ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 10, 2012
1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Bill Wielechowski, Vice Chair
Senator Joe Paskvan
Senator Lesil McGuire
Senator John Coghill

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 135
"An Act relating to the rights of crime victims; relating to the duties of prosecuting attorneys; and amending Rule 45, Alaska Rules of Criminal Procedure."

- MOVED CSSB 135(JUD) OUT OF COMMITTEE

SENATE BILL NO. 140
"An Act classifying certain substances as schedule IIA controlled substances; and providing for an effective date."

- MOVED CSSB 140(JUD) OUT OF COMMITTEE

SENATE BILL NO. 186
"An Act relating to persons found guilty but mentally ill; relating to sentencing procedures for factors that may increase the presumptive range or affect mandatory parole eligibility; relating to the granting of probation; relating to procedures for finding aggravating factors at sentencing; amending Rule 32.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 140
SHORT TITLE: CATHINONE BATH SALTS

SPONSOR(s): SENATOR(s) MEYER, GIESSEL, OLSON

01/17/12	(S)	PREFILE RELEASED 1/6/12
01/17/12	(S)	READ THE FIRST TIME - REFERRALS
01/17/12	(S)	JUD, FIN
01/27/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/27/12	(S)	Heard & Held
01/27/12	(S)	MINUTE(JUD)
02/10/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 135
SHORT TITLE: CONTINUANCES IN CRIMINAL TRIALS; VICTIMS
SPONSOR(s): SENATOR(s) FRENCH

01/17/12	(S)	PREFILE RELEASED 1/6/12
01/17/12	(S)	READ THE FIRST TIME - REFERRALS
01/17/12	(S)	JUD, FIN
01/27/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
01/27/12	(S)	Heard & Held
01/27/12	(S)	MINUTE(JUD)
02/10/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 186
SHORT TITLE: SENTENCING/PROBATION/MENTALLY ILL
SPONSOR(s): JUDICIARY

02/01/12	(S)	READ THE FIRST TIME - REFERRALS
02/01/12	(S)	JUD, FIN
02/10/12	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

LILA HOBBS, Staff
Senator Hollis French
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Described the changes in CSSB 135, version M, on behalf of the sponsor.

ANNE CARPENETI, Assistant Attorney General
Criminal Division
Department of Law
Juneau, AK
POSITION STATEMENT: Stated support for the changes in CSSB 135, version M, and introduced SB 186.

CHRISTINE MARASIGAN, Staff

Senator Kevin Meyer
Alaska State Legislature
Juneau, AK
POSITION STATEMENT: Described the changes to CSSB 140, version I, on behalf of the sponsor.

DOUGLAS MOODY, Deputy Director
Public Defender Agency
Department of Administration
Anchorage, AK
POSITION STATEMENT: Testified in opposition to SB 186.

ACTION NARRATIVE

1:33:33 PM
CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Coghill, Paskvan, McGuire, and Chair French. Senator Wielechowski arrived soon thereafter.

SB 135-CONTINUANCES IN CRIMINAL TRIALS; VICTIMS

1:33:59 PM
CHAIR FRENCH announced the consideration of SB 135 and asked for a motion to adopt the work draft committee substitute (CS).

SENATOR PASKVAN moved to bring CSSB 135, labeled 27-LS0966\M, before the committee for purposes of discussion.

CHAIR FRENCH announced that, without objection, version M was before the committee.

1:34:35 PM
LILA HOBBS, staff to Senator Hollis French, said the CS for SB 135 makes four minor changes.

1) Section 2 amends AS 12.61.015(a)(5) on page 4, lines 12-15, providing a definition of "substantially delay" in the instances of misdemeanor, felony and an appeal. For a misdemeanor, it would be a delay of one month or longer; for a felony, it would be a delay of two months or longer; and for an appeal, it would be a delay of six months or longer.

2) Section 3, page 4, line 24, removes the word "only."

3) Section 3, page 4, line 25, adds the terms "if known" to account for the instances where the victim cannot be contacted

or does not wish to participate. This is to avoid inadvertent delay when trying to send notice of a request to a victim who does not want notifications.

4) Section 4, page 5, line 4, adds the terms "if known" to account for the aforementioned circumstances.

1:36:29 PM
ANNE CARPENETI, Assistant Attorney General representing the Criminal Division, Department of Law (DOL), related that Nancy Meade with the Alaska Court System suggested the changes to Rule 45. The DOL agrees that adding the terms "if known" will avoid delay in instances where the victim can't be contacted. She expressed appreciation that DOL's suggestion to provide guidance as to what constitutes "substantial delay" was incorporated in the bill.

CHAIR FRENCH commented that the suggestions put more teeth into giving consideration to victims' wishes when continuances are granted.

1:37:55 PM
SENATOR PASKVAN moved to report CS for SB 135, version M, from committee with individual recommendations and attached zero and indeterminate fiscal notes.

CHAIR FRENCH announced that, without objection, CSSB 135(JUD) moved from the Senate Judiciary Standing Committee.

At ease from 1:38 p.m. to 1:39 p.m.

SB 140-CATHINONE BATH SALTS

1:39:34 PM
CHAIR FRENCH announced the consideration of SB 140 and asked for a motion to adopt the work draft committee substitute (CS).

SENATOR WIELECHOWSKI moved to adopt CSSB 140, labeled 27-LS1032\I, as the working document.

CHAIR FRENCH announced that, without objection, version I was before the committee.

1:40:09 PM
CHRISTINE MARASIGAN, staff to Senator Kevin Meyer, said the CS makes several changes relating to the penalties associated with cathinone bath salts and addresses a drafting issue.

The new Section 1 basically keeps the substances in Schedule IIA. Sales, distribution, manufacture, and possession of 500 milligrams or more of the substances remain classified as misconduct involving a controlled substance in the fourth degree, a class C felony.

In the new Section 2, possession of less than 500 milligrams of the substances is classified as misconduct involving a controlled substance in the fifth degree, a class A misdemeanor. This amount is about the size of a sugar packet.

In Section 3, the drafters made a technical amendment to transfer methcathinone from the list of Schedule IA substances into Schedule II so that all the cathinone-related substances will be listed in the same schedule.

Section 4 repeals the methcathinone listing in Schedule 1.

CHAIR FRENCH asked which of the substances listed in Section 3 on page 5 was transferred from Schedule IA.

MS. MARASIGAN replied it's the one listed in paragraph (12) on lines 10-11. She noted that she had correspondence from Orin Dym with the Crime Lab confirming that "methcathinone" and "methylamino-1-phenylpropan-1-one" are the same substance.

CHAIR FRENCH summarized that the CS keeps manufacturing, delivering and possession of large amounts of the drug as a felony, and reduces to a misdemeanor the possession of small amounts.

1:42:12 PM
SENATOR PASKVAN asked the approximate dollar value of 500 milligrams of these substances.

MS. MARASIGAN replied that she understands that a small packet costs about $40.

CHAIR FRENCH summarized that a $40, single dose, would be a misdemeanor under the bill, but any larger amount would be a felony.

MS. MARASIGAN agreed.

CHAIR FRENCH commented on the "Spice" drug bill that passed last year, and observed that this bill provides a fairly substantial

penalty for possession of a very small amount of bath salts. He asked the will of the committee.

1:43:54 PM
SENATOR WIELECHOWSKI moved to report CS for SB 140 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection CSSB 140(JUD) moved from the Senate Judiciary Standing Committee.

1:44:18 PM
At ease

SB 186-SENTENCING/PROBATION/MENTALLY ILL

1:45:33 PM
CHAIR FRENCH announced the consideration of SB 186, a committee bill sponsored by request of the administration.

1:45:56 PM
ANNE CARPENETI, Assistant Attorney General representing the Criminal Division, Department of Law (DOL), thanked the committee for sponsoring SB 186. She provided a sectional analysis.

Section 1 clarifies in statute that for a person to be found guilty but mentally ill (GBMI), the fact finder must prove beyond a reasonable doubt that when the defendant committed the crime he or she was guilty but mentally ill. This major change was required by the U.S. Supreme Court decisions, Apprendi v. New Jersey in 2000 and Blakely v. Washington in 2004. The court held that the Sixth Amendment right to a jury trial requires that a factual finding that would increase the statutory maximum penalty for an offense must be made by a jury, unless waived by the defendant, by proof beyond a reasonable doubt.

In 2005, the Legislature made major changes to Alaska's presumptive sentencing laws. Since then, a court of appeals decision said that a person who is guilty but mentally ill does not qualify for parole (sometimes called good time release), including mandatory parole, until the defendant's health has improved to the point that he or she can no longer be found a danger. Because a person who is found

GBMI may not qualify for mandatory parole, the factual decisions addressing whether the defendant is GBMI must be made by a jury, unless waived by the defendant, and proven beyond a reasonable doubt.

Section 2 makes changes to the procedure for addressing the GBMI issue as articulated in Apprendi and Blakely. It also adopts a procedure for giving notice 10 days before trial if the party intends to raise the issue after trial.

Section 3 clarifies that the jury must determine whether the defendant is guilty but mentally ill, unless the defendant waives the right. The court then determines the sentence.

Section 4 recognizes that that current law has provisions that require a different standard of proof than by a preponderance of the evidence. This clarifies the importance of looking at the specific law.

Sections 5 and 6 and the conforming Sections 10 and 11 add provisions to ensure that neither the prosecuting authority nor the defendant can, without mutual agreement, change the terms of a Rule 11, Alaska Rules of Criminal Procedure, agreement after it has been imposed. This would effectively overrule the court of appeals decision in State v. Henry. Judges, in sentencing a person who has violated a condition of probation, must still apply the Chaney criteria in deciding how much, if any, of the suspended period of incarceration should be imposed. However, the court may not reduce the period of probation or the period of suspended time (less the time imposed for the probation violation) without agreement from the prosecuting authority.

MS. CARPENETI explained that in State v. Henry, Mr. Henry was charged with felony drunk driving. He was also charged with driving with a revoked or suspended operator's license, failure to stop at the direction of a police officer and driving without motor vehicle insurance. Mr. Henry and the state entered into a Rule 11 plea agreement and the state dismissed the latter three charges. The defendant agreed to plead guilty to felony drunk driving and to the sentence, which was 24 months in prison with 19 months suspended.

Mr. Henry specifically agreed to serve 5 months in jail, pay a mandatory fine and probation for a period of 3 years. One of the conditions of probation was that he would not consume alcohol. With "good time" or mandatory parole he probably served 3.5 months in jail and was released. Within 2 weeks of his release he was found in possession of alcohol, and his blood alcohol concentration (BAC) was .245 percent.

At the hearing the state filed a motion to revoke probation, and the defendant told the court he no longer wanted to be on probation. Over the state's objection, the court sentenced Mr. Henry to 15 months in jail and eliminated the rest of the probationary period. The court reasoned it should be able to use the Chaney criteria in determining how much time should be imposed on a petition to revoke probation. The Department of Law agrees with that, but it does not agree with the decision of the court to unilaterally end probation and reduce the period of suspended time. The state had good reasons to enter into the plea bargain and both the defense and the judge agreed.

1:57:46 PM
Section 7 amends the sentencing provisions for murder in the first degree, changing the burden of proof that the defendant subjected the victim to substantial physical torture or that the defendant was a peace officer who used the officer's authority to facilitate the murder. Current statute provides for a clear and convincing burden on the prosecution, but under the Apprendi and Blakely decisions, the state must prove these factors beyond a reasonable doubt.

Section 8 codifies the requirements of Apprendi and Blakely. If a sentence is imposed on a defendant that would preclude the person from receiving good time, the jury (unless waived by the defendant) must determine the factual issue beyond a reasonable doubt. Additionally, if a court is sentencing a person who is subject to a presumptive range and the prosecution seeks to increase the range by proof of certain aggravating factors, the jury (unless waived by the defendant) must determine the factual issue by proof beyond a reasonable doubt.

Section 9 addresses aggravating factors that have caused confusion in the courts. The first deals with the aggravating factor of the person's conduct was the most serious in the definition of the offense. This specifies that the factual finding of what the defendant's conduct was must be submitted to the jury (unless waived by the defendant), and proven beyond a reasonable doubt. But the legal decision about whether or not that conduct was the most serious in the definition of the offense is left to the judge. This codifies that provision.

2:00:35 PM
CHAIR FRENCH posed a hypothetical situation of assault in the first degree and asked how the jury would make a decision and how and when the judge would make a decision.

MS. CARPENETI clarified that these provisions allow a judge to make decisions on the procedure in each individual case. She continued to explain that the prosecution would give notice that it planned to claim an aggravating factor. After the jury returned a guilty verdict, the prosecution would ask the court to consider making specific findings on the conduct of the defendant. For example, if a person beat another person nearly to death and caused permanent brain damage, the prosecution would ask the fact finder to make that determination. The prosecution would then ask the judge to conclude that based on those facts that was the most serious in the definition of the offense.

CHAIR FRENCH asked if the prosecution would have to tell the grand jury it wanted an indictment on assault in the first degree and that it was among the most serious in this category.

MS. CARPENETI replied it wouldn't be required at that point.

CHAIR FRENCH asked at what point the trial jury gets this decision.

MS. CARPENETI replied the jury would get the evidence for the underlying charge. If the prosecution then asks the

jury to make specific findings, it would be based on the defendant's conduct and how it affected the victim.

CHAIR FRENCH asked if the jury would fill out an additional verdict form and decide if that conduct was the most serious.

MS. CARPENETI clarified that the jury would only make the factual findings; the judge would make the decision about whether or not that conduct was the most serious.

CHAIR FRENCH asked what factual finding a jury would make in an assault case.

MS. CARPENETI replied it might be that the harm paralyzed the victim or caused whole life injuries from which the victim would never recover.

CHAIR FRENCH said it is not a defined element in criminal law; it's an aspect of proving that it was a serious assault.

MS. CARPENETI agreed.

2:04:13 PM
SENATOR PASKVAN asked what the problem was in the Henry case.

MS. CARPENETI replied the problem was that the judge unilaterally eliminated the rest of Mr. Henry's probation. Sometimes the prosecution will agree to a change of conditions, but not the Henry case. He was a felony drunk driver and a danger to the public.

SENATOR PASKVAN asked what sentence would likely be imposed for violating probation by consuming alcohol.

MS. CARPENETI offered to follow up with the information.

2:07:11 PM
CHAIR FRENCH opined that the sentence would probably be two months, but he'd also have 17 months suspended hanging over his head for the next three years.

SENATOR MCGUIRE stated support for the provision and asked if the committee could spend some time looking at success rates for alcohol rehabilitation programs in prison and when people are on probation.

2:10:25 PM
MS. CARPENETI offered to find out what treatment program Mr. Henry was following.

SENATOR MCGUIRE expressed a desire to look at the programs available to someone on probation and if someone can be required to go through alcohol treatment while in prison.

MS. CARPENETI offered to find out all the conditions of probation in that case.

2:12:00 PM
SENATOR COGHILL asked for additional explanation of the aggravating factor in Section 9.

MS. CARPENETI explained that at trial the state is generally required to prove every element of the crime charged beyond a reasonable doubt. When there is a determination of guilt, the prosecution could submit additional evidence to the trial jury during the sentencing phase. If the judge wants to sentence above the mandatory sentencing range, aggravating factors have to be proven. If the judge wants to sentence below the mandatory sentencing range, the defense needs to prove mitigating factors.

SENATOR COGHILL asked, under Blakely, if it was the jury's discretion or the court's discretion to present additional evidence before final sentencing.

MS. CARPENETI explained that before both Blakely and Apprendi, a person would be found guilty and there would be a sentencing hearing. The prosecution would file aggravating factors, the defense would file mitigating factors, and there would be a hearing before the judge who would find whether or not the factors were present by clear and convincing evidence. The Blakely decision stopped that and now there are sentencing ranges. To go above or below those ranges, aggravating factors have to be proven beyond a reasonable doubt.

SENATOR COGHILL asked how the jury is involved in that proof.

MS. CARPENETI replied the defendant has a right for the jury to determine factors unless the aggravating factor is a prior conviction, because the jury already decided that. But the jury can decide aggravating factors such as the defendant was particularly cruel or he chose the victim based on a vulnerable factor.

2:16:42 PM
SENATOR PASKVAN said he assumes that the same jury that found the defendant guilty would have to make a determination on the additional fact, and it would use the standard of beyond a reasonable doubt.

MS. CARPENETI agreed and reiterated that the prosecution would have to give notice before trial that it was going to seek an additional charge after a guilty finding. Responding to further questions, she confirmed that the aggravator [under AS 12.55.155(c)(10)] caused particular difficulty and DOL wanted to codify what it thought was the law in this area.

2:19:32 PM
SENATOR PASKVAN asked if a second trial jury could be called to address the question of an aggravator if the prosecution had not raised the issue until after a guilty verdict and the initial trial jury was dismissed.

MS. CARPENETI offered her belief that if notice wasn't given initially, the prosecution probably lost the opportunity.

SENATOR PASKVAN summarized that before the jury makes a determination as to guilt or innocence on the initial charge, the prosecution has to make a determination as to whether or not to try to prove an aggravator.

MS. CARPENETI agreed.

SENATOR PASKVAN continued that if the jury finds an aggravating factor, the judge can impose a sentence subject to a presumptive range.

MS. CARPENETI confirmed that a finding of an aggravating factor allows the judge to impose the maximum term for that offense.

2:21:12 PM
CHAIR FRENCH commented that the discussion reminded him of his initial irritation with the Blakely decision, which was that it needlessly tied the hands of prosecutors and judges.

MS. CARPENETI agreed that it was discouraging to the prosecution the judge and probably the defense bar as well.

She said the last aggravating factor that is codified in law is subsection (j) in Section 9 that appears on page 4, line 31. Once one aggravating factor has been determined by law, the judge may impose the maximum term. The prosecution does not have to go through that procedure for other aggravating factors. She noted the sectional analysis cites Reandeau v. State.

CHAIR FRENCH asked Mr. Moody to provide his perspective of SB 186.

2:22:58 PM

DOUGLAS MOODY, Deputy Director, Public Defender Agency, Department of Administration, Anchorage, AK, stated disagreement with Ms. Carpeneti's assessment of Section 9, and said he believes that it will leave the statute open to attack under federal constitutional law. Blakely basically made these aggravating factors an element of the offense that has to be proven to a jury. The state wants the jury to decide the facts and the judge to decide whether it's the most serious. He opined that juries are quite capable of making these decisions, and highlighted that the U.S. Supreme Court has been rather consistent in its support of Blakely. That is not likely to change anytime soon.

2:26:40 PM

SENATOR PASKVAN asked if one or both subsections in Section 9 present a constitutional problem.

MR. MOODY replied both present a problem. Subsection (i) is directly in conflict with Blakely and subsection (j) contravenes the Sixth Amendment right to a trial by a jury when a judge can weigh an aggravating factor without a jury.

2:30:57 PM
CHAIR FRENCH referred to Section 9, subsection (i), and asked what the current procedure is for proving the most serious aggravator in an assault trial.

MR. MOODY acknowledged that he hadn't been a felony trial lawyer for a long time, and therefore could not immediately provide an answer.

CHAIR FRENCH expressed interest in knowing how the state was doing it and held the question in abeyance for the time being.

SENATOR COGHILL asked, at some point, for a discussion of the principle of the constitutional issue in Section 9.

SENATOR PASKVAN asked, at some point, for clarification of the meaning of the last sentence in Section 9 subsection (j) on page 5, lines 2-5.

CHAIR FRENCH asked Mr. Moody the rationale for his belief that there were constitutional issues in Section 9.

2:33:58 PM
MR. MOODY explained that the basic rationale is the federal constitutional right to a jury trial, and that the court has said that part of that right is the right to have every element of the offense proven to the jury. If a factor changes the maximum sentence that could be imposed by the judge, then it's considered an element of the offense. The right to a jury trial means that element must be decided by the jury.

SENATOR COGHILL summarized that it's the right to have a jury discern the elements of a crime and its egregiousness versus the judge's sentencing discretion.

CHAIR FRENCH added that it ensures that the jury stands between the defendant and the judge's sentence and considers each aspect.

SENATOR PASKVAN summarized his understanding and Senator French agreed with his assessment.

CHAIR FRENCH said the grief that many people felt with the Blakely decision was that the judge can't impose the maximum penalty for assault in the first degree unless aggravators are proven and the aggravators now have to go to a jury.

He asked Mr. Moody to continue his discussion of the bill.

2:36:35 PM
MR. MOODY turned to Section 6, and highlighted that it was not a new decision in State v. Henry to give trial judges the discretion to terminate a defendant's probation early and impose some of the original sentence. That was decided in the 1997 DeMario case that said trial courts have the duty to reevaluate a sentence on the original conduct and the conduct on probation (including an unwillingness to do probation) and impose a fair and just sentence in light of the Chaney criteria. The potential problem is that this strips the court of the discretion to review the sentence in entirety.

2:44:20 PM
CHAIR FRENCH said he too had concerns with the discretion issue, but this was a bargain that was struck knowingly on both sides, and it's perhaps unfair to deprive the state of what it felt it bargained for.

SENATOR PASKVAN asked where the duty to reevaluate is found because it didn't appear to be before the committee.

MR. MOODY cited DeMario v. State. In 1997 the court of appeals said:

> It is well settled that when the trial court revokes probation, it may not automatically impose all previously suspended time. Instead, the court must carefully reevaluate all currently available information in light of the Chaney criteria. The court's sentence must be based on the totality of the circumstances, including the original offense, the offender, and the offender's intervening conduct. These sentencing principles apply with equal force to situations in which the defendant refuses probation; The defendant's refusal of a probationary term cannot, in itself, be given determinative consideration.

MR. MOODY stated that this has been case law for a long time in this state.

SENATOR PASKVAN asked if the question is can the Legislature statutorily change that.

CHAIR FRENCH responded that the judge is always free to consider the totality of the circumstances and impose some of the suspended time. But the judge cannot eliminate the suspended time that was imposed initially saying it was too much.

MR. MOODY confirmed that the provision says the judge cannot do that, and then pointed out that the DeMario case was the background law under which all Rule 11 agreements were entered into, including the one that formed the basis of the Henry decision. It says that when a person comes before the court on a revocation, the court can reevaluate the sentence in totality.

Referring to an earlier statement that the parties entered into a bargain, he said the problem is that it's not an equal bargaining position. The defendant is bargaining to get out of jail and, in general, will take more jail time than the defense would recommend or a court would impose if it gets him or her out immediately. It is therefore appropriate to have a judge reevaluate the fairness of the entire sentence.

CHAIR FRENCH thanked Mr. Moody for offering his views on the bill.

He asked Senator Coghill to discuss his idea for an amendment conceptually before offering it formally.

2:50:29 PM
SENATOR COGHILL explained that the proposed amendment relates to property crimes and the limits on the value of the property or service. The amendment seeks to adjust values that were established in the 1970s to levels more appropriate for the new century. For example, someone who is charged with a $500 felony theft is in court with people who have done very serious personal damage to another person. When these values were established, $500 would probably have been enough to buy a fleet of bicycles, whereas today it would probably buy just one. The question is whether that level of theft should be a felony, and "I don't think so," he said.

He offered to follow up with a written summary of the proposal, but it would basically increase property crime limits from $50 to $250 and $500 to $1,500.

CHAIR FRENCH observed that this adjustment would touch a lot of different parts of the law. He asked when these numbers were adopted and last adjusted.

2:53:10 PM
SENATOR COGHILL replied they have not been adjusted since they were adopted in 1978.

CHAIR FRENCH asked where the numbers would be if they were inflation adjusted.

SENATOR COGHILL replied they'd be considerable higher than what he is suggesting; the $1,500 figure would probably be closer to $2,500.

CHAIR FRENCH asked if this was aimed at just the misdemeanor/felony cutoff or if it also focuses on class B felonies and class A felonies.

SENATOR COGHILL responded that the primary purpose was to adjust the misdemeanor/felony cutoff. "I don't want to look soft on crime," but the reality is that some of these things do not merit what is now a felony charge, he opined.

CHAIR FRENCH observed that there were good examples on page 4 relating to issuing a bad check and the fraudulent use of an access device. He asked what conversations he'd had with law enforcement, the Department of Law (DOL) and others.

2:55:25 PM
SENATOR COGHILL said DOL might not be an advocate, but there wasn't any pushback. There has been some concern regarding vulnerable adults and seniors who have been taken advantage of, but there should be some way of dealing with that other than making that conduct a felony. He said the biggest problem relates to plea bargaining that was discussed earlier, and that a felony hammer is a nice bargaining tool. Property crimes is one area that the state uses to bargain from a felony to a misdemeanor.

2:56:44 PM
CHAIR FRENCH related that Senator Coghill brought the proposal forward at his encouragement with the knowledge that it would be controversial. On one hand, there's the soft on crime argument; on the other hand, more money could have been put into the base student allocation (BSA) today if the state had not had the need to build a $250 million prison.

SENATOR PASKVAN expressed support for the concept, and observed that the ultimate question was at what point a person would be a criminal, but not a felon.

SENATOR WIELECHOWSKI asked to hear from DOL about the number of people this would have impacted in the last couple of years.

MS. CARPENETI offered to try to get the numbers.

2:58:19 PM
SENATOR FRENCH said he'd look at what other states do and suggested that perhaps the court system could offer

anecdotal information about the amounts of the last three convictions for felony theft.

SB 186 was held in committee.

2:58:45 PM
There being no further business to come before the committee, Chair French adjourned the Senate Judiciary Standing Committee hearing at 2:58 p.m.