

HOUSE FINANCE COMMITTEE  
April 10, 2012  
9:04 a.m.

9:04:51 AM

CALL TO ORDER

Co-Chair Stoltze called the House Finance Committee meeting to order at 9:04 a.m.

MEMBERS PRESENT

Representative Bill Stoltze, Co-Chair  
Representative Bill Thomas Jr., Co-Chair  
Representative Anna Fairclough, Vice-Chair  
Representative Mia Costello  
Representative Mike Doogan  
Representative Bryce Edgmon  
Representative Les Gara  
Representative David Guttenberg  
Representative Reggie Joule  
Representative Mark Neuman  
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Kevin Meyer, Sponsor; Christine Marasigan, Staff, Senator Kevin Meyer; Diane Casto, Prevention Manager, Division of Behavioral Health, Department of Health and Social Services; Kate Burkhart, Executive Director, Advisory Board on Alcoholism and Drug Abuse, Department of Health and Social Services; Leslie Houston, Director, Division of Administrative Services, Department of Corrections; Anne Carpeneti, Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law; Kelly Howell, Legislative Liaison, Department of Public Safety; Nancy Meade, General Counsel, Alaska Court System.

PRESENT VIA TELECONFERENCE

Michael Jeffery, Superior Court Judge, Barrow; Dave Fleurant, Executive Director, Disability Law Center of Alaska; Trish Smith, Director, Prevention and Intervention Services, Volunteers of America; Jeanne Gerhardt-Cyrus, Self, Kiana; Quinlan Steiner, Director, Public Defender Agency, Department of Administration.

SUMMARY

CSSB 140(JUD)

CATHINONE BATH SALTS

CSSB 140(JUD) was scheduled but not heard.

CSSB 151(JUD)

FETAL ALCOHOL SPEC. DISORDER AS MITIGATOR

CSSB 151(JUD) was REPORTED out of committee with a "do pass" recommendation and with three previously published zero notes: FN2 (CRT), FN3 (ADM), FN4 (COR); and one previously published indeterminate note: FN5 (LAW).

#sb151

CS FOR SENATE BILL NO. 151(JUD)

"An Act relating to mitigation at sentencing in a criminal case for a defendant found by the court to have been affected by a fetal alcohol spectrum disorder."

9:05:53 AM

SENATOR KEVIN MEYER, SPONSOR, thanked the committee for hearing the legislation. The bill related to fetal alcohol spectrum disorder (FASD) as a mitigating factor pertaining to sentencing. He stated that the bill would not provide a get out of jail free card. He detailed that if the defendant was involved in arson, assault, or a violent crime, the mitigating factors could not be used. The intent was to have more appropriate sentencing for people who suffer from FASD; the proposed law would not be mandatory, but would allow judges with sentencing flexibility. The disorder is caused by maternal alcohol use during pregnancy resulting in permanent brain damage, which can manifest in a variety of ways. He relayed that Alaska had the highest known rate of FASD in the United States. Experts reported

that people suffering from brain dysfunction were disproportionately represented in the nation's criminal justice system. Individuals were affected through no fault of their own and he stressed that the state needed to find ways to help them. He stated that incarcerating individuals with the disorder taught them the wrong type of lifestyle and was not a good solution to the problem. He expounded that other alternatives existed including longer probation periods, assisted living, intensive case management, and other. The sponsor had worked with the Alaska FASD Partnership group, the Department of Law, and the Court System to determine the available alternatives. He reiterated that the costly corrections system did not work well for individuals inflicted with the disorder. He summarized that the bill offered one way to help individuals with the disability by providing judges with some flexibility.

[9:11:36 AM](#)

Representative Edgmon spoke in strong support of the bill. He discussed that a Dillingham superior court judge who had recently left the position had pointed to the challenge that resulted from the broad prevalence of first and second generation FASD offenders.

Representative Wilson asked whether the bill opened up the door for more disabilities be added as mitigating factors, which would force the courts to decide whether a disability was a determination in the committed crime.

Senator Meyer deferred the question to his staff. He believed that other mental health disabilities were currently used as mitigating factors.

CHRISTINE MARASIGAN, STAFF, SENATOR KEVIN MEYER, replied that it was a slippery slope related to creating mitigating factors for every existing condition; however, there was already a mitigating factor for mental disease or defect. The factor was not specific to FASD, but some individuals had tried to apply it to FASD cases. The compelling reason for including the disorder as a mitigating factor was due to its overwhelming presence in Alaska and in the corrections system. The legislation focused on individuals who committed non-violent crimes (e.g. property or drug crimes and impulsive behavior). She stressed that individuals with FASD had a mental dysfunction and could

not process information in the typical way; therefore, it was common for the individuals to reoffend. Without the mitigating factor the individuals could be incarcerated for long periods of time without receiving the needed help; therefore, upon release they reoffended. The bill included a clause related to clear and convincing evidence that required a link between the crime and the disorder.

Representative Wilson wondered how the disorder was not covered by current law related to mental dysfunction. She surmised that courts could already have the necessary avenue established. She explained that naming specific disorders made her nervous because it would be hard to determine where to stop.

Senator Meyer replied that Alaska Superior Court Judge Michael Jeffery was available to discuss the question. He elaborated that some courts and judges felt that the current statute could be applied to FASD, but the bill made the issue clear.

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Co-Chair Thomas supported the bill. He discussed the difficulty some of his Vietnam War veteran friends had experienced with admitting that they had Post Traumatic Stress Disorder (PTSD), which had resulted in death for various reasons. He recalled that several veterans with PTSD had gotten in trouble legally; however, the courts did not take the disorder into consideration because the individuals had not been treated. He had introduced a bill several years earlier related to PTSD as a mitigating factor for drinking under the influence and domestic violence crimes. He had been told the legislation was too dramatic. He discussed that soldiers returning from active duty had trouble getting counseling, but it was helpful that the problem had been identified. He wondered whether courts would show sympathy to a person with PTSD who needed counseling. He reiterated that many veterans would not admit to the problem.

Representative Doogan looked at page 3, line 24 that read "ability to cope with the ordinary demands of life." He wondered whether the ordinary demands of life were defined in statute. Ms. Marasigan responded that the exact definition was not included in statute. She elaborated that statute did include antiquated language related to mental

illness and disabilities. The legislation took detail from statute and the sponsor had worked with Susan Astley, a pioneer in FASD diagnosis to ensure that language was clear. She noted that several diagnoses fell within the spectrum of the disorder.

Representative Doogan surmised that the bill would leave it to the judge to determine what the ordinary demands of life were on a case-by-case basis. Ms. Marasigan responded in the affirmative. She detailed that with the other 19 existing mitigating factors there was latitude for the judge to decide through clear and convincing evidence that one of the factors did or did not play a role in the crime committed.

[9:21:16 AM](#)

Co-Chair Stoltze believed the bill was appropriate.

Senator Meyer asked for testimony to begin with Judge Jeffery.

MICHAEL JEFFERY, SUPERIOR COURT JUDGE, BARROW (via teleconference), introduced himself.

Co-Chair Stoltze asked whether Mr. Jeffery was speaking on behalf of himself or the court.

Mr. Jeffery clarified that he was speaking from his personal standpoint as a superior court judge. He spoke in strong support of the legislation. He was a court system representative on the Alaska FASD Partnership, served on the statewide FAS steering committee, and was a member of the Alaska Juvenile Justice Advisory Committee. He relayed that he struggled with the issue of FASD in the justice system on a daily basis. He explained that any mitigating or aggravating factor had to be shown by clear and convincing evidence, which was not easy; in order for a person to use the mitigating factor they would have to prove that they had been diagnosed with FASD (the disorder was a spectrum and impacted individuals in different ways). Individuals would also be required to show that FASD had affected their conduct related to the crime committed. If the individual met the clear and convincing evidence standards it opened the door for the judge to consider the issues when sentencing. He detailed that as a practical matter, defendants would have to present the judicial

officer with meaningful and applicable program alternatives and other related to their FASD condition. He referred to the idea as "smart justice" and stressed that it would greatly reduce costs to the state to provide the appropriate structure for affected individuals in a more effective and humane way. He discussed that there were statutory limits to how far a sentence could be mitigated. He elaborated that if the minimum term was four or more years it could not be mitigated below half; if the term was less than four years it was possible to mitigate it down more substantially. He furthered that there were a lot of protections to public safety and humane efforts to meet the needs of the population.

9:27:10 AM

Mr. Jeffrey recalled a case he handled in 1990 where FASD had not fit within the legal definition surrounding mental disease or defect under Alaska Statute 12.47.130; therefore, he stressed the importance of the legislation. He thanked the committee for its time and consideration of the bill.

Representative Doogan asked for an estimate of how many people appearing in court had the defect. Mr. Jeffrey answered that there were two ways of looking at the issue. The first related to how many people appearing before judges had been diagnosed with the disorder (as would be required under the legislation; the number was currently small. Most diagnoses occurred when a child was in the juvenile justice or welfare system; however, some diagnostic teams did diagnose adults. He believed there was a significant (but unknown) number of people appearing before judges who were affected by the disorder but had not been diagnosed. As a result he had adapted by making paperwork and his speech more understandable in the court room. Some studies estimated that the occurrence of FASD was 10 times greater than Fetal Alcohol Syndrome (FAS), which affected facial features and other. He noted that the question was difficult and did not believe anyone really knew the answer.

Representative Doogan pointed to the bill's indeterminate fiscal note. He was curious to know what the expectation would be in order to estimate potential costs. He surmised that costs could go up if the diagnoses increased. He

believed the committee would like to have a potential cost estimate as soon as possible.

Mr. Jeffrey opined that the bill would provide a large savings to the state. He referred to property crimes and other that could generate long jail terms for second offences and discussed that the idea was to reduce the load on the prison system by allowing people to get out into the community with appropriate structure. He noted that there could be a cost increase related to community treatment programs, but they would be overwhelmingly balanced by the great savings that would result from moving people out of jail when it did not benefit society or the individual.

[9:32:58 AM](#)

Representative Edgmon noted that sometimes a shortcoming of a fiscal note was the inability to show potential savings. He discussed savings related to the overcrowded prison system. He believed the total cost and savings may not ever be known. He opined that savings would occur under the legislation.

Co-Chair Thomas asked how an individual that may not know they had FASD would be told about it; he believed it could be agitating to a person to be told they had a disorder. Mr. Jeffrey agreed. He had to be very careful when he suspected a person may have FASD who had not been diagnosed. He detailed that in some cases he noted in the judgment that a person had "cognitive impairment" and recommended that correctional facilities use concrete language and repetition to ensure that the defendant understood. He emphasized that he could not diagnose an individual in his position as a judge. In order to address the issue he used methods such as speaking in a concrete way, slowing down the hearing, and using forms with more concrete language. He would do what he could and hoped that more diagnosis would occur at a later time.

[9:36:03 AM](#)

Ms. Marasigan relayed that experts were available to address questions including how an individual was diagnosed if it was unknown whether a mother had drunk during pregnancy. Additionally, there had been extensive discussion related to the number of people the mitigating factor would apply to; the sponsor did not want to make its

use incredibly easy or impossibly difficult. She communicated that there had been a fine balance in the creation of the bill. Diane Casto with the Department of Health and Social Services (DHSS) was available to address the issues and could discuss the numbers of diagnosed individuals in the state. Nancy Mead with the Alaska Court System could address the actual number of court cases in which FASD may have an impact.

Senator Meyer added that there were four fiscal notes: three were zero and one was indeterminate. The intent with the indeterminate note was to show a savings. He elaborated that it cost approximately \$40,000 per year to incarcerate a person. He explained that assisted living or assisted care was more than enough in most cases he had seen, which could be provided at half the price of imprisonment. He reiterated that the intent was to save money.

[9:38:27 AM](#)

DIANE CASTO, PREVENTION MANAGER, DIVISION OF BEHAVIORAL HEALTH, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, introduced herself. She discussed that the Office of Fetal Alcohol Syndrome under DHSS had been started in 1998 after legislators had made the department aware of the issue. The office had initially been funded by a \$300,000 grant from the Alaska Mental Health Trust Authority. She explained that the office had been incorporated into the Division of Behavioral Health in 2003. Former Senator Ted Stevens had provided an earmark for FAS efforts, which had helped fund a statewide system of diagnostic services. Currently there was one specialty team at the Alaska Psychiatric Institute and teams in Fairbanks, Anchorage, Mat-Su, Kenai, Bethel, Juneau, and Sitka. Teams in Kodiak and Dillingham had gone on hiatus and would hopefully be reopening in the future; other locations were also looking at beginning new teams. Since inception, 1,683 individuals had been diagnosed; the average age of diagnosis was between the ages of seven and ten. She expounded that most diagnoses did not take place until a child entered the school system (particularly in small communities). Diagnoses could take place beginning at approximately three years of age when the central nervous system could be tested for brain damage.

Ms. Casto shared that the office averaged approximately 153 diagnoses on an annual basis; 179 cases had been diagnosed in 2011. The office used the University of Washington's

Four Digit Diagnostic Code, which was the gold standard of diagnosis; it looked at four categories including facial dismorphology (there is a permanent very specific change of facial features directly related to prenatal alcohol exposure), growth patterns (many individuals with FASD have significantly less growth), central nervous system (the key to determining the level of disability, which looked at psychological, speech and language, and motor skill testing), and confirmed maternal alcohol use (a diagnosis is still possible without the confirmed knowledge of a mother drinking). Often times it was known in small communities whether a mom drank during pregnancy and doctors frequently knew if a mom had a history of alcohol use.

[9:45:03 AM](#)

Ms. Casto continued that from the testing it was possible to obtain an analysis of the person's strengths and their challenges (i.e. the key issues the person has the most difficulty with - memory, cause and effect, or impulsivity).

Representative Wilson asked what options existed when there was no treatment available in a community. Ms. Casto responded that the department did not want to set up systems of care solely for FASD because the disorder had similarities to other mental concerns and defects. The department looked at accommodations for the disability more than treatment because FASD was a lifelong disability; it worked to provide case management, which addressed a critical area of need, to work with individuals to help guide them through making good life decisions. She pointed to a late 1990s University of Washington study, which found that 80 percent of people with prenatal alcohol exposure needed some form of assisted living throughout their entire lives; the finding did not mean the individuals needed to live in a home or institution, but they needed someone in their life to help with day-to-day chores. She discussed that even in communities without good services it would be beneficial if DHSS could provide training in existing services (i.e. schools and employers) related to how to work with individuals with the disability. She stated that with the appropriate accommodations individuals with FASD could be very successful.

Representative Edgmon questioned whether there was a way to determine how prevalent the disorder was in Alaska; he surmised that a range must exist. He discussed that alcohol use was widespread and was the principal reason for much of the activity occurring in the criminal justice system.

Ms. Casto responded that there was an FASD surveillance system through the Alaska Birth Defects Registry, which was housed in the Division of Public Health; the system generated a prevalence rate of the number of individuals with the disability statewide. She detailed that every disability, excluding prenatal exposure to alcohol, had to be reported by age one; prenatal exposure to alcohol could be reported up to the age of six. An individual did not have to be diagnosed to get into the registry; a medical notation that the mother drank or the suspicion that a child had the disability was sufficient. Case file reviews were conducted to determine whether an individual met the case definition of FAS. There were existing numbers showing how many individuals were suspected to have the disability and how many new people were added annually. She noted that the department believed the numbers were low, as not all individuals were reported. Currently the rate showed that 15 individuals were born each year with FAS; the department believed there were approximately 160 additional births annually that fell somewhere on the FASD spectrum.

Co-Chair Stoltze surmised that the births showed different manifestations of impact related to the disorder. Ms. Casto replied in the affirmative. She elaborated that the amount of alcohol, when it was consumed, and other factors resulted in different manifestations of the disorder. She communicated that every year 160-plus individuals were added to the lifelong disability. She highlighted that a 36 percent decrease in the number of individuals born with prenatal exposure to alcohol had been witnessed in the division's last review of the prevalence data; almost 50 percent of the decrease was among the Alaska Native population. She observed that the Alaska Native health system was doing an excellent job screening women early on for alcohol use. The division did not know whether the decrease was a trend and was currently working on new surveillance data. She noted that a long-term estimate could be done and added that a significant number of people were impacted.

Co-Chair Stoltze stated that the disorder was not curable. Ms. Casto answered that the disorder was life-long, but early diagnosis resulted in earlier appropriate intervention and support that could improve an individual's lifetime outcome. She expounded that if a person entered the correctional system at the age of 18 or 19 and was diagnosed, the appropriate accommodations could be provided in order to improve their future success.

[9:53:18 AM](#)

Co-Chair Thomas surmised that there would be a cost associated with accommodations provided after an individual is diagnosed.

Co-Chair Stoltze remarked that additionally there would be a mandate under the Alaska Mental Health Trust Authority and increased responsibility.

Co-Chair Thomas asked whether there was an existing cost. Ms. Casto answered in the affirmative. She communicated that the individuals were being served somewhere in the system because they struggled throughout their lives and frequently ended up in the juvenile justice and foster care systems. The philosophy was to improve the diagnosis system and the training of service providers in order to serve individuals better in the long-run and to increase efficiencies and cost savings.

Representative Joule thanked Ms. Casto for her continued efforts related to FASD. He observed that there were costs and cost savings. He stated that there were costs when affected individuals began school, but it helped the teachers and others to know ahead of time. He discussed former Senator John Binkley who had tried to get warning labels and signs posted in bars and liquor stores. He pointed out that many locations did not have diagnostic teams. He added that once individuals entered the system (corrections or otherwise) it helped bring focus to the issue.

[9:55:52 AM](#)

Co-Chair Stoltze thanked Ms. Casto and Mr. Jeffrey for their testimony and time. Mr. Jeffery thanked the committee and noted that the issue was very personal.

DAVE FLEURANT, EXECUTIVE DIRECTOR, DISABILITY LAW CENTER OF ALASKA (via teleconference), vocalized support for the legislation. He explained that the bill would impact the center in two areas. First, the center did a significant amount of special education advocacy and there was currently a national dynamic that was referred to as the school-to-prison pipeline where youths were disciplined through a referral to the criminal justice system (special education could go through the age of 22). He believed the bill would allow the system to divert kids and young adults away from the criminal justice system to a structured setting to prevent the revolving door that was common for people with FASD. Second, the center was involved with individuals with FASD within the prison system. The center observed that impairments that brought individuals into conflict with the law (e.g. poor executive functioning, memory problems, and impaired judgment) made them very susceptible to victimization in the prison system. He believed keeping affected individuals out of the prison system and connected with support services as much as possible would benefit the individuals and society as a whole.

10:00:15 AM

TRISH SMITH, DIRECTOR, PREVENTION AND INTERVENTION SERVICES, VOLUNTEERS OF AMERICA (via teleconference), spoke in support of the legislation. She participated in the Anchorage Wellness Court and observed that individuals who may be successful in court began to struggle later and had to return to jail or were no longer involved in prevention services. She believed the bill would increase options to help individuals succeed throughout Alaska.

JEANNE GERHARDT-CYRUS, SELF, KIANA (via teleconference), spoke in support of the legislation. She was a parent of an individual with FAS who was in the criminal justice system. She believed the bill would provide cost savings and that it would be better for society and affected individuals. She shared that her son had been a contributing member of society when there had been services in place such as assisted living and mentors. Without the services he had repeatedly gone back to jail and had learned how to function in prison, but he had not learned how to be a better citizen. She believed providing support and teaching skills early on would help individuals and the broader society.

10:03:42 AM

KATE BURKHART, EXECUTIVE DIRECTOR, ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, expressed support for the legislation. She communicated that the bill was the result of a long and thoughtful process; the sponsor had worked with the Court System, the Department of Law, the Public Defender Office, service providers, and advocates on behalf of people who experienced FASD, in order to devise a balance between the interest of justice and public safety with the need to provide more equitable treatment to people with a disability that was not currently covered by statute.

Co-Chair Stoltze CLOSED public testimony.

Co-Chair Stoltze asked the Departments of Corrections, Law, and Public Safety to provide comments and their positions on the legislation.

LESLIE HOUSTON, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF CORRECTIONS (DOC), pointed to the department's zero fiscal note and indicated that the department had a neutral position on the bill. She referred to prior testimony that pointed to the high number of individuals with FAS in the prison system and communicated that it was not possible to verify the actual number because screening had not been conducted. She believed there would be a shift in the cost to the supervised release of inmates if the bill's mitigating factor shortened sentences.

Co-Chair Stoltze asked whether the mitigating factor would be beneficial to DOC. Ms. Houston replied that she could not provide an opinion on the bill, but believed it would be helpful for individuals inflicted with the disorder.

ANNE CARPENETI, ASSISTANT ATTORNEY GENERAL, LEGAL SERVICES SECTION-JUNEAU, CRIMINAL DIVISION, DEPARTMENT OF LAW (DOL), referenced the department's indeterminate fiscal note. The department had a neutral stance on the bill. She did not disagree with many of the items that had been listed in support of the legislation, but DOL believed there would be an increase in the number of hearings at sentencing for people who had not been diagnosed; once individuals had

been diagnosed there would be litigation concerning the effect the diagnosis would have on individual cases.

Co-Chair Stoltze asked whether the bill would hinder the pursuit of justice. Ms. Carpeneti responded in the negative. She elaborated that the bill would reduce sentences for applicable individuals. She noted that services would then be needed to help the individuals, but she did not believe it would be more expensive than a day in jail.

KELLY HOWELL, LEGISLATIVE LIAISON, DEPARTMENT OF PUBLIC SAFETY (DPS), relayed that DPS had a neutral position on the bill; however, based on testimony supporting the legislation, DPS believed it would be beneficial to individuals inflicted with FASD and that it would hopefully relieve potential recidivism of the individuals.

[10:09:11 AM](#)

Representative Wilson asked whether the departments did not believe the legislation would produce enough positive outcomes to warrant an opinion other than neutral.

Ms. Carpeneti replied that she had no reason to disagree with the comments that had been made by prior testimony, but DOL had not taken a position on the bill.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, pointed to earlier questions related to the number of individuals the mitigating factor would apply to; the Court System estimated that the number would not be large because the majority of felony cases were resolved with plea bargains instead of trials. She elaborated that mitigating and aggravating factors only came into play after a trial with a guilty verdict during sentencing. Out of approximately 6,500 felony charges the prior year, there had been 177 trials with 146 guilty verdicts. She explained that a significant portion of the guilty verdicts would not apply under the mitigating factor because they were crimes against people or arson in the first degree, which were specifically excluded. She did not currently have the detail from the prior year related to the number of cases the mitigator would apply to.

Co-Chair Stoltze asked for verification that the bill did not provide a court-rule change. Ms. Meade responded in the

affirmative. She expounded that at the sentencing hearing a defendant tried to prove through clear and convincing evidence that a mitigating factor would apply. There was often a dispute about whether a mitigating factor applied; the court anticipated that the hearings would be handled in the same way as the other existing 19 mitigating factors.

Co-Chair Stoltze asked whether the courts would view the mitigating factor as an expansion of judicial discretion or as a legislative directive on a specific statute. Ms. Meade responded that mitigating factors were seen as an expansion of discretion. Related to sentencing, the court had the ability to "go up to half of the bottom of the presumptive range if the range was four years and above," which gave the court some movement area if the factor was proven by clear and convincing evidence.

Co-Chair Stoltze asked whether the department had a position on expanding judicial discretion. Ms. Meade replied that the department did not have a position on the bill.

Co-Chair Stoltze commented on the chief justice's testimony and asked whether he had spoken on behalf of the court. Ms. Meade responded in the affirmative. Co-Chair Stoltze surmised that the chief justice had indirectly endorsed the bill. Ms. Meade declined to answer the question. She added that more discretion was typically viewed by the judge as helpful. She discussed the department's zero fiscal note. She observed that there may be some increase in the number of sentencing hearings or in their length, but the department anticipated that the number would not be high and that the hearings would be handled in the normal course, which would not increase costs.

Vice-chair Fairclough questioned how traumatic brain injury would be addressed under the other mitigating factors. She wondered whether traumatic brain injuries would be taken into account for military servicepersons and other who committed crimes.

Ms. Meade replied that there was currently a mitigating factor (listed on page 3, line 12 of the bill) that enabled defendants to attempt to prove that they had committed the offense while suffering from a mental disease or defect. She continued that the item was broadly defined and that it was not clear whether FASD was covered. Defendants could

attempt to prove that PTSD or other impairments qualified as a mental disease or defect under the existing mitigating factor.

10:17:44 AM

Co-Chair Stoltze asked whether the Department of Administration anticipated any fiscal impact from the legislation.

QUINLAN STEINER, DIRECTOR, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION (via teleconference) answered that he did not anticipate that the bill would have a significant fiscal impact. He remarked that there were not consistent rulings across the state related to whether or not current statute applied to FASD. He believed the mitigating factor would make the ruling clearer, but would not increase or decrease existing litigation.

Co-Chair Stoltze asked whether the bill was good public policy and if it was fair. Mr. Steiner believed the bill was more fair than current policy. He stated that even if a judge did not mitigate a sentence they may make a finding under the mitigator that could serve as the framework for the supervision and sentencing of afflicted individuals, which could ultimately benefit the client in the long-term.

Co-Chair Stoltze wondered whether the mitigating factor would be more "just" than current statute. Mr. Steiner answered that recognizing the conditions that impacted people's conduct and providing a framework for making services available would help affected individuals and the system as a whole.

Co-Chair Stoltze made a clarifying remark related to the fiscal notes.

Vice-chair Fairclough MOVED to report CSSB 151(JUD) out of committee with individual recommendations and the accompanying fiscal notes. There being NO OBJECTION, it was so ordered.

CSSB 151(JUD) was REPORTED out of committee with a "do pass" recommendation and with three previously published zero notes: FN2 (CRT), FN3 (ADM), FN4 (COR); and one previously published indeterminate note: FN5 (LAW).

#sb140

CS FOR SENATE BILL NO. 140(JUD)

"An Act classifying certain substances as schedule IIA controlled substances and providing penalties relating to those substances; and providing for an effective date."

CSSB 140(JUD) was scheduled but not heard.

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ADJOURNMENT

10:21:08 AM

The meeting was adjourned at 10:21 a.m.