the second offense. He thought it might be appropriate to allow that offender to subsistence hunt for his family. He said his suggestion of a two-year presumptive sentence for a second offense would be the limit. If a person committed anything more serious, it would be time to "sell the net, sell the rifle, and let the family live on those proceeds while you're away in prison...." However, he said he does not feel Senator Therriault's preference of one year is unreasonable.

8:45:31 AM
SENATOR THERRIAULT asked DOC to respond to the one-year versus two-year argument.

8:45:47 AM

MS. PARKER said she is not sure how much of an impact the one-year difference would have. She explained that since the Felix decision, periodic sentencing has become much less of a problem. She said with a two-year sentence, the person with "good time" would be released after two-thirds of the sentence has been served. She noted that presumptive sentencing remains a problem for DOC regarding the movement of prisoners for population control. And, it is a problem in prisons that are always overcrowded, such as in Bethel, Fairbanks, and the Mat-Su pretrial facility. If DOC could keep shorter-term prisoners there, it would. However, as soon as those prisoners are sentenced, they are sent somewhere else. She summarized that the situation is still problematic but it is not a big enough problem to make a difference to DOC's operations.

8:46:47 AM
SENATOR THERRIAULT moved to adopt a conceptual amendment to page 2, lines 5-8, to strike the new suggested language and replace it with [Amendment 1]:

> But only if an employment obligation of the defendant pre-existed sentencing and the defendant receives a composite sentence of less than two years to serve.

SENATOR GUESS objected and asked for clarification. She wondered why Senator Therriault decided to remove the phrase "continued incarceration would cause extreme hardship."

SENATOR THERRIAULT said the legal drafter suggested his proposed language.

SENATOR GUESS said she just wanted to hear his thinking behind Amendment 1.

8:48:33 AM
CHAIR SEEKINS commented that by saying the person must have a pre-existing employment obligation that is for less than one year composite, it will be easier to get a composite sentence by removing a degree of difficulty.

SENATOR THERRIAULT agreed and added that it removes a restriction that was tied to paying restitution and replaces it with the limitation of time.

8:49:24 AM
CHAIR SEEKINS said he could go along with that.

SENATOR THERRIAULT furthered that Ms. Parker said this problem has largely corrected itself.

SENATOR GUESS removed her objection and thanked Senator Therriault for the explanation.

8:49:52 AM
CHAIR SEEKINS announced that with no further objection, Amendment 1 was adopted.

8:50:05 AM
SENATOR THERRIAULT said the next issue pertained to judges granting probation officers the right to modify parole conditions. The committee had asked for language to clarify that a probation officer could not just send a letter to the probationer, because that person might be illiterate or might not be English proficient. He wanted make sure the person clearly understands the modifications.

8:50:42 AM
MS. PARKER said probation officers already communicate verbally and in written form with the probationer so DOC does not oppose adding "and verbally" as that is current practice.

SENATOR THERRIAULT moved to adopt a conceptual amendment on page 4, line 5: after the word "provided" insert "orally and in writing".

CHAIR SEEKINS labeled Senator Therriault's amendment as Amendment 2 and announced that with no objection, it was adopted.

8:52:13 AM
SENATOR FRENCH asked Ms. Parker to describe the powers or parameters of a probation officer to impose the conditions of probation. He referenced page 3 and asked if a probation officer could suddenly decide the offender has to pay a fine that was not imposed by the court.

MS. PARKER explained that a probation officer couldn't impose additional fines, restitution, or payments of any kind without court approval. She said the typical conditions a probation officer could add when the court grants the probation officer authority under number 12 are mandates such as reporting to job training, curfew if interfering with employment, or assessment for drug and alcohol abuse. Those conditions can be added on a temporary or immediate basis for public safety reasons. DOC

feels it is critical to give probation officers that authority because doing so keeps people out of jail and prevents clogging up the court system.

8:54:43 AM
SENATOR FRENCH agreed with Ms. Parker completely but asked if that authority is written down anywhere.

8:55:08 AM
MS. PARKER offered to get back to him with specific information.

SENATOR THERRIAULT asked Ms. Parkes to address a concern expressed about judges escalating sentences because of how the ranges are set in SB 56, the reason being they would not want to be viewed as being slack on crime. He asked her if she has thought about how to convey to the court system that is not the legislature's intent.

MS. PARKES said she has given that concern a lot of thought. She said there has been a lot of speculation about how this bill will be implemented but no one will know until the bill goes into effect. She believes a letter of intent would be a good way to clarify that the legislature's intent is not to raise sentences across the board; instead, the creation of this new system is to bring the state into compliance with the Blakely decision. She noted that she ran across a case, Beltz v State, in which a defendant was convicted of sexually abusing his 11-year-old daughter. He was given a presumptive 8-year sentence. He appealed that sentence for being too harsh. He quoted the Superior Court judge at his sentencing that stated on the record that half the judges in the state would only give a 5-year sentence for this type of offense if it weren't for the legislature ordering an 8-year presumptive sentence. She said that is anecdotal evidence but, in her experience, one reason judges do not like presumptive sentences is that they believe they are too harsh. She doesn't share that concern, but believes a letter of intent would make the legislature's intentions clear.

8:58:57 AM
SENATOR THERRIAULT asked Ms. Parkes if she had any data on the number of cases in which aggravators actually kick in. He also asked how many cases mitigators come into that impact sentences.

MS. PARKES said she tried to track down that information. She noted that although Ms. Brink said 120 cases were aggravated and that number may be accurate, she wanted to find out in how in

many cases aggravators were proposed. She spoke with Terry Carnes at the Alaska Judicial Council who was involved in the 1999 study and asked the number of cases in which the state noticed aggravating factors. The Judicial Council only looked at two-thirds of the felony cases for 1999; notices of aggravators were filed in 483 cases. That extrapolates out to 642 cases if one were looking at 100 percent of cases. She said again, it is up to judges to decide whether to increase sentences but potentially, there could be 642 cases where the state would be proposing aggravators and taking them to a trial jury. Regarding mitigators, Ms. Carnes said in 186 cases, mitigators were noticed up. That would extrapolate out to 247 cases if 100 percent of cases were accounted for. She noted the felony caseload referrals have increased by 1,000 cases since 1999 so the state is probably looking at a higher number of cases where aggravators and mitigators would apply.

9:01:12 AM
MS. PARKES referred to a 1999 study pie chart and indicated that overall, in 55% of cases the offenders got presumptive sentences, in 25% of cases offenders got below, and in 20%, offenders got above.

9:01:47 AM
SENATOR THERRIAULT asked if 1,000 additional cases equal a 20 percent increase.

MS. PARKES said in 1999, there were 5,629 new felony referrals. In 2003, there were 6,477; that represents about a 15% increase, which is significant. She said Ms. Brink thought aggravators should go before a grand jury but that would create a significant resource problem for the state and criminal justice system as a whole. She pointed out that Chair Seekins asked what happens if the aggravators are unknown at the time and answered that the prosecution would have to go back to the grand jury. She felt it is extremely unrealistic to expect the state to have that kind of information that early in the process.

9:02:59 AM
SENATOR FRENCH referred to page 17 and said his question pertains to the phrasing of time parameters for giving notice about aggravators to the other side. The language on lines 26 through 31 talks about 10 days before trial or at another specified time. He asked if the time limit could be less than 10 days or if this was provided to give the judge some leeway.

9:03:46 AM

MS. PARKES thought that language was intended to give the courts some leeway. She said there is often a lot of local practice depending on the court. Some courts may find 20 days to be more appropriate. She said as an issue of fairness, if the state suddenly gets significant information 5 days before a trial, the remedy would be a continuance for the defense.

SENATOR FRENCH said that pertains to a trial but his question has to do with "lesser included" and “changes of plea” and asked Ms. Parkes to walk him through such a scenario.

9:04:54 AM
MS. PARKES said that language was inserted because it actually happened in a case. DOL had a retrial where the defendant was charged with murder in the second degree. That offense does not have a presumptive sentence, so aggravators and mitigators are not applicable. The state hadn’t gone to grand jury on aggravators or noticed any aggravators. DOL had not indicted on manslaughter, which is the lesser included. At the trial, the defense asked for the lesser included of manslaughter. The jury was instructed on manslaughter and came back with a guilty plea of manslaughter, not guilty on murder in the second degree. Manslaughter has a presumptive sentence and aggravators do apply. At that point, DOL requested to notice up some aggravators but the judge refused. He said the state has to take aggravators to the grand jury. Because DOL had not, it was precluded from bringing them to the trial. DOL is appealing that ruling.

9:06:26 AM
SENATOR FRENCH said regarding changes of plea, a range of aggravators might apply. He asked what happens if the defendant won't admit the aggravators and they are contested. Would the jury have to make that finding.

9:07:14 AM
MS. PARKES said DOL is requesting a jury trial based on aggravators alone. DOL would try to negotiate that as part of a plea. DOL thought the judge would make findings on aggravators but in the meantime the Blakely decision was issued. The judge can't make those findings so DOL requested a jury trial.

9:08:06 AM
SENATOR THERRIAULT asked, since the Blakely decision was issued during the process, the plea was accepted or whether any negotiation took place. He noted that if negotiations took

place, DOL would be able to negotiate the full sentence and whether an aggravator should apply.

MS. PARKES said DOL normally would have gotten a stipulation that the aggravators existed, an agreed upon sentence, or an agreement that it wouldn't pursue aggravators, but the timing was crucial. DOL would strive to avoid this kind of situation.

9:09:22 AM
CHAIR SEEKINS asked Ms. Parkes if it is DOL's intent that aggravators not be required to go to the grand jury but, if detected later, they could be added into the jury trial.

MS. PARKES said that is correct and explained that under the rules, once a person is in custody, DOL only has 10 days to get to grand jury. That is a very short period and often, especially in serious cases, DOL must rely on the pre-sentence report. That is why under the current system aggravators are noticed 10 days before sentencing. Ten days after arrest is simply not enough time to know all of the facts.

9:10:38 AM
CHAIR SEEKINS noted that aggravators will still be in place for certain crimes after the Blakely decision but the standard of proof has changed to beyond a reasonable doubt and will have to be found by a jury, not by a judge. He indicated that he doesn't see in the bill the sponsor's intent that aggravators need to go to a grand jury. He noted he is open to any discussion on that point.

9:11:34 AM
SENATOR FRENCH said he agrees with Ms. Parkes that the ballistics evidence, DNA etc., is not available within 10 days.

CHAIR SEEKINS maintained that the record needs to be clear that it is not the intent of this bill to require aggravators be presented to the grand jury.

9:12:23 AM
SENATOR GUESS asked if the Blakely decision forces the legislature to put ranges in the bill.

MS. PARKES replied that Blakely does not require ranges; the range method is one option that DOL believes is appropriate. Another option would be wide open sentencing that gives judges full discretion. The purpose of providing ranges is to recognize

that the playing field has changed. DOL believes that providing ranges will give back some discretion that Blakely took away.

9:14:41 AM
SENATOR GUESS asked how a judge would determine where in the range the sentence should fall.

MS. PARKES replied that AS 12.55.005 contains the principles of sentencing that judges are supposed to look at. That language reads:

> The legislature finds that the elimination of unjustified disparity in sentences and the attainment of reasonable uniformity in sentences can best be achieved through a sentencing framework set by statute. When imposing sentence the court should consider the seriousness of the defendant's present offense in relation to other offenses, prior criminal history, likelihood of rehabilitation, need to confine the defendant, circumstances of the event, harm to the victim, effect of the sentence to be imposed in deterring the defendant and deferring others and community condemnation, restoration of the victim.

DOL anticipates that judges would look to those principles to determine where in the range the sentence should fall.

9:16:18 AM
SENATOR GUESS referred to the previous day's discussion about inconsistency of sentences in the past and asked how DOL can ensure that this legislation will not take the state back to that situation.

MS. PARKES said most states with presumptive sentencing schemes have ranges. Many of those states have found that the ranges resolved the disparity problem. DOL believes that fairly narrow ranges will take care of the disparity problem because judges will still have direction from the presumptive sentencing scheme.

9:17:56 AM
SENATOR FRENCH thought the range idea is a good one. He then described a story to illustrate why.

9:20:03 AM
SENATOR THERRIAULT asked Ms. Parkes to address the language in Section 5.

MS. PARKES said there is a problem on page 3 in Section 5. She believed line 14 should read “sentence or lower than the presumptive range.”

SENATOR THERRIAULT moved to adopt a conceptual amendment on page 3, line 14, after the word "or" strike "within" and replace it with "lower than."

CHAIR SEEKINS announced that without objection, Amendment 3 was adopted.

9:21:37 AM
CHAIR SEEKINS asked Ms. Parkes to respond to Ms. Brink's comment regarding the lower limit for presumptive sentences caused by mitigating factors.

MS. PARKES said the bill was drafted so that the ranges start at the current presumptive, except in two instances. The thinking was that the mitigators haven't changed. The Blakely decision did not affect a judge's ability to find mitigators by clear and convincing evidence and to mitigate accordingly. Because the Blakely decision only affected a judge’s ability to aggravate, DOL felt that was the appropriate place to begin the range. The Legislature could make changes if it feels that is appropriate. Blakely did not affect the current system's ability to mitigate sentences.

9:23:30 AM
CHAIR SEEKINS said with that explanation on the record, he has no objection to leaving the bill as is. He believes the legislature’s intent is that mitigating factors have not been affected so there is no perceived need to build mitigating factors into the presumptive scheme. He asked if anyone objected or wanted to discuss the matter further. There was no response.

9:23:58 AM
SENATOR FRENCH noted that last week the Supreme Court issued a ruling on a case called Booker and a companion case named FanFan. He asked Ms. Parkes if she thinks anything from that ruling would affect the statutory fix in SB 56. He thought that ruling was about federal sentencing guidelines and putting them under the Blakeley decision.

MS. PARKES said DOL’s appellate attorneys looked at that ruling. They do not believe it affects the response proposed in this

bill. It was fairly specific to the federal guidelines and turned them into voluntary guidelines.

9:24:58 AM
SENATOR FRENCH said his understanding of the Blakely case was - other than the fact of prior conviction - any fact that increases the penalty has to be proved beyond a reasonable doubt to a jury. SB 56 exempts six facts that a judge can learn by looking at the court file. The only one that could be argued is number 12 on page 12, line 27, which pertains to whether the defendant is on bail release for any felony or assault. He asked why that was included.

MS. PARKES said DOL felt number 12 was one the judge could take judicial notice of by looking at the court file. DOL believes it is appropriate.

SENATOR FRENCH asked if that is “black and white”?

MS. PARKES said that is how DOL saw it.

9:26:38 AM
CHAIR SEEKINS referred to the language on page 23, Section 29, and said it could be argued that Section 29 constitutes an impermissible change in sentence because of an unconstitutional increase in punishment applied before the effective date of the act. The legal drafter said it would allow the Board of Parole to make a prisoner ineligible for further consideration of parole when that prisoner otherwise would have been eligible.

MS. PARKES commented that discretionary parole is just that - discretionary. No one is entitled to it. If denied discretionary parole, the sentence is not being changed. She said her understanding is that a person can ask for discretionary parole the first time but if the board decides the person does not meet the criteria, the question is whether the parole board should be required to hold repeated hearings with that same person. The intent of Section 29 is to cut down on the parole board’s expenditures if it has determined that a person doesn't meet its standards. She said DOL doesn't believe that can be seen as a sentence modification.

9:29:15 AM
CHAIR SEEKINS asked what standard DOC would be looking at.

MS. PARKER told members the parole board looks at the person’s conduct while incarcerated - whether that person availed himself

of opportunities for reform, past convictions, and a wide array of considerations. The board is very cautious about what it grants. She pointed out that Section 29 is already current practice in its regulations; it merely clarifies the authority to do what is already being done. This section is preventative in nature because of continued challenges.

9:30:48 AM
CHAIR SEEKINS asked if a crime committed while incarcerated could be cause to deny discretionary parole.

MS. PARKER agreed that could be one reason.

9:31:16 AM
CHAIR SEEKINS referred to Section 7 on page 4 and asked if the appellate court could no longer say that a sentence is excessive and reverse it.

MS. PARKES said her recollection is that Senator Therriault asked Ms. Brinks if she felt this bill met the constitutional requirements of the Blakely decision. She agreed that it did with the one caveat that Section 7 might be unconstitutional. Ms. Parkes said she researched that issue; DOL strenuously disagrees with that analysis. She explained that this doesn't deny a person the right to appeal. It says the legislature has set a range of sentences appropriate for a particular offense. If a person receives a sentence within that range, a court can't reverse it based on the sentence being excessive. The Legislature gets to set appropriate sentences based on statutory law. In Bear v State, the Supreme Court said it didn't have the authority to review sentences at all. In response, the legislature gave statutory authority to the Supreme Court to look at sentences and it created the Court of Appeals and gave it statutory authority to look at sentences. She said in cases since then, particularly a 1997 case, Bear was again cited as good law. In that case, the legislature had passed a law in 1995 restricting sentence appeals for people who receive sentences of less than two years as excessive. That was challenged and the court said the legislature had solid reasons for passing that law. It cited resource issues as one reason for the restriction. She noted that DOL anticipates that people who get sentences at the top of the range may challenge them as excessive but judges shouldn't have to be second-guessed if the sentence is within the range - that is the intent of sec 7. DOL believes it is constitutional; she urged members to leave it in.

9:36:04 AM

SENATOR THERRIAULT pointed out the ranges were drawn fairly narrowly.

9:36:42 AM
SENATOR HUGGINS complimented all of the players involved, particularly Ms. Parkes and Ms. Parker. He said the hearing has been very educational and it is important that Alaskans realize that quality people are representing their interests. He thanked everyone.

CHAIR SEEKINS announced the committee would take a 5-minute recess.

9:46:18 AM
Upon reconvening, CHAIR SEEKINS asked if members had any other questions.

SENATOR THERRIAULT thought the committee had dealt with all of the issues today but proposed that the committee take no final action until the most recent changes were printed in a new committee substitute. He also wanted to work with Ms. Parkes on the letter of intent and offered to do so between today and tomorrow and to iron out the fiscal impact of SB 56 with the departments. He said he anticipated getting zero fiscal notes. He asked that the committee hold the bill for one more day.

9:47:50 AM
CHAIR SEEKINS noted that Ms. Sidney Billingslea wanted to testify.

9:48:07 AM
MS. SIDNEY BILLINGSLEA, a director on the Board of the Alaska Academy Trial Lawyers, told members SB 56 was new to her so she would offer her initial thoughts. She said the Blakely and Booker/Fanfan cases were decided by a conservative Supreme Court. They were decided to primarily support and uphold the Sixth Amendment right to a jury trial, especially on aggravating factors, and to reduce prosecutorial powers, especially as federal guidelines were designed to withhold relevant collateral information until the imposition of sentence and then permit enormous increases in guideline sentences. It restricts judges' discretion not to give enormous increases based on relevant conduct. The purpose was not to increase the sentences of people who were accused. She disagreed with Ms. Parkes that the intent of SB 56 is to address Blakely and not to increase sentences because that is what it does.

9:50:25 AM
MS. BILLINGSLEA said prior to SB 56, if no aggravating or mitigating factors existed, an individual would get an 8-year presumptive sentence. Now, an individual can get an unreviewable 8 to 12-year sentence, which has the practical effect of giving the prosecutors a free aggravator. However, it does not give the defense a free mitigator because the defense must prove its mitigators by clear and convincing evidence. The Booker and Fanfan case addresses congressional intent in drafting the sentencing guidelines. One of the legislative purposes when originally suggesting a presumptive term for first-degree sexual assault was to allow an individual to receive and complete sex offender treatment while incarcerated. That is no longer an option for those convicted of committing sex offenses. She asked if it was the legislature's intent to continue to have an 8-year sentence with a possible increase to 12 years when the purpose of the 8-year sentence no longer exists. She asked the committee to examine that from an historical perspective as well as a practical perspective.

She responded to Senator French's example of the 18-year-old offender who only got 5 years. She noted, when supervised, that person has no court access. If that individual violates conditions of parole, he can be incarcerated immediately without judicial review. She continued to explain the parole situation.

9:54:24 AM
MS. BILLINGSLEA said she sees SB 56 as an opportunity to increase sentences. The sentencing ranges could have been 6 to 12 years or 6 to 10 years. She believes the numbers did not come with an eye toward completely preserving judicial discretion; instead that discretion will be decreased. She explained her reasoning and offered to comment again later.

9:55:36 AM
CHAIR SEEKINS asked if she could cite any decision that implies that the ranges are unconstitutional.

MS. BILLINGSLEA said she could not but she did not believe that is the issue.

9:56:26 AM
MR. WILLIAM OBERLE, President of the Alaska Academy Trial Lawyers, said the Academy has not had the opportunity to review the bill so the following comments are his personal comments.

He sees SB 56 as reactive legislation to the Blakely decision that requires the greatest reflection. The fallout of that decision has not been fully realized yet. In addition, the Booker/Fanfan decision was issued just last week. He said that although the committee thinks SB 56 will have a zero fiscal impact, he doesn't believe that will happen in the long run. He doesn't know if it will cause more trials but cautioned the need to look at increased costs to DOC due to increased sentences. He disagrees with Ms. Parkes' statement that DOL will save money because DOL will not have to present aggravators to a grand jury. He sees this as a resource transfer from DOL to DOC.

9:59:13 AM
MR. OBERLE said he sees SB 56 as contrary to the underpinnings of the original presumptive sentencing scheme. That scheme was specifically designed by the legislature because disparate sentences were being issued around the state. SB 56 takes the presumption out and will allow for disparate sentences. He has not heard any clamoring for longer sentences from anyone but that is what SB 56 will do. The Alaska Trial Lawyers have not reached consensus on SB 56; they were not involved in the process. He asked to be involved when these issues arise in the future. He cautioned that SB 56 will have significant fiscal impact and said he will provide further comments later.

10:02:12 AM
CHAIR SEEKINS announced that he would hold SB 56 over until tomorrow and get a clean draft. He anticipated that the committee would take final action at the next hearing.

SB 19-CIVIL LEGAL SERVICES FUND

10:02:47 AM
MR. JOE MISCHEL, aide to Senator Seekins, sponsor of SB 19, explained that this legislation adds to AS 37.05.146, which pertains to the definition of program receipts and non-general fund program receipts. SB 19 is designed to provide a financial mechanism whereby the legislature can appropriate funds to organizations that provide civil legal services to low-income Alaskans. It creates a civil legal services account funded by AS 09.17.020(j). It requires that 50% of all punitive damage awards be deposited into the general fund.

SENATOR GUESS asked for the origin of the definition of "low income" and whether that definition will constrain organizations that use 125% of the poverty level.

CHAIR SEEKINS said the civil legal services people suggested that definition. He noted that Mr. Harrington was on line.

SENATOR FRENCH asked if a windfall is expected.

CHAIR SEEKINS said it could range from zero to a large number. He noted that last year the amount would have been $100,000.

10:06:47 AM
SENATOR THERRIAULT asked the source of any windfall.

10:07:07 AM
MR. ART PETERSON, Alaska Legal Services Corporation, told members he is serving his final term on the legal services board after serving for 31 years. He explained that SB 19 fits a funding source into a legislative funding pattern established in the mid-80s. The source of funds would come from punitive damages; that amount fluctuates wildly. Last year the amount was $100,000. The Legal Services Corporation has existed for 40 years. He applauded the staff that work for minimum salaries and carry a huge workload and reminded members that legal services attorneys don't just litigate, they also advise. When an indigent person comes into a legal services office, an attorney will often write a letter to solve the problem, thereby avoiding litigation. When litigation occurs, having legal representation streamlines the judicial process - having an attorney who knows the procedures can help people through the legal system more quickly. SB 19 will provide that assistance to low income Alaskans. The definition of “low income” in SB 19 is the same one used by Alaska Legal Services and other low-income programs; the Alaska level is set at 125 percent of the poverty level. He referred to a graph that showed the amount of funding provided to the Alaska Legal Services Corporation over the years. That amount is now at zero. He maintained that is a blow to one of the most efficient programs in the state.

10:12:50 AM
SENATOR THERRIAULT asked if money from that source now accrues to the general fund.

MR. PETERSON said it does.

CHAIR SEEKINS asked Mr. Harrington to testify.

10:13:15 AM
MR. ANDY HARRINGTON, Executive Director of the Alaska Legal Services Corporation, described the corporation as a 501(C)(3)

firm that provides legal assistance to low-income individuals at no charge. It differs from the public defender agency in that it only provides services in cases where the law does not recognize a right to an appointed attorney but where the consequences at stake in the case are significant to the family, i.e. laws of shelter or domestic violence. It recruits volunteers through its pro bono attorney support program, which handles between 100 and 200 cases at any one time. It also offers legal information to the general public through clinics and the Alaska Law Health website. Its mission is to provide meaningful access to justice. It has 8 offices around the state.

MR. HARRINGTON said the idea behind SB 19 stems from an Alaska Supreme Court task force report, which determined that people who are unrepresented take more of a judge's time. SB 19 designates a legal fund reserve flowing from Alaska's civil cases – that is 50 percent of punitive damage awards that go to the state rather than the plaintiff under current law. He talked about an eviction case in which the defendant found that Alaska law gave her more protection than she realized. She had entered into a "too good to be true" financing arrangement with an outside firm and lost the house in a foreclosure. The attorneys from the other side made a settlement offer, the eviction was set aside and she regained ownership of her house.

10:17:10 AM
MR. HARRINGTON said that SB 19 presents a creative approach. He then suggested two technical changes: the Legal Services Corporation sets the eligibility guidelines. Those are set at 125% of the federal poverty guidelines used in the contiguous 48 states. He said one of two changes would be preferable: either on line 13, after the word "or less than," insert "125% of", or on lines 13-14 use "or less than the maximum income level for Alaska set by the federal legal services corporation."

He apologized for not raising that issue earlier. His second suggestion was to include an effective date. He noted that legislative support of the legal services staff would be greatly appreciated.

10:20:04 AM
SENATOR THERRIAULT referred to the packet of information about funding and asked if the legal services corporation oversees the state bar pro bono program.

MR. HARRINGTON said it doesn't oversee it but cooperates with it. The Alaska Bar Association doesn't place cases but makes attorneys available.

10:21:28 AM
SENATOR THERRIAULT referred to the funding graph and noted the amount in the current fiscal year went down to zero with the governor's veto action but in a separate document the 2003 state dollars amounted to $327,000, which doesn't match the $175,000 FY 03 amount on the graph. The note on the bottom talks about grants, donated services, gain of dispositional property, etc. He asked about the disparity between the graph and state dollars.

10:22:39 AM
MR. HARRINGTON explained that the figures on the chart are taken from direct legislative appropriations, which came to Alaska Legal Services through the Departments of Community and Economic Development (DCED) and the Department of Health and Social Services (DHSS). The figures on the table came from the Alaska Legal Services audited financial statements. Those figures include grants from organizations such as the AkMHTA through the Alaska Children's Trust, through the Municipality of Anchorage and through the Fairbanks North Star Borough. The auditors classified all of that money as state funds despite the fact that part of it came from boroughs and from competing with other organizations. The chart reflects direct legislative appropriations through DCED and formerly through DHSS. He said the figures in the table include money from other sources.

10:24:30 AM
SENATOR THERRIAULT asked if, with the passage of SB 19, he is proposing that all of that money be funneled through the new sub-account in the general fund. He questioned whether the punitive damage awards would be tagged as a funding source for operations.

MR. HARRINGTON said that is correct.

SENATOR THERRIAULT asked if there would be a one-year lag so that this year the legislature would appropriate the funds that come in from punitive damages and make those funds specific available next year or whether the legislature would estimate the amount.

MR. HARRINGTON thought that an estimate would be necessary for the first year. His vision of how it would work in the long run

is that the money would accumulate and the legislature would appropriate based on the preceding fiscal year.

10:25:57 AM
SENATOR THERRIAULT said he asked because if the committee takes action, it would need to convey to the finance committee that this year's budget would need verbiage saying that all funds that fit this description need to be appropriated into this sub-account, and that next year the legislature would have a certain amount from which it could appropriate.

10:27:02 AM
MR. BILL OBERLE, President of the Alaska Academy Trial Lawyers, said he appreciates the work done by the Alaska Legal Services Corporation. He believes that SB 19 provides an excellent opportunity to fund an organization that is doing valuable work in Alaska. The Academy supports SB 19.

10:28:33 AM
CHAIR SEEKINS asked members if they preferred using a percentage for the definition of "low income" or to use the guidelines set by the federal legal services corporation.

SENATOR GUESS asked for Mr. Harrington's input. She said she likes the second approach so that any changes do not need to be made by statute.

MR. HARRINGTON agreed and said a generic reference to the maximum income level for Alaska is set by the federal legal services corporation and will avoid the need for future changes.

SENATOR FRENCH asked if the national body looks to each states cost of living and sets a number for that state.

MR. HARRINGTON said that is correct although the figure is currently set at 125% of the federal poverty level. The only two states it looks at that have a different number set for them are Alaska and Hawaii.

10:30:30 AM
CHAIR SEEKINS said he would have staff work with Mr. Peterson and Mr. Harrington to clarify the definition of low income and the appropriation language and bring it before the committee for further consideration. He hoped to complete the work on SB 56 and continue work on SB 19 at the next meeting.
10:31:50 AM
CHAIR SEEKINS then adjourned the meeting.