SENATE FINANCE COMMITTEE
March 18, 2013
9:13 a.m.

9:13:34 AM

CALL TO ORDER

Co-Chair Meyer called the Senate Finance Committee meeting to order at 9:13 a.m.

MEMBERS PRESENT

Senator Pete Kelly, Co-Chair
Senator Kevin Meyer, Co-Chair
Senator Anna Fairclough, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Donny Olson

MEMBERS ABSENT

Senator Lyman Hoffman

ALSO PRESENT

Senator Fred Dyson; Chuck Kopp, Staff, Senator Fred Dyson; Forrest Dunbar, Liman Fellow; Kris Sell, Vice-President, Alaska Peace Officers Association; Lee Phelps, Self; Kate Burkhart, Executive Director, Advisory Board on Alcoholism and Drug Abuse; Richard Svobodny, Self.

PRESENT VIA TELECONFERENCE

Carmen Gutierrez, Co-Chair, Alaska Prisoner Reentry Task Force, Anchorage; Seth McMillan, Self, Anchorage; Walt Monegan, Alaska Native Justice Center, Anchorage; Rick Allen, Director, Office of Public Advocacy, Anchorage; Quinlan Steiner, Self, Anchorage.

SUMMARY

SB 22 CRIMES; VICTIMS; CHILD ABUSE AND NEGLECT

SB 22 was SCHEDULED but not HEARD.

SB 56 RECLASSIFYING CERTAIN DRUG OFFENSES

SB 56 was HEARD and HELD in committee for further consideration.

Co-Chair Meyer noted that Senator Hoffman had an excused absence for the day.

#sb56
SENATE BILL NO. 56

"An Act relating to certain crimes involving controlled substances; and providing for an effective date."

9:14:36 AM

SENATOR FRED DYSON, offered that the state had a propensity to over criminalize offenses during the past few decades. He shared that his office was undergoing an effort to get "smart on crime" and stated that the legislation was the first step in that effort. He pointed out that the legislation reclassified crimes involving small amounts of drugs, in which there was no harm and no intent to distribute, from a Class C felony to Class A misdemeanor. He related the growing prison populations in Alaska over the last 12 years and shared that currently, 60 percent of the population in the state's corrections institutions were non-violent offenders. He remarked that the Goose Creek Prison had a cost of $250 million to the state and pointed out that the Department of Corrections (DOC) predicted that if the rate of incarceration did not change, another prison the same size would need to be built in 7 years. He reported that Legislative Research Services had indicated that the bill would avoid 10s of millions of dollars in costs every year.

CHUCK KOPP, STAFF, SENATOR FRED DYSON, introduced himself and Mr. Dunbar. He related that Mr. Dunbar was a recent graduate of Yale Law School who had helped with the research on the bill as part of a Liman Fellowship. He related that the current cost of the state's drug policy was not sustainable and emphasized that the bill would not decriminalize anything that was currently in the law. He stated that it would still be against the law to possess any amount of a Schedule IA or IIA drug. He shared that the essence of SB 56 was to set a threshold for what was a

felony amount and offered that that without establishing a threshold, the state was not being conscious of the total impact to the system. He relayed that corrections and independent researchers had shown that by classifying drug possession for small, non-distributable amounts as a felony, the state was paying $54,000 per year for each person that was in prison for that long on a felony charge. He stated that the bill treated drug possession similar to the current treatment of DUIs and explained that the first two possessions would be misdemeanors, while the third violation would be a felony. He stated that the legislation would eliminate the felony label for the first time offenders. He expounded that a felony label prevented employment prospects, affordable housing, and professional licensing, which had been determined to be variables that were strongly related with recidivism and domestic violence.

Mr. Kopp spoke to the sectional analysis of the bill (copy of file).

Section 1

1. Amends the criminal statute AS 11.71.040 (Misconduct Involving Controlled Substance in the Fourth Degree), raising the quantity of Schedule IA or IIA controlled substance needed to be found in an offender’s possession that would precipitate a felony charge from “any amount” to a quantity that implies distribution.

2. Establishes that the quantity possessed that implies distribution and opens an offender to a felony charge is 15 or more tablets, ampules, or syrettes when the Schedule IA or IIA is found in such a form.

3. Further establishes that the quantity possessed that implies distribution and opens an offender to a felony charge is 3 grams when the Schedule IA or IIA substance is in the form of a preparation, compound, or mixture.

4. Creates a carve out for the substances heroin and Lysergic acid diethylamide (LSD), each of which will be subject to a stricter felony quantity limit: 500 milligrams for heroin and 300 milligrams for LSD.

5. Provides for an “escalating punishment” system wherein a repeat offender found in possession of any amount of Schedule IA or IIA substance may still be prosecuted for Misconduct Involving a Controlled Substance in the Fourth Degree—a Class C Felony—if they have been previously convicted of any drug offense defined in AS 11.71.010 – 11.71.050 in the five years preceding the current offense.

6. Leaves unaffected any provisions of this statute or any other controlled substance statute that empowers law enforcement and prosecutors to charge and convict distributors of controlled substances.

Section 2

1. Provides that offenders found in possession of small quantities of Schedule IA and IIA substances may be prosecuted under AS 11.71.050 (Misconduct Involving a Controlled Substance in the Fifth Degree), a Class A Misdemeanor.

2. Establishes that an offender may be prosecuted of a Misconduct Involving a Controlled Substance in the Fifth Degree if they are found with any amount of a Schedule IA or IIA substance up to the felony limits, above which they are subject to felony convictions under AS.71.040.

3. Establishes the felony limit as 15 tablets, ampules, or syrettes if the substance is found in such a form, or 3 grams if found in a preparation, compound, or mixture.

4. Includes carve outs for heroin and LSD, for which the felony limits will be 500 and 300 milligrams, respectively.

Section 3

1. Establishes that this Act applies to offenses committed on or after the effective date of the Act, except that references to previous convictions in the “escalating punishment” or “three strikes” provisions of Section 1 include convictions occurring before, on, or after the effective date.

Section 4

1. Removes conflicting language related to Bath Salts from the MICS-4 and MICS-5 statute. After the passage of this bill, Bath Salts will be treated as other Schedule IIA controlled substances, with the same felony limits as, for example, methamphetamine.

Section 5

1. Provides for an effective date.

9:22:44 AM

Co-Chair Meyer noted that Co-Chair Kelly and Senator Bishop had joined the committee.

Vice-Chair Fairclough pointed to the bill's effective date and asked how the state would handle people who were already incarcerated if the legislation passed. She inquired if people who were currently incarcerated would be able ask for consideration under the bill and wondered if that would be a good thing. Mr. Kopp replied that they could ask for consideration under the bill, but that the main thing the bill did was that it addressed a future act if a person did have two prior convictions within a five-year period. He expounded that the bill could result in a felony for people that were incarcerated for the third time and that it did incorporate two prior acts. He opined that if the question pertained to whether someone who was convicted under the old law could ask for a felony to be turned into a misdemeanor, then he believed the answer was no. He explained that someone could make a legal argument, but opined that it would not "hold water" because the law would apply going forward.

Vice-Chair Fairclough mentioned the high and escalating costs of incarceration and inquired if there was a reason the state would not want to have mandatory drug counseling or "something else" that would be the responsibility of the previously convicted individual. Mr. Kopp responded that the questions were excellent public-policy questions that needed to be explored.

Vice-Chair Fairclough noted that it had had been said for a number of years that the prisons in Alaska were full and that the state was picking up the costs for people who were

non-violent drug offenders. She wanted to see some discussion in the future regarding the bill's effective date and noted that people could be languishing in prison because of a date versus how the state was viewing that offense in the future.

Co-Chair Meyer noted that the committee would probably hear some options in the future as the bill progressed through the process.

Senator Dunleavy observed that he concurred with Vice-Chair Fairclough. He explained that if there was a way to "reach back" and somehow mitigate "where those folks are now" in order to allow them fall under the bill's concept, it would be something that he would look forward to.

9:25:56 AM

FORREST DUNBAR, LIMAN FELLOW, began a presentation titled "Reclassifying Nonviolent, Small Quantity Possession." (copy on file) He stated that he was on a fellowship that was being hosted by the Office of Public Advocacy (OPA), where he had conducted the research, but stressed that he did not represent OPA, the Department of Administration, or any other executive branch of government.

Mr. Dunbar spoke to slide 2 titled "Reclassification of Drug Possession."

- SB 56 creates an “Escalating Punishment” system, similar to the State’s approach to DUI’s or DV4’s (Domestic Violence in the 4th Degree). Key features:
    - Reclassification of small quantity, nonviolent possession to a misdemeanor
    - “3-strikes” Rule. Repeat offenses= felony.
    - Strict quantity limits; over the limit = implied distribution = felony.
    - No restrictions placed on law enforcement or prosecutors to pursue drug dealers, regardless of quantity (i.e., any evidence of selling drugs = felony).

- This should lead to reductions in:
    - Prison admissions
    - Legal and adjudication costs
    - Low-risk offenders being placed on felony probation
    - Collateral consequences for simple possession offenders
    - Reduction in indirect costs, such as welfare costs
- Significant cost savings while maintaining public safety.

Mr. Dunbar stated that the bill only applied to non-violent, small quantity possession offenses.

Mr. Dunbar addressed slide 3 titled "Alaska's Prison Population Growth." He stated that the graph on the slide was from DOC. He noted that the red line represented the number of prison beds that were available in the state and pointed out the jump in 2012-2013 when Goose Creek Prison had been brought on line. He stated that the blue line, which was the prison population, had been growing at about 3 percent a year, which was more than double the rate of general population growth. He related that in 2013, the lines crossed and that the state would be faced with the prospect of building another prison or exporting Alaskans outside of the state.

Mr. Dunbar discussed slide 4 titled "Drivers of Alaska's Prison Population Growth."

1. Increased admission for Felony Theft in the Second Degree—theft of property valued over $500—and increased sentence lengths associated with these offenses.

2. A 63% rise in prison admission for drug offenders, particularly felony offenders convicted of possession offenses.

>>Addressed by Senator Dyson's SB 56.

3. Increase in Petitions to Revoke Probation (PTRP's) and probation violations.

>>Connected to number of offenders on felony probation; greatly impacted by SB 56.

•Source: DOC Memo, Factors Driving Alaska's Prison Population Growth, at 1 (August 24, 2012).

Mr. Dunbar discussed a 2012 internal memo from DOC and stated that it indicated that there were three primary drivers of the prison population growth, which were displayed on the slide. He stated SB 56 attempted to address the second point on the slide, but that it would also have an impact on the third point because there would be fewer people on felony probation.

Mr. Dunbar spoke to slide 5. He stated that in the last five years, there had been a fairly large increase in the number of charges of Misconduct Involving a Controlled Substance in Fourth Degree (MICS-4), which was a Class C felony. He related that typically a MICS-4 was prosecuted for anyone caught with any quantity of a Schedule IA or IIA drug. He thought that a person could also receive MICS-4 for being caught with a large quantity of Marijuana or having Marijuana on a school ground. He stated that the bill addressed the simple possession offense and left the other portions of MICS-4 untouched. He added that the bill, in no way, impacted the difference Schedules and reported that bath salts would remain a Schedule IIA substance.

9:29:26 AM

Mr. Dunbar discussed slide 6 titled "Collateral Consequences from Small-quantity Drug Felonies."

- First and foremost, barrier to employment:
    - Medicare/Medicaid facilities - federal law
    - Anchorage School District - district policy
    - North Slope - Private HR decision

- Difficulty finding housing
- Inability to qualify for certain federal benefits, like Food Stamps
- Ineligible to become a Village Public Safety Officer
- Other barriers: stretched to 26 pages of appendices in full report
- SB 56 allows Alaskans to avoid many of these consequences if they are not repeat offenders.

Mr. Dunbar stated that an important consideration was that felons were, in many ways, removed as functioning members of society. He pointed to the first bullet point and related that even if Alaska changed its own laws, all of the collateral consequences would not be affected. He recalled that during his research, he had contacted an HR firm that hired on the North Slope. He related that the firm did not hire most felons and that even for non-violent, low-level felons, it required a ten-year cooling off period. He observed that the Anchorage School District had a similar policy that required ten years to have elapsed since a felony conviction in order to gain employment. He concluded that SB 56 removed non-violent drug offenders from the "felony web."

Mr. Dunbar spoke to slide 7 titled "Reduced Legal and Adjudication Costs." He discussed the slide's graph and related that partly because a felony on one's record was so serious, they were fought much harder in court; partially because of this, it took more than twice as long for the average felony case to reach disposition in Anchorage courts as it did for misdemeanor charges. He mentioned that the increased time to disposition was important to note because it led to higher costs to the prosecutors, the court system, and to the defense agencies.

Mr. Dunbar addressed slide 8 titled "Annual Savings from Reduced Legal and Adjudication Costs." He shared that in his research, he had tried to estimate what the savings to the different defense agencies and the courts would be from a reduction on felony charges. He reported that his

research had found that there would be between $400,000 and $800,000 in annual savings, which came from the reduction in days, as well as from other aspects. He explained that a grand jury did not need to be empaneled for a misdemeanor; also, if a misdemeanor did go to trial, it required a smaller jury than a felony did. He stated that most importantly, typically misdemeanor charges involved less experienced, less expensive attorneys on both the prosecution and the defense. He stated that he had reached out to the Department of Law (DOL) during his research, but had been unable to get data from the department regarding cost savings.

Mr. Dunbar spoke to slide 9 titled "Projected Range of Annual Savings to DOC from Reduced Incarceration Population." He related that the largest savings to the state would be in DOC. He stated that a similar reform had been passed in Colorado and had been attempted in California and that the two states' equivalents of Legislative Research Services performed estimates of the bed impact of those reforms. He relayed that he attempted to take those estimates, analogize them to Alaska, and change them to meet the Alaska's cost structure. He pointed out that using the estimates, he had found between $1.5 million and $2 million in cost savings within 4 years. He stated that Legislative Research Services had conducted its own study that used a different methodology and had found about $14 million in annual costs. He pointed out that the legislative research's model operated on "costs" and not "cost savings" and emphasized that the two estimates were measuring slightly different things; however the estimates suggested that there were millions of dollars in potential costs savings that could be reached through the bill. He concluded that he had tried to be very conservative with his estimates.

Mr. Dunbar discussed slide 10 titled "Public Safety: Map of Lower-48 States Where Drug Possession is a Misdemeanor." He related that the map depicted the 14 states where the offense that the bill dealt with was already a misdemeanor. He pointed out that while Alaska would be joining the minority of states, it would be far from the first to implement the policy. He shared that the map was interesting because it showed that the states were varied. He pointed out that while the states were concentrated in the Northeastern U.S., they included poor states like Mississippi, rich states like New York, rural and

conservative states like Wyoming, and urban and liberal states like Massachusetts.

9:34:18 AM

Mr. Dunbar addressed slide 11 titled "Public Safety: Statistical Comparison." He relayed that he did not have the kind of data that was necessary to do regression analysis and that he did not want to overstate his conclusion. He stated that he was not claiming that there was a causal link between making small-possession, non-violent drug offenses a misdemeanor and "these kinds of outcomes." She related that it was the case, for whatever reason, that the states where the offense was a misdemeanor had lower rates of violent crime, property crime, incarceration, and drug use. He opined that the slide's listed states probably had lower rates of drug use because they had higher rates of drug treatment, which was proven more effective at actually reducing drug use. He pointed to the slide and related that it showed that the levels of drug treatment were significantly higher in states where a small-quantity, non-violent drug offense was a misdemeanor. He stated that a counter argument to bills like SB 56 was that the threat of a felony was needed to keep people in drug treatment, which was demonstrably not the case; there were higher drug treatment rates in misdemeanor states. He believed that Alaska had the tools necessary by using the Class A misdemeanor charge in order to keep people in treatment. He recalled speaking with prosecutors, judges, and probations officers during his research, who had indicated that between three and nine months of suspended time was needed in order to incentivize people to stay in treatment; this was important to note because the state could sentence up to a year in prison, as well as up to a $10,000 fine for a Class A misdemeanor. He concluded that the rates of rape and domestic violence were also lower in "misdemeanor states."

Mr. Dunbar discussed slide 12 titled "Conclusions."

- Predicted outcomes from SB 56:
    - Minimal impact on public safety.
    - Large reduction in collateral consequences for offenders and improvement in employability.

- Reduction in Probation Officer caseloads.

- Between $5.77 and $10.31 million in savings to the State over four years, increasing thereafter (LRS estimates considerably larger).

Mr. Dunbar believed that the bill, as it was structured, would have a minimal impact on public safety. He discussed the third bullet point and related that it was particularly important to Anchorage because the officer caseloads were too high there. He opined that for best practices, the caseload per officer should be around 80, but that it was currently around 120 cases in Anchorage. He concluded that if the state was able to bend the prison population growth curve down and put off the day that it would have to build another Goose Creek Prison, it could save hundreds of millions of dollars.

Co-Chair Meyer inquired what percentage of Alaska's criminal offenders were in prison for non-violent crimes. Mr. Dunbar believed it was 64 percent. He offered that around the year 2000, the majority of people in Alaska's correctional facilities were violent offenders and that there had been a large growth in the number on non-violent offenders in the state's prisons since that time.

Co-Chair Meyer inquired if individuals that were charged with possession of marijuana or cocaine were actually charged as felons or if it was usually negotiated into a misdemeanor. Mr. Dunbar clarified that the bill did not affect marijuana laws and that it was relatively infrequent to be charged with a felony for marijuana, unless it involved a very large amount. He related that the bill dealt with more serious drugs and offered that depending on the circumstances, marijuana and cocaine possessions were often negotiated down to Class A misdemeanors. He pointed out that there was a former prosecutor online who could speak to the question better, but that many people were prison or had been charged with a felony for this offense.

Co-Chair Meyer noted that there were several people online from law enforcement and the judicial system that could answer his question. He related that violence was often associated with drugs and that there were multiple factors that went into a judge's decision at sentencing. He opined

that the bill was a great idea and felt that prisons should be for violent offenders.

Co-Chair Meyer OPENED public testimony.

9:39:25 AM

CARMEN GUTIERREZ, CO-CHAIR, ALASKA PRISONER REENTRY TASK FORCE, ANCHORAGE (via teleconference), testified in support of SB 56 and provided a brief history of her work experience as a criminal defense attorney in the state, as well as her time working for DOC. She related that she had seen a number of lives ruined because of the felony labeling and incarceration that occurred primarily because society had decided that it was appropriate to incarcerate the people that it was mad at, as opposed incarcerating the people that it was afraid of. She related that the incarceration rates for non-violent criminals had risen dramatically and that the percentage of non-violent convictions had increased from 42 percent in 2002 to 62 percent in 2011. She pointed out that DOC's annual operating budget had also increased dramatically since 2005 and had grown at an approximate annual rate of 5.5 percent since that time. She stated that the number of Alaskans who were being charged and convicted as felony drug offenders was growing each year, despite the fact that the prosecuting attorneys and prosecutors had the discretion to reduce some of these felony offenses to misdemeanors. She shared that the incarceration rates for both misdemeanor and felony drug offenses had increased by 63 percent since 2002. In 2002, there were 967 admissions to DOC, which grew to 1,574 in 2010. Additionally, from 2002 to 2010, the admissions for felony drug offenders in in DOC had risen by over 81 percent. She noted that the average length of stay for a felony offender had also increased over the last ten years; in 2002, the average stay for a felon was 6.6 years, which had had increased to 7.2 years by 2011. She remarked that the cost of incarceration was rising each year along with the increased incarceration rates. She offered that increased costs, length of stay, and the increase in felony labels may "be well and fine" if the state's approaches were effective in reducing criminal recidivism, but that research had shown that Alaska's approach was not working. She related that in November of 2011, the Alaska Judicial Council released an updated version of its 2007 recidivism study, which showed that the recidivism rates had not improved.

9:44:43 AM

Ms. Gutierrez stated that Alaska still had 2 out of 3 Alaskans returning to prison for a probation violation or a new offense within the first 3 years of release. She suggested that Alaskans were not receiving good value for their criminal justice dollars and submitted that the state was at a crossroad. She discussed the high construction and operating costs of the Goose Creek Prison. She stated that in 1982, 1 out of every 90 Alaskans was under the jurisdiction of DOC; by 2007, that number had increased to 1 out of every 38, which again increased to 1 out of every 36 Alaskans by 2009. She was supportive of people being accountable for their own conduct, but offered that the issue was how the state dealt with drug use that did not involve distribution. She submitted that research had shown that incarceration for the simple possession of controlled substances was not a cost-effective or public-safety minded approach. She discussed the collateral consequences of felony labeling and shared that the consequences to Alaskans were severe. She stated that Alaska had 492 state statutes and regulations that pertained to collateral consequences for criminal convictions, which clearly impacted an individual's ability to find employment and housing. She discussed her experience with prisoner reentry issues at DOC and related that some of the state's largest corporate landlords had a blanket policy not to rent an apartment to any individual who had a felony conviction that was not at least 8 years old. She offered that the state was creating a large class of Alaskans who could not get a second chance. She opined that the bill would give Alaskans a meaningful opportunity to obtain rehabilitation for drug issues and pointed out that under the legislation, a person would still get felony on their third conviction. She offered that the state needed to look at more effective strategies for addressing the issue of criminality in Alaska, particularly regarding low-level, non-violet offenses.

9:51:26 AM

Co-Chair Meyer observed that Ms. Gutierrez had spent a great deal of time and effort on the issue and related that the committee appreciated her testimony. He related that he personally agreed with Ms. Gutierrez, but wanted to hear more about the bill. He offered that small quantity

possession offenders should not be in prison, but stated that there was concern with distributors of narcotics. He assumed that the bill did change the law regarding the distribution of drugs and inquired if that was correct. Ms. Gutierrez pointed out that Mr. Kopp and Mr. Dunbar could explain in greater detail, but that the bill did not address the issue of dealing or the delivery of a controlled substance. She continued to explain that the bill did not hamper a prosecutor's ability to prosecute individuals who were charged with dealing controlled substances. Co-Chair Meyer noted that the state had a problem with heroin and oxycontin and that the people pushing those drugs should not be shown any leniency.

Co-Chair Kelly pointed out that the bill only applied to possession offenses.

SETH MCMILLAN, SELF, ANCHORAGE (via teleconference), testified against SB 56. He discussed his history working in law enforcement and his recent experience investigating street level drug trafficking. He discussed his work in the capacity of a drug investigator. He addressed the bill's requirement of two or more prior convictions before making the possession of a Schedule IA or IIA a Class C felony and related that the Anchorage District Attorney's Office regularly made pre-indictment offers of Suspended Imposition of Sentence (SIS) for the first MICS-4; this meant that if the defendant completed a designated period without committing new crimes, the conviction was set aside. He pointed out that the SIS effectively made the bill's requirement of two prior convictions actually three convictions. He discussed the weight and amount thresholds of certain drugs in the bill. He stated that number threshold of less than 15 tablets of oxycodone was unrealistic for simple possession. He relayed the current street prices for oxycodone, as well as the average daily usage of an addict. He offered that the threshold of less than 3 grams of a Schedule IA or IIA substance was also unrealistic. He pointed out that the street price for crystal methamphetamine was around $240 per gram and that the average addict was rarely in possession of more than .5 grams to 1 gram. He shared that the average street price for cocaine was about $100 per gram and that the average addict was rarely in possession of more than .2 grams to 1 gram; the average amount was even less for crack cocaine. He offered that dose of heroin was around .1 grams or less and shared that the street value of that amount was $50;

the average user was consuming .1 grams to .4 grams daily. He stated that the bill's threshold exception of .5 grams allowed for misdemeanor possession of 10 to 18 doses. He stated that he had contacted and reviewed the bill with a former confidential informant who used to be a heroin and methamphetamine dealer; the informant had agreed that the legislation would empower a street-level dealer. He concluded that the bill would establish misdemeanor amounts and weight thresholds that were actually distribution amounts, that the requirement for previous misdemeanor convictions before becoming a felony was unrealistic, and that it would enable the street-level drug trafficker.

Co-Chair Meyer appreciated Mr. McMillan's work on bath salts, "spice", and other "so called" legal drugs.

9:56:59 AM

Co-Chair Kelly requested a written copy of Mr. McMillan's testimony. Mr. McMillan responded in the affirmative.

WALT MONEGAN, ALASKA NATIVE JUSTICE CENTER, ANCHORAGE (via teleconference), spoke in support of SB 56. He shared that the bill was a logical and intuitive approach to fighting addiction. He shared that he was opposed to the "scarlet letter" that came with a felony. He was sympathetic with the previous testifier, but stated that the bill did so many positive long-term things within society. He pointed out that the state currently operated under the traditional "retributive justice, which was based on pain and punishment," which resulted in about a 66 percent recidivism rate. He pointed out that several years prior, the state had begun to employ aspects of a "restorative justice," which were the therapeutic courts. He shared that the therapeutic courts had proven to be very effective, which had been confirmed in studies by the Alaska Judicial Council. He shared that Native participants had responded well to the therapeutic court programs. He offered that the state needed to consider the downstream aspects of what having a felony conviction did and pointed out that it hindered employment, housing, and other things. He cited a study titled "The Adverse Childhood Experience Study" and pointed out that having a parent in prison was one of the ten factors that led to health and behavioral issues later in life. He opined that the bill would help mitigate future downstream issues and offered that it was an investment in individuals and society.

10:01:33 AM

RICK ALLEN, DIRECTOR, OFFICE OF PUBLIC ADVOCACY, ANCHORAGE (via teleconference), testified OPA's support of the SB 56. He shared that there was a devastating impact of felony convictions on individuals and families and related that the scope was larger than the impacts on an individual's employment prospects. He explained that studies showed that having a parent in prison could be just as harmful to a child as witnessing or experiencing domestic violence. He continued that children with parents in prison were more likely to be in need of aid or be involved in the juvenile justice system and pointed out that either of these scenarios cost OPA resources that could be used elsewhere. He shared that the district court was able to deal with a large volume of cases in a timely and efficient manner and that the misdemeanor disposition of low-level drug cases would enable OPA to use less expensive attorneys. He offered that the bill should also reduce the amount of litigation in these matters, which would result in saving money in attorney time, travel, and expert witnesses. He opined that results from other states had shown that reclassification would likely have no negative impact on public safety. He offered that the legislation would positively impact the lives of OPA clients and save the state considerable resources.

QUINLAN STEINER, SELF, ANCHORAGE (via teleconference), expressed his support for SB 56. He stated that the bill would likely have a positive impact on an individual's attempt at rehabilitation. He offered that the opportunity to take personal responsibility for a drug addiction would likely divert a significant number of people out of the system without the consequences of felony convictions.

10:05:25 AM

KRIS SELL, VICE-PRESIDENT, ALASKA PEACE OFFICERS ASSOCIATION, expressed the association's opposition to SB 56. She offered that the bill's cost-savings estimates were not reasonable and related that the Department of Law already plea bargained felonies down to misdemeanors or dismissed them in the face of likely or sincere commitment to treatment. She related a story that illustrated her point. She stated that the bill dealt with expensive, highly addictive drugs, which drove users to significant

criminal activities and that although there had been discussion about the nature of the offense, there had been no reference to whether the person themselves was non-violent or whether they were committing other felonies. She related that it would be easy to be able to put criminals into "neat, constrained little boxes," but offered that people who were experimenting with heroin did not go to work all day and pay their bills. She stated that heroin was a highly-addictive, life-destroying drug that pressed people into an entire lifestyle of crime. She warned against removing the tools that law enforcement needed to address the issue and pointed out that "this" very small portion of the population committed the vast majority of crimes.

Senator Bishop expressed appreciation for the work of peace officers and noted that he had been a victim of a home burglary. Ms. Sell observed that the burglary had probably felt quite violent. Senator Bishop indicated that it had.

Senator Bishop observed that Alaska had been fighting a war on drugs for 40 years and had spent billions of dollars on the issue. He inquired what the common sense approach to the problem of drug use was and noted that the current approach was not working. Ms. Sell acknowledged that the current system was not working and asserted that she was a strong advocate of accessible and available treatment. She pointed out that some addicts had a brief period of being open to treatment, but that if they were put on a waiting list, the bureaucracy was too complicated, or they had other mental-health problems that were not being met, it became necessary to lock them up for public safety. She pointed out that the ideal system would help these offenders, but that removing the consequences for these types of offenders lengthened and deepened their career. She wondered if the committee wanted to send the message that experimenting with heroin was the same type of offense as keeping an envelope that you found with $100 in it. She concluded that removing the consequences would not motivate people.

10:12:03 AM

LEE PHELPS, SELF, testified against SB 56. He related his work experience in drug enforcement in Alaska. He recalled that prior testimony had stated that the bill dealt with non-violent offenders and would not decriminalize anything,

but thought that the bill would have several unintended consequences. He related that Misconduct Involving Weapons in the Second Degree was currently a Class B felony under AS 11.61.195. He explained that it was currently a Class B felony to possess a firearm in the commission of an offense under AS 11.71.010 through 11.71.040, but that if the bill were to pass, someone would be able to legally possess a firearm while also possessing methamphetamine, cocaine, heroin, or oxycodone. He opined that someone under the influence of those drugs should not be allowed possess a firearm. He recalled recently arresting someone who possessed two firearms, heroin, cocaine, and methamphetamine and related that the individual had been charged with four felonies; if the bill was passed, the perpetrator would have been charged instead with a Class A misdemeanor. He concluded that the bill would represent a gross injustice in protecting society if it were to pass.

Senator Dunleavy thought the last several testifiers had indicated that reducing the penalties would make the drug problem worse and inquired if doubling the penalty would make things better. Mr. Phelps replied that what he was saying was that the bill would make a Class B felony legal and pointed out that the U.S. Supreme Court had stated that drugs and guns were associated with each other.

Senator Dunleavy inquired if the bill would change the law so that someone who had guns and was doing drugs would be charged with a misdemeanor instead of a felony. Mr. Phelps replied that they would not be charged with a weapons crime at all, but would be instead charged with a Class A misdemeanor for the possession of the controlled substance. He noted that from a public safety standpoint, he did not want anyone who had narcotics to also have a gun.

Senator Dunleavy inquired why other testifiers that were in the same business as Mr. Phelps had a different opinion about the legislation.

10:18:14 AM

KATE BURKHART, EXECUTIVE DIRECTOR, ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE, testified the board's support of SB 56. She stated that the board had provided a letter of formal support for the bill and that it had deliberated at length and taken a formal vote on matter. She stated that the advisory board had weighed the considerations that were

being voiced from the law enforcement community, but that because the traditional justice responses were not always effective at dealing with the issue, it had felt that access to treatment was a better option. She stated that the effectiveness of having access to treatment had been proven with the therapeutic courts in Alaska and remarked that the misdemeanor process allowed the courts to order people into treatment.

Senator Olson noted that the people who were out there "where the rubber meets the road," who dealt with criminals that may have ill intent for society in general, seemed to disagree with Ms. Burkhart's views on simply going into treatment. Ms. Burkhart responded that part of the board members' deliberations was to reflect on the experiences of board members who were in recovery themselves; several of the board members were in recovery for illicit narcotics. She related that the board had members who had contact with the criminal justice system before their recovery period and pointed out that it also had providers of treatment services that offered assistance to people who were engaged with the criminal justice system. She offered that the discussion had been informed by the experiences of board members and the public that it served, which had indicated that while many people had ill intent, characterizing all people who were in possession of a small amount of a Schedule IIA substance as someone who was going to burgle a home was incorrect. She shared that the board had a member who had been addicted to heroin and had never been involved in criminal activity and furthered that board members were persuaded by its experience, as well as their clients' experiences, when it decided on whether or not to support the bill. She related that the board dealt with people who had not been full-fledged addicts yet, but that as result of a felony conviction, had lost their jobs, their access to public housing, and their ability to support their families. She pointed out that hardcore addicts did present a public safety concern at times, but that there were also people who were experimenting or were not engaged in the criminal elements who would be unable to support their families as a result of a felony. She related that the board was trying to balance an appropriate and effective response, but admitted that the members had not looked at the legislation's financial consequences to the state.

Senator Olson commented that some of the board's members were recovering addicts and inquired if the drug users that

made it to "that level" were a very small subset of the entire segment of society that had "this affliction." He offered Ms. Burkhart's assertion in contrast to the two prior testimonies by law enforcement officers. Ms. Burkhart believed that the board members' recovery was a testament to the effectiveness of treatment services when they were made available. She related that there were many facets to every problem and stated that she represented people who experienced substance abuse disorders, the providers of services, and the families and communities. She offered that she was not saying that the board's perspective was more important or valid than that of law enforcement, DOC, or policy makers, but that it was part of the many facets. She concluded that balancing all of the competing experiences and perspectives was why policy making was hard. She added that the board had approached the bill from its own perspective, but recognized that law enforcement had a different one.

10:24:41 AM

Senator Bishop expressed appreciation for the work of the Advisory Board on Alcoholism and Drug Abuse.

Senator Dunleavy inquired if there were more violent crimes associated with alcohol or with people under the influence of the drugs that were covered in the bill. Co-Chair Meyer stated that the committee would finish taking public testimony before the question was addressed.

10:26:01 AM

RICHARD SVOBODNY, SELF, expressed concerns about the unforeseen consequences of SB 56. He discussed the revision of drug laws in Alaska in 1982 and observed that the state had followed a model that was similar to the federal government's model. He explained that the state's "Schedules" on controlled substances were generally the same as the federal government's system. Alaska had six schedules and the federal system had five. He related that a schedule of a drug was based on what the perceived danger of that substance was. The past history, use, the biochemistry, toxicity, the history of abuse, and how it related to other crimes were taken into consideration when formulating the perceived danger and scheduling. He explained that Schedule IA controlled substances, which included heroin and oxycontin, dealt with substances that

were viewed as the most serious. He stated that a Schedule VI substance was marijuana. He stated that the methodology in determining which schedule a drug fell under was laid out in statute. He noted that testimony regarding the reasons for the bill's proposed change was based on a factor of cost, which was not envisioned by the 1982 legislature when it had made the criteria. He related that the cost of incarceration had not been considered when the schedules were established and offered it could be added to the bill as a determining factor in scheduling.

Mr. Svobodny stated that one element of state's drug law pertained to the nature of the offense and that the other part dealt with the prohibited conducted, which consisted of six difference degrees. He pointed out that just like the schedules, the most serious degrees started on top. He related that Misconduct Involving a Controlled Substance in the First Degree (MICS-1) was an unclassified felony and included things like distributing heroin to children or being involved in a continuing criminal enterprise. He stated that Misconduct Involving a Controlled Substance in the Sixth Degree (MICS-6), which was the least serious degree, was the possession of less than one ounce of marijuana. He stated that the bill only addressed MICS-4 and Misconduct Involving a Controlled Substance in the Fifth Degree (MICS-5) offenses. He offered that bill attempted to balance the prohibited conduct versus the danger of the drug. He wondered if it was appropriate or a good policy decision to say to children and other prospective users that using heroin or other Schedule IA and IIA drugs was not all that serious of a matter. He added that the overriding policy question was balancing the message that would be sent to the public with the cost of incarceration.

Mr. Svobodny stated that reclassifying the prohibited conduct was not same model that was used for DUI offenses and related that there were several differences. The first difference was that the look back period in the legislation was five years, while the look back period was ten years for DUIs. He noted that DUI offenses had mandatory minimum sentences, which did not exist in the bill. He shared that the bill's structure was similar, but was not the same as DUI offenses. He related that the bill may be the death knell of the therapeutic courts and explained that it might result in a substantial reduction in the number of people involved in those courts. He asserted that there were

basically three groups of people who were in therapeutic courts and that they were people with felony DUIs, people with felony property offenses that resulted from drugs, and people with a MICS-4, which was currently a felony. He shared that the therapeutic courts offered an SIS for felony drug offenses for people that went through the system, but that the courts were currently having trouble getting felons to accept those terms. He explained that drug addicts would rather do 20, 30, or 60 days at a time in jail and that the state was currently having difficulty getting participants; furthermore, if the offense was a misdemeanor, "it's just not going to happen."

Mr. Svobodny recalled the comments of a previous testifier who had indicated that there was not enough incentive in Bethel for people to go into the therapeutic courts and related that if the felony drug offenses were changed into misdemeanors, there would be substantially less incentive for people to go into those courts. He noted that it was important to remember that the therapeutic court represented zero jail time and that what was offered was 24 months of probation and a set aside conviction as long as the person stayed in the court; people who did not do this may get a small amount of time in jail for the small-quantity felony drug possession and probation afterwards. He offered that one of the reasons that the offense had been a felony in the past was because the offender was put on felony probation and was getting help. He explained that the state did not have probation officers for misdemeanors and that the offenders would be on their own. He pointed out that California had misdemeanor probation officers, and surmised that Colorado likely had misdemeanor probation officers as well. He stated that if the state wanted to deal with the problem of spending too much money on incarceration, there needed to be a mechanism that was not currently in the bill that dealt with getting people into treatment. He pointed out that the bill might be, in many respects, a disincentive to treatment.

Co-Chair Meyer noted that the committee had questions for Mr. Svobodny and wondered if he could summarize his thoughts. Mr. Svobodny replied that he had one more subject to quickly discuss.

10:39:42 AM

Mr. Svobodny shared that prosecutors had to prove cases by the "elements of the crime" and that the bill added two elements that would be required to be proved for the possession of a small-quantity of certain drugs. He explained that legislation added the elements of weight and prior offenses. He noted that the Alaska Court System had been claimed that the bill would result in a small reduction in the amount of time for juries, but shared that dealing with the prior offenses could be very difficult and would result in bifurcated trials. He explained that there would be two trials on the same offense because of concerns regarding prejudice. He related a hypothetical scenario that illustrated the potential difficulties of dealing with prior offenses and offered that the bill would increase litigation issues. He referenced a previous comment by Vice-Chair Fairclough and stated that if the bill passed, everyone who was already in jail for a MICS-4 would be asking the court for a modification of sentence under Criminal Rule 35; this represented unforeseen increases in costs. He discussed additional potential litigation issues involved with the bill. He related that DOL had an indeterminate fiscal and surmised that that the bill would result in cost savings for the DOC; however, it would result in increased costs for DOL early on. He related that typically, the current treatment was that a young, first-time offender who was charged with a MICS-2 or a MICS-3 was often plea bargained down to a MICS-4 because the presumptive sentences were viewed as too high; he thought that this would no longer happen under the bill.

Senator Dunleavy inquired if the current laws in the books were working as intended. Mr. Svobodny replied in the negative and related that the state was not currently dealing with the addiction problems that people had. Senator Dunleavy asked if harsher laws, easier triggers, and longer sentences would eliminate the problem and fulfill the original intent of the law. Mr. Svobodny replied in the negative.

Senator Olson observed that Mr. Svobodny was not in favor of the bill and inquired if that assumption was correct. Mr. Svobodny replied that something had to be done about the amount of people that were incarcerated in Alaska, but opined that without a substantially greater revision of the state's drug laws and a reallocation of resources from other departments, the bill would not solve anything. He

concluded that the bill had potential hidden consequences that needed to be considered.

Senator Bishop inquired if there was a potential loss of federal funding to the state's police departments or treatment facilities with the bill. Mr. Svobodny responded that he had not thought about that aspect, but that U.S. Attorney General was dealing with that kind of issue in the State of Washington and the State of Colorado regarding the decriminalizing marijuana because the U.S. had treaties that dealt with drugs on certain levels. He offered that it may affect federal funding, but that he had not looked into that particular area.

10:46:40 AM

Co-Chair Meyer CLOSED public testimony.

SB 56 was HEARD and HELD in committee for further consideration.

Co-Chair Meyer discussed the format of the joint House and Senate Finance Committee meeting the following day, as well as the committee's agenda for the rest of the week.

SB 22 was SCHEDULED but not HEARD.

10:47:56 AM
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ADJOURNMENT

The meeting was adjourned at 10:48 a.m.