

HOUSE FINANCE COMMITTEE
April 19, 2016
1:39 p.m.

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CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 1:39 p.m.

MEMBERS PRESENT

Representative Mark Neuman, Co-Chair
Representative Steve Thompson, Co-Chair
Representative Dan Saddler, Vice-Chair
Representative Bryce Edgmon
Representative Les Gara
Representative Lynn Gattis
Representative David Guttenberg
Representative Scott Kawasaki
Representative Cathy Munoz
Representative Lance Pruitt
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Craig Richards, Attorney General, Department of Law; Lieutenant Kris Sell, Self, Juneau; Senator John Coghill, Sponsor; Sheldon Fisher, Commissioner, Department of Administration; Kate Sheehan, Director, Division of Personnel and Labor Relations; Representative Cathy Tilton, Representative Dave Talerico; Representative Dan Ortiz; Representative Geran Tarr; Representative Liz Vasquez; Representative Ivy Spohnholz; Representative Louise Stutes.

PRESENT VIA TELECONFERENCE

Gregory Razo, Chair, Alaska Criminal Justice Commission, Anchorage; Brenda Stanfill, Commissioner, Alaska Criminal Justice Commission.

SUMMARY

CSSSSB 91(FIN) AM

OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS

CSSSSB 91(FIN) AM was HEARD and HELD in committee for further consideration.

PRESENTATION: Labor Contracts Review: Department of Administration

Co-Chair Thompson discussed the meeting agenda.

#sb91

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 91(FIN) am

"An Act relating to criminal law and procedure; relating to controlled substances; relating to immunity from prosecution for the crime of prostitution; relating to probation; relating to sentencing; establishing a pretrial services program with pretrial services officers in the Department of Corrections; relating to the publication of suspended entries of judgment on a publicly available Internet website; relating to permanent fund dividends; relating to electronic monitoring; relating to penalties for violations of municipal ordinances; relating to parole; relating to correctional restitution centers; relating to community work service; relating to revocation, termination, suspension, cancellation, or restoration of a driver's license; relating to the excise tax on marijuana; establishing the recidivism reduction fund; relating to the Alaska Criminal Justice Commission; relating to the disqualification of persons convicted of specified drug offenses from participation in the food stamp and temporary assistance programs; relating to the duties of the commissioner of corrections; amending Rules 32, 32.1, 38, 41, and 43, Alaska Rules of Criminal Procedure, and repealing Rules 41(d) and (e), Alaska Rules of Criminal Procedure; and providing for an effective date."

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CRAIG RICHARDS, ATTORNEY GENERAL, DEPARTMENT OF LAW, communicated his intent to discuss the Department of Law's

(DOL) support for the legislation and the process the department had used to develop the Alaska Criminal Justice Commission recommendations used in the bill. He explained that DOL was responsible for prosecuting all felonies statewide; it also prosecuted most misdemeanors in the state although a few of the municipalities including Juneau and Anchorage had their own prosecutorial elements for misdemeanors. He believed it gave DOL a unique perspective on the bill and criminal justice in general, particularly the application of various provisions within the law itself. He surmised that the public defender had a similar role on the other side of some of the issues.

Attorney General Richards furthered that when he had come into the process he had not looked at the reform effort as a social justice reform bill, but as a question of sustainability. He addressed how to have an affordable criminal justice system in addition to a system where reductions in sentencing or other criminal measures had the minimum impact on public safety. He believed one of the things that worked well about the Alaska Criminal Justice Commission process was the focus on evidence-based reasoning to determine what kind of changes could have the biggest results and impacts on diminishing prison head counts, reducing the number of hearings at the trial level, and doing other things to reduce the cost of the system with a minimum impact on public safety. He believed the collaborative commission process had worked very well and had involved numerous parties representing different aspects of the community and criminal justice including victims, prosecutors, public defenders, corrections, law enforcement, and others. He elaborated that Pew had done a good job facilitating different options and analyzing data related to reasons for increasing prison growth and costs. Pew had worked with the commission to come forward with a number of recommendations across the spectrum of the system. Ultimately the recommendations had been debated - heavily at times - by the commission. He relayed that all of the recommendations had to be unanimously supported by DOL and the Public Defender Agency, which meant there was a natural balance in the process.

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Attorney General Richards communicated that DOL had significant input in the process. He provided examples of items he had been involved in during the process including

inflation proofing for felony threshold levels at \$1,000. He shared that DOL had provided pushback on a number of items that it believed did not work as well as they could after the recommendations and final report had been finished. He continued that all of the recommendations were ultimately incorporated including reducing the distribution controlled substances threshold from 5 grams to 2.5 grams. Additionally, DOL had been the primary author of the suspended entry of judgement provisions. The department had also developed some of the underlying ideas on the zero to 30-day presumptive for Class A misdemeanors. He spoke to DOL's active participation in the process including wrapping in prosecutors most knowledgeable in their areas on the different subjects. He shared that he had been at the National Association of Attorney Generals in recent months and that Alaska was not unique in going through justice system reform. He detailed that what the reform looked like was unique to every state, but there was a national movement to recognize that there may be less expensive ways to deliver as good or better criminal justice in some circumstances. He discussed that he had spoken with Georgia Attorney General Sam Olens about reform efforts that had been unsuccessful. Mr. Olens had shared that all of the efforts had worked - Georgia had not needed to repeal any of the major initiatives it had undertaken and the state had excellent success in reducing its prison population while maintaining a high level of public safety. He reiterated that DOL supported the legislation and believed it had been arrived at by a balanced and fair process that should hopefully improve justice in Alaska and substantially reduce costs.

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Co-Chair Thompson noted that bill sponsor Senator John Coghill and Representatives Daniel Ortiz, Geran Tarr, and Cathy Tilton were present in the audience.

Co-Chair Neuman asked for clarification on drug amounts. He noted that he did not know how much a gram of a substance was and how much people typically used. He requested to hear about drug amounts during the conversation.

Attorney General Richards replied that the particular discussion about 5 to 2.5 grams revolved around heroin. He detailed that heroin sold in packages for individual use of about one-tenth of a gram. The department felt that

increasing the limit to 5 grams was too high for distribution charges; DOL and troopers believed 2.5 grams was more consistent with the higher end of what really constituted distribution.

Representative Kawasaki referred to recommendation 9 from the criminal justice commission that would expand and streamline the use of discretionary parole and recommendation 10 that would implement specialty parole for long-term geriatric inmates; both were included in the legislation. He was unsure of Section 122 related to administrative parole for Class B or C felonies. He detailed that the section specified that first-time Class B or C felony offenders (excluding sex offences) who had been in prison for at least 180 days could be released under the section by the Parole Board without a hearing. There were a couple of conditions specifying that a person would need to meet at least one-fourth of their active term and other mandatory minimums. He spoke to the perspective of a victim of a Class B or C felony and wondered what Mr. Richards thought about the particular strategy to shrink prison sentences.

Attorney General Richards answered that the administration supported all of the different parole options. He believed it was key to ensure that the provisions worked individually and stacked in a logical way. He had not personally done a "deep dive" on the administrative parole because it was a newer provision. However, he had discussed it with others at DOL and the department was supportive of the provision.

Representative Kawasaki spoke about Class C felonies and provided a recent example. He detailed that the children of a woman in Mat-Su had been taken from home due to severe malnourishment and could have potentially died. He stated that it would have been a Class B felony if the children had died. He stated that the woman could have been eligible for parole after 181 days as long as she had served one-quarter of her sentence. He pointed out that the bill language specified that the department shall release a person on administrative parole without a hearing. He noted that there were other conditions - a victim could request that a hearing be held. He found it too simplistic and wondered if Mr. Richards disagreed.

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Attorney General Richards answered that he did not have the exact language with him. The department was amenable to the idea of administrative parole, but he had not thoroughly reviewed the provision.

Vice-Chair Saddler asked how Mr. Richards would answer the charge that the response of the criminal justice system, corrections, court system, and the attorney general's office was to "lock 'em up, throw away the key." He asked how Mr. Richards responded to the desire in people to get retribution and put people away by saying the solution was to let more people out of prison.

Attorney General Richards replied that the criminal justice system served multiple goals including retribution, reform, and keeping people off the streets. He stated they were all different and valid goals. He agreed that victims had the right to see perpetrators punished, but there had to be a balance struck between that element, the need to reform, an affordable and sustainable system, and not to keep people in jail longer than the state could afford (when the offenders were the least likely to commit other acts or the nature of their acts were less serious than others). The process he had undergone with the commission was to strike a balance; the participants had worked to find areas where sentences could be reduced to try to drive system costs down.

Vice-Chair Saddler had heard from some constituents that supporting the bill was surrendering to crime and that it basically redefined crime upward. He asked how Mr. Richards would respond to the belief.

Attorney General Richards answered that he did not see it that way. He saw the bill as a practical realization that the current practice was stricter than what was sustainable; therefore, the goal was to strike a new balance. He detailed that it was always a little arbitrary where the sentencing guidelines were placed. He continued that in talking about the process of reforming the guidelines a there was a recognition that a reasonable range needed to be created. He added that what was reasonable had changed in Alaska over the years. The bill took the range back a bit, but he did not believe it was fundamentally surrendering to crime. He concluded that the effort was to balance competing interests.

1:54:49 PM

Representative Wilson asked if Mr. Richards was speaking to the original bill or the current committee substitute (CS).

Attorney General Richards answered that he was not as familiar with the current CS; he had been very involved in the original bill. He added that John Skidmore from DOL was also available to answer questions via teleconference.

Representative Wilson stated that it would be helpful to receive a write up on whether there were items the department supported or opposed in the House Judiciary Committee CS. She stated that one of the largest issues the committee had seen was related to pretrial. She asked if the department had analyzed why there seemed to be so many people in pretrial status. She asked if there were not enough judges or laws were bogging the process down. She believed determining why pretrial accounted for one-third of the prison population would be a significant lift off the system.

Attorney General Richards replied that Pew had presented numerous statistics on the reasons for substantial pretrial growth. He spoke to two of the reasons, which he believed made sense. He explained that many people were not getting access to bail - particularly for low level crimes - because they could not afford it. Additionally, the process was taking longer. He detailed that some of DOL's policies made it more difficult to plead (the department had changed policies to make more discretion go to the local district attorneys to plead cases). He continued that the longer process meant more hearings, people staying in jail longer, and that bail was not as accessible as maybe it should be.

Representative Wilson requested to see which things could be done in DOL procedures versus items that required a statute change.

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Representative Edgmon stated that the House Bush Caucus had sent the commission a letter asking that it not forget the fact that Alaska Native tribes had a role in criminal justice reform. The caucus believed that in many small communities around the state circle sentencing and other

local measures could serve as a deterrent to keep younger Alaska Native males (in the age 19 to 34 category) out of the system in the long run. He asked Mr. Richards to address any of the discussions that may have taken place.

Attorney General Richards answered the tribal discussions had not been that heavy in the criminal justice pieces he had participated in. The department had been active in working with tribes on the civil diversion agreement (work on finalizing the agreement had been underway for about 1.5 years). He explained that the agreement would ultimately give tribes jurisdiction to handle cases for first-time non-violent Class A misdemeanors (tribal and non-tribal members) opting into the tribal system. The agreement would enable the tribes to step into the roles of the state and to handle some of the cases. He relayed that he was meeting with TCC [Tanana Chiefs Conference] in early May where he anticipated finalizing the agreement. He elaborated that once tribes had the authority to handle some of the criminal matters they would have the ability to develop their own alternative diversion programs that were a little more practical and could hopefully keep some young people out of the institutional system.

Representative Edgmon referred to Mr. Richard's earlier testimony related to a conversation with Georgia Attorney General Olens and the dual purpose of reducing the prison population and maintaining public safety. He asked if the bill would keep Alaska safer.

Attorney General Richards replied that it was not possible to know the outcome until something was put in place. Public safety had been at the forefront of everyone's minds when the department had looked at things to change in the existing system; it had tried to focus on areas that had maximum impact on cost reductions and minimum impact on public safety. Ultimately, he believed the department had done a good job striking a balance.

Representative Edgmon remarked that members of the criminal justice commission were an impressive array of representatives in the criminal justice arena. He believed the work had been done fairly rapidly when coming together on 21 major consensus points. He wondered if there were any areas that seemed more onerous in terms of reaching consensus.

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Attorney General Richards replied that there had been substantial debate around how to handle suspended entry of judgement in a way that did not create additional hearings and that had "teeth to it," but did not drag the process out. The other area he recalled as contentious was how Class A misdemeanors were handled and the presumption around how long a person would spend in jail. Ultimately it had been drafted much firmer - that there would basically be no jail time for Class A misdemeanors. A compromise had been reached that a person could receive zero to 30 days, but if there were good reasons a first-time Class A misdemeanor offender could receive a sentence of up to 1 year.

Representative Kawasaki spoke to the geriatric specialty parole option. He remarked that the bill provision included an age of 55, which seemed young. He noted that a person under the age of 55 did not qualify for the parole option. He asked if it was constitutional and surmised that it seemed like age discrimination.

Attorney General Richards replied that other jurisdictions had similar geriatric parole provisions, which had been held to be constitutional. He noted that the commission had included a recommendation of age 55 to 65; it had been a recommendation for the legislature to have an internal conversation because the commission did not reach consensus on the appropriate age.

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LIEUTENANT KRIS SELL, SELF, JUNEAU, provided information about her employment background. She was currently a lieutenant with the Juneau Police Department (JPD) and served on the Alaska Peace Officers Association. She noted that she was testifying on her own behalf and had been asked not to speak on behalf of the groups given a great deal of contention around the bill. She furthered that she had served on the Alaska Criminal Justice Commission and had paid a price in popularity amongst her colleagues for serving in the role. She relayed her intent to speak about the journey she had gone through that had brought her to a consensus position for the commission - it had been a difficult journey. She had always prided herself on being a "cop's cop"; she had been the first woman to be on the JPD

SWAT Team, which had been an ancillary duty of hers for eight years. She stressed that she loved kicking in doors, putting "bad guys" in jail, and trials where someone was put in jail for a long time for doing something bad. She shared that she had lived for the work for her adult life and earlier; her childhood had been shaped by "tough on crime" speeches. She recalled watching the speeches on television as a child. She emphasized her desire to be tough on crime to prevent criminals from hurting people. The desire had propelled her into a law enforcement career. She recalled that when she had become a detective her mother visited and had said "honey I mean this with love, but you're scary." As she had begun detective work and working with children she had softened her look, but not her feelings about public safety.

Lieutenant Sell continued that she had come into the criminal justice commission telling her chief - who had come out against SB 91 - that she was going to make sure people did not turn the bad guys out of jail. She expounded that when the consensus agreement had come out her police chief had been crushingly disappointed with what she had agreed to. She explained that it had been a long and painful trip for her, where she had to look at the science. She elaborated that once a person started to become educated - no matter how inconvenient it was - it was not possible to go backwards and start believing things that they believed before. She had never previously questioned the bail system; the point of bail was to keep the public safe, but there was no correlation between someone's risk of recidivating and not going to court and their access to money. She had met numerous very bad criminals - sometimes with a great deal of family enabling - and they had gotten right back out on the street; while someone without resources who may be developmentally delayed, did not get out. As she had been confronted with the science, she began to rethink some of her experiences.

Lieutenant Sell discussed that when a person was eligible for parole, the individuals in jail with educated family resources were put in for parole; while individuals who did not understand the paperwork and did not have a hand to hold through the process, did not. She believed it did not seem fair that parole would be decided by who had connections and help with paperwork. She continued that the corrections officers had not been staffed to a level enabling them to help the prisoners' needs in those areas.

She had started thinking about some of her analysis that happened as a young street officer. She recalled arresting the same people four to fifteen times and how she had thought they were stubborn or not bright because they were not getting it. She recalled thinking that perhaps the individuals should be put in jail longer in order for them to figure it out. She had just assumed it had been the answer. Now when she considered the cases she believed the reason the individuals continued to get arrested was more likely about the fact that the individuals had continued to be drug addicts or were mentally ill. She continued that individuals had been arrested over and over until they were so marginalized they became homeless and violent. She stressed that the individuals got worse every time they were released from jail. She spoke to coming out of the criminal justice commission process and surmised that perhaps much of the pushback the legislature was receiving from law enforcement was because she had failed. She elaborated that she had failed to bring people through the education that had taken her so long. She furthered that she had not been able to; it had taken time for her emotionally.

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Lieutenant Sell recalled a heated debate that involved Quinlan Steiner, Director of the Public Defender Agency. She relayed that until the commission she had never sat across the table from a defense attorney. The commission had been discussing the studies related to how long probation was effective. She noted that someone was likely to violate in the early part of their probation when they were really learning how to be a citizen again - it was the time a person most needed oversight and support. She explained that long probations watered down probation for everyone and made it ineffective. She recalled that they had been discussing a one-year probation time. She remembered feeling like she had bent and bent to the science until she could not bend any farther. She relayed that she had shoved back and stated that she just did not like hearing two years for probation. She detailed that Mr. Steiner had asked what statistic she was trying to capture by going with a longer probation. She explained that she just did not like it and it made her stomach hurt. She furthered that it did not taste good to her to talk about shortened periods for probation; however, those conversations had resulted in what she termed the "auction

amendments." She detailed that groups had come forward and specified that they wanted more time served for specific items; however, the reasoning was not based on a particular reason, study, or statistic - it was based on not feeling good about giving less time. She understood where the amendments came from because she had personally experienced doing the same thing in commission meetings. She explained that she had not liked certain dates even though there was no science to back up her feelings.

Lieutenant Sell continued that she had not been able to bring her law enforcement colleagues through. However, she noted that a few of the younger line officers had approached her privately to voice their belief that she was on the right track. She discussed that most JPD officers realized that almost everyone they arrested was addicted to something and very possibly was struggling with mental illness. She pointed to a lot of serious mental illness. She noted that some of the individuals struggling with substance abuse and mental illness would never be safe to be on the streets. She furthered that the only way some individuals should be dealt with was by a SWAT Team; she stated that unfortunately, it was a necessary part of the system. She highlighted that she had slowly developed a new theory as she had gone through the commission process. She wondered what would happen if the very first time someone got into trouble that the system had actually looked at the individual person (not as a shoplifting case, a felon, someone with drug possession, and other) to determine what needed to be addressed. She did not see handling a person's issues through treatment and supervision as necessarily being nice to them. She spoke to the importance of relentlessly confronting people with their problematic thinking and addictions that cause them to commit crimes.

Lieutenant Sell underscored that it was important to relentlessly supervise the individuals by using positive and negative incentives to bring them back into a law abiding life. She shared her observations that inmates napped, watched television, played cards; she assumed they did not speak to each other about very healthy things. She stressed that the individuals were dangerous people with problematic thinking who did not get better by napping and watching television in jail even with longer and longer sentences. She discussed that part of the tough on crime theory had rested on was deterrence. She stated that it was obvious when interviewing people who had committed crimes

that there had not been a lot of thinking going on before committing a crime - individuals did not do a cost benefit analysis. She furthered that individuals knew that they would get away with crimes most often; getting caught only occurred in the minority of cases. She observed that when the individuals did get caught it was like they had lost a hand at a card game - it did not really have anything to do with them. She surmised that the individuals were probably committing crimes on a daily basis and when they did get caught they had no correlation to their behavior.

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Lieutenant Sell discussed that one of the theories with a longer sentence was that people thought that at some point a person would have an epiphany and decide they no longer wanted to be a "dirt bag." She countered that those epiphanies did not happen, not when a person is fueled by mental illness and addiction. She stated that there were not those moments of revelation. She explained that it was necessary to confront the individuals with what they were doing and to let them practice being citizens. She stated that somewhere along the line - probably because people had been trying to get elected on tough on crime platforms - there had become a belief that treating people and relentlessly monitoring them was being nice; that it was being nicer than having them watch television and nap. She really did not believe it was. She believed it was actually much more painful for people to face their issues instead of being given a time out. She believed that currently the system was just giving people a long and expensive time out, which was not helpful. She furthered that people were then released from jail and tended to continue to commit crimes. She opined that a two-thirds recidivism rate within three years should indicate that the easiest thing to keep doing as a criminal was to continue being a criminal. She reasoned that it was human nature to take the path of least resistance. She stressed the importance of making the life of a criminal the hard path and the life of a law abiding citizen as the easy path. She underscored that it was done with a relentless level of monitoring and accountability. She emphasized the importance of investing in the resources, which was where reinvestment came in. From the beginning, she had believed that the only way to make the status quo worse - which was a challenge because it was pretty bad - was to take all of the cuts from putting people in jail less and to fail to reinvest the money. She

expounded that failing to reinvest the savings would make the revolving door spin faster. She stressed the importance of supervision for individuals as a person from the very first contact. She believed it was possible to do a better job. She concluded that there would always be a need for SWAT Teams, but she believed the element of doing things better was also critical.

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Co-Chair Neuman spoke to the availability of treatment after arrest as opposed to sentencing. He shared that he had heard from officers that when individuals felt remorse after arrest was the time to put them into treatment. He asked for Lieutenant Sell's experience on the issue.

Lieutenant Sell replied that addicts routinely hated themselves and they regularly told officers the reason they commit their crimes was because they could not handle their addiction. She elaborated that addiction had such a powerful hold on people that they were not able to merely pull themselves up by their bootstraps and quit. She believed that most people did want the offenders to just quit. However, she relayed that after spending significant time around addicts, she had observed that their brains were really rewired. She likened it to an overeating disorder and telling someone they needed to stop overeating because they were disappointing everyone. She explained that the person would still be unable to quit overeating. She expounded that after a few days overeating would become such a powerful pull, the person would engage in the activity no matter how much they hated themselves afterwards. She realized that there were many people who wanted help with their addiction; it happened regularly that individuals would tell officers they needed help, but law enforcement did not have any place to send them. She had sat down with many heartbroken families who believed that if their loved one would just get arrested they may be helped; however, it did not happen that way. She explained that the loved one merely got arrested, went to jail for three days, was released, and continued the same behavior. Many of the families did not have the money to afford sending someone to out-of-state treatment at \$30,000; additionally, it may take four times before treatment actually worked. She questioned how many families could actually absorb the cost. She explained that everyone was looking for the criminal justice system to solve the

addiction problem, but it did not have the resources at present. She relayed that former Department of Corrections commissioner Ron Taylor had told her that perhaps they should just cut all of the jails in half and designate half to addiction treatment. She surmised that it was probably not enough resources considering that about 80 percent of the inmates had substance abuse problems or mental illness.

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Co-Chair Neuman asked Lieutenant Sell how she felt when having to arrest the same people continuously. He asked if she felt that the system was not helping her as a law enforcement officer. He remarked that the individuals could be physically dangerous for officers.

Lieutenant Sell replied that she was usually angry at the individuals for continuing on the same path.

Co-Chair Neuman asked if the situation impacted retention.

Lieutenant Sell answered in the affirmative. She stated that it was frustrating to keep doing the same things over and over. She elaborated that sometimes the frustration was focused on the prosecutor for continuing to let the individuals out. She reasoned that unless every prisoner was locked up for 99 years for every crime, the individuals would eventually get out of jail even if long sentencing was used. She relayed that it became frustrating and dangerous work. She explained that her first instinct was anger, but she had been working as an officer in Juneau for so long that she had started arresting individuals who had been abused or mistreated when they were young. She recalled arresting the parents of these individuals. They were now adults and she was arresting them for violent crimes and drug crimes. She wondered if the individuals ever really had another chance given the significant amount of things pushing them to end up where they did. She recalled witnessing young girls allegedly held home for home schooling, but in actuality they had been kept home to run an illegal daycare for the mother so the mother could stay in bed and use drugs all day. She continued that the kids were not literate and ended up hooking up with drug dealers and making a living off drugs. She questioned if it was such an illogical path for someone who had started out life that way. While she wanted to be angry at the young woman committing crimes, she kind of understood how she

ended up in the situation. She spoke to a lack of choices the woman had through life.

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Representative Kawasaki appreciated Lieutenant Sell's comments about other police officers telling her how they felt; he was also receiving the same calls from his officer friends. He asked about the drug offence sections of the bill. He relayed that some of the discussion had been about the aggregate weight of Schedule 1a, 2a, and 3a drugs. He did not know if 2.5 grams was a significant or small amount.

Lieutenant Sell replied that she was most versed in the heroin trade, which had negatively impacted Juneau. She explained that one-tenth of a gram was a standard dosage unit. The heaviest users she had interviewed were males who used up to 10 doses per day at a total of almost 1 gram. She noted that males tended to be heavier users than females. Some of the lighter users may use one-tenth of a gram per day. The discussion had arisen in the criminal justice hearing; Mr. Steiner had shared that he had clients who had done substantially more meth per day and that weights were different. The commission had tried to establish what constituted a distribution amount. She believed part of the problem with getting wrapped around distribution weights was that users are dealers and dealers were generally users; there was not an easy way to tell the individuals apart, including by the weights they carry. She explained that drug addicts fueled their addiction by stealing and dealing; they were doing both all of the time. She detailed that an individual may get drugs to hook up a couple of friends and the police got some "buys into them" maybe through an informant. Prosecutors had been able to clear the books without going to a significant number of trials by giving plea agreements to many dealers for possession. She elaborated that there was a lot of pushback to not classify possession as a misdemeanor because it was a plea offered to numerous dealers; dealers that police had wired "buys" into by informants who were being offered possession. She explained that part of the panic of seeing possession as a misdemeanor was that it had been such a plea bargain tool. She expounded that the things sprung up organically in a system because people were trying to make things work with the least amount of resources. She stated that it was necessary to start treating dealers as dealers

instead of clearing the books by offering pleas on possessions for everything.

Representative Kawasaki was still trying to determine the weights of drugs and whether the chosen weights worked. He stated that there were different weights of different drugs.

Lieutenant Sell replied that the purpose of the weights was to draw the line somewhere. She noted that it was not an exact science. She detailed that a male user may actually be using a full gram per day and someone else may be using a much lower amount. She reiterated that it was a very difficult thing to pin down; it almost included picking the heaviest users with a one to two-day supply in their possession. She stated that the entire drug experience was not cooperative with those kind of fences.

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Vice-Chair Saddler asked how Alaska's geography, culture, and economy made the smart justice techniques more or less effective.

Lieutenant Sell replied that there were parts of smart justice that may be more or less effective in rural versus urban areas and vice versa. She explained that it was the reason the justice reform was not a one-size-fits-all solution. She expounded that when the state put the techniques that had been successful in other areas into practice in Alaska, they would be different and would be culturally impacted. She stated there were crazy things going on in Alaska that the reform would have to adjust to. She spoke about taking a field trip to Nome where she discovered that the troopers were spending \$28,000 per month to shuttle prisoners back and forth between Nome and Kotzebue for different jail stays. She believed it was an "insane" amount of transportation. She furthered that there may be things that worked very well for the situation. For example, putting community-based supervision in place that actually worked. She added that if community-based supervision was implemented without the necessary structure, there would have to be immediate adjustments. Some of the protective factors included that people could continue to support their families and to meet their community obligations. As soon as those ties started breaking an individual was more likely to not have a reason

to reengage. She provided a scenario of a person who had come in from a village and was stuck living in an abandoned car in Anchorage. She explained that those individuals were dangerous because they did not have anything left to lose; all of their relationships and roles in community were gone. The goal was to preserve those relationships and roles to the extent possible. Part of the issue included technology that could accommodate video hearings, electronic monitoring in more rural areas, staff for 24/7 sobriety testing, and other. Alternatively, if the resources did not exist, people may need to be moved into more urban areas. In some ways rural communities had the most to gain from smart justice because residents were currently losing entire generations of people when they were incarcerated and moved into the cities. She stressed that continuing to remove the workforce would kill a community. Rural communities had a lot to gain by trying to turn offenders back into productive citizens. She noted that it would be necessary to see how the structure worked. She underscored that the justice system changes would be a living, breathing thing that would have to be monitored and adjusted in real time; it could not merely be left alone.

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Vice-Chair Saddler had often heard people in law enforcement say that if there was one thing they could do to reduce the pressure on courts, police, and the jail system, it would be to reduce substance abuse. He asked if reinvesting savings (from reducing sentences and parole) in prevention and substance abuse treatment was the proper use of the funds.

Lieutenant Sell replied in the affirmative. She stressed the critical nature of dealing with addiction problems because an addict would never stop committing crimes. She elaborated that an addict would never be able to separate their addiction from the crimes they committed while impaired or crimes committed to fuel their addiction. She emphasized that it would not be possible to stop the criminal behavior until the addiction was stopped. The person had to have enough negative incentive to come around to wanting to stop the addiction. She added that sometimes it took time; it did not always happen on the first attempt. She referred to victims who talked about the horrible things that had happened to them by someone who they may well say should not have been out of jail to begin

with because they had prior crimes. She would want to delve deeper to explore whether if there had been any meaningful intervention when a person had started to have criminal justice problems; it really meant that the victims' names were just shuffled if there had been no intervention and the solution had been to merely change the length of sentencing. Until the underlying factors were addressed (usually addiction and sometimes mental illness) nothing else would stop. She would like to see all of the money saving from reduced sentencing go towards treatment for substance abuse.

Co-Chair Thompson noted that Representative Gara had joined the meeting. He added that Representative Lora Reinbold was present in the audience.

Representative Wilson referred to Lieutenant Sell's earlier testimony about beginning to see adults commit crimes who she had seen as children in homes where the parents had been offenders. She spoke to two different populations and wondered if there had been discussion about ensuring there were funds for both groups.

Lieutenant Sell answered that the commission had talked about the issue of incarcerated parents and abused children, but it was a huge issue; the commission had spoken about the correlation. One of the risk factors for someone becoming incarcerated was having an incarcerated parent. Based on her knowledge of many of the individuals the police had put in jail, she suspected they did not possess any real parenting skills. She explained that if the individuals were not learning anything about life skills in prison they would not learn it anywhere; they would not go seek the skills out. She believed the criminal justice system was the state's firm grip on the population it was trying to serve with almost all of its social services (e.g. Office of Children's Services, job placement, and other) - the services were in silos but broadly serviced the same 5 percent of the population. She reasoned that the state had been trying to deal with characteristic after characteristic without looking at the actual person. For example it was meaningful to consider that a person could have four kids at home that they were not supporting or had abused, had a substance abuse problem, were not literate, and could not get a legitimate job. She explained that there was a lot to be done with the person and in some ways criminal justice was where the

state got them; the individuals did not have an option, they had to be there. She reasoned that if the state took advantage of that correctly, it would be the most valuable tool.

[2:35:41 PM](#)

Representative Wilson had been told by Fairbanks Correctional Center that they could not make a person go through treatment. She wondered why not. She contemplated whether the state needed to mandate treatment in statute. She asked if it would be more helpful to play treatment videos for inmates versus regular television. She reasoned they were a captive audience.

Lieutenant Sell responded that the commission had not discussed that idea, but it had discussed using positive and negative incentives. Sometimes just a slate of negative incentives would not be successful if a person's only power was to deny taking the action. She explained that most individuals responded better to a combination of positive and negative incentives. She relayed that she worked better for a boss who used both positive and negative incentives. Someone may refuse to go through treatment, but if the alternative was to not get credit, people would change their minds. She stated that people would act in their own best interest if given enough of an incentive to do so.

Representative Wilson spoke to the lack of treatment providers. She asked if the commission had talked about how many more providers the state would need to make most of the provisions in the bill successful. She mentioned in-state versus telemedicine options.

Lieutenant Sell answered that the commission had not determined a number it would take. The discussion had been more about the recognition that every single addict would not get better without treatment and that it may take undergoing treatment multiple times. She explained that without treatment the state would keep doing the same thing over and over.

[2:38:20 PM](#)

Representative Edgmon thanked Lieutenant Sell for her testimony. He referred to her comments about a level of institutionalization around the mindset in the law

enforcement community and broader criminal justice system. He believed the legislature also had a level of institutionalization that it needed to work to overcome. He was uncertain on whether characterizing it as a barrier was accurate.

Lieutenant Sell affirmed that it was a barrier.

Representative Edgmon continued to speak to overcoming the institutionalized level of thinking to reach an understanding shared by Lieutenant Sell and others. He asked about her view on commercialization of marijuana. He wondered what it may introduce into the picture.

Lieutenant Sell replied that she did not think the state needed another legal drug for people to use. She relayed that when she spoke to high school students about things like heroin, she was not telling them that every single person who smoked marijuana would become a heroin addict because it was not true; however, every heroin addict she had ever talked with had been a marijuana user in the past. She discussed that most people did not know what their addictive tendencies may be. Some people would stop at alcohol or tobacco; some would have tobacco, alcohol, and marijuana; and some would experiment higher and never go there again. She emphasized that people did not know what their results would be. She questioned whether a person trying cocaine would know beforehand that it would not result in addiction. She emphasized that no one knew beforehand; experimenting with drugs was a gamble. She reasoned that the more drugs that were available, the more experimentation seemed to be easy. She remarked that so many young people on heroin who started with oxycodone and hydrocodone said that it had all been a game at first. She believed the more drugs that became legal made them more prevalent. She added that it was a drug-using society already. She surmised that about everyone in the room had probably taken a pill for something during the day. She stressed that marijuana was a massive disincentivizer. She stated that someone was going to have to maintain the roads and stock the grocery shelves in 10 years and she questioned what increased marijuana use would mean for those things.

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Representative Edgmon stated that growing up many kids around him had used marijuana. He wondered about how critical it was that the legislation passed.

Lieutenant Sell asked if the state had another \$370 million to build another prison. She believed it was the answer. She stressed the importance of doing something more effective than the status quo. She emphasized that the state could not continue pouring out more money. She provided a scenario where a car mechanic failed to fix a car two out of three times. She asked if a person should keep using that mechanic. She underscored that the state could not keep using the mechanic; two out of three criminals ended up back in the system. She strongly believed it was necessary to do something different. She noted that the state did not have the funds to continue with the status quo. Additionally, it was dangerous for the public and it was dangerous for law enforcement officers when people went to prison and did not get better. For the most part people did not currently get better in the system.

Co-Chair Thompson shared that he was getting numerous emails from police chiefs throughout the state who were concerned about some aspects of the bill. He wondered if Lieutenant Sell had seen the most recent form of the bill in comparison to the original version. He wondered if there were some differences that made the bill worse.

Lieutenant Sell believed the differences in the CS had been mostly what she termed the "auction amendments," which was the emotional pushback resulting in an auction to determine where to land on an issue. She did not believe those amendments made the bill better, but she did not believe they were fatal. The commission knew there would be emotionally driven "carve-outs" in the legislation. When the commission had submitted its recommendation it understood that changes would be made in the legislative process. Some of the changes may make the legislation better and some may make it worse. She added that in some cases they would not know for years whether a change made the system better or worse. She reasoned that no one had a crystal ball, but the commission had expected push back. The commission members had also felt the emotional pushback themselves and had wrestled with it. She believed the bill was still worth passing.

2:45:53 PM

Representative Gara noted that one could never fault someone for filing a bill that did not solve every problem. He was uncertain the bill addressed that it was not possible to force a person into treatment. He suggested that motivators would be useful in making it more compelling for prisoners to participate. He furthered that law enforcement could use probation and courts could use therapeutic courts that allowed a person to leave jail if they participated in a job training, drug treatment, and parenting program. He detailed that the moment a person failed to follow through on one of the conditions they were sent back to jail. He asked if those types of motivators worked.

Lieutenant Sell believed the state had to do them. She spoke to the importance of consistent, reliable, proportional responses to people not doing the things they had been instructed to do. Currently, there were random, harsh consequences. For example, if someone violated probation, it was possible that six months down the road something really bad could happen and they would end up back in jail for a very long time. She thought that the random delayed consequences were not working when trying to control something as powerful as drug addiction or compliance with mental health requirements. She stressed the importance of being consistent. She explained that when raising a child a parent would want to have constant oversight, correction, and reward as opposed to delayed random and severe consequences.

Representative Gara was hopeful that Co-Chair Neuman's suggestion of additional behavioral health grants to help people with substance abuse problems would help bend the curve. He asked if there was a quick and rapid response component to the bill.

Lt. Sell responded that the issue was folded into the whole pretrial theory and probation. She remarked that the bill was already massive and would be even larger if it included all of the policy particulars. She relayed the importance of having supervision in pretrial before there was a conviction; afterwards the same thing would be done in probation. The reason for shortening probation was to make the initial probation more effective. She detailed that people were most likely to fail in probation in the first

year; therefore, the relentless supervision was critical in the first year. She spoke about the need for immediate consequences if a person was not attending parenting classes, staying off substances, or meeting other obligations.

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Representative Gara observed that it was not possible to force a person into treatment, but it was possible to let them know the consequences if they chose not go through treatment.

Lieutenant Sell agreed. She added that it may take a few times to get a person into treatment. She questioned the alternative, which was to be criminally driven drug or alcohol addicts.

Co-Chair Thompson lauded Lieutenant Sell for her comments on changing behavior and early intervention. He thanked her for her time and testimony.

[2:50:34 PM](#)

GREGORY RAZO, CHAIR, ALASKA CRIMINAL JUSTICE COMMISSION, ANCHORAGE (via teleconference), relayed that he was also the Alaska Native representative for the group. He supported the testimony provided by Attorney General Richards and Lieutenant Sell. He discussed that in his previous presentation he had highlighted the recommendations of the Alaska Criminal Justice Commission individually. He relayed that he would focus on the commission's process, some of the group's key findings and recommendations, and the need for reinvestment. He provided information about his professional background. He shared that he had been a businessman with Cook Inlet Regional Inc. for many years, he had previously been an attorney in Kodiak. He believed his business background had led him to serve on the commission because it led him to ask a simple business question of the state's prison system: Is our current corrections system providing Alaskans with the best return on their corrections dollars? Are we getting return on investment? Based on his experience he knew that Alaska's prison system was not working, which was his reason for wanting to serve on the commission. He spoke to the diverse membership on the commission and he had been surprised that everyone agreed that the current system was

not working to keep communities safe and victims whole. He explained that the fact that the prison system was not working was also clear from the data. He detailed that the commission had reviewed 10 years of Alaska data and nationwide studies and had the best technical advice as it had developed its policy recommendations. The commission had learned that the state's prison system had grown 27 percent in the past ten years, yet the state still had one of the highest recidivism rates in the country (nearly two out of three individuals released from prison returned within three years).

Mr. Razo relayed that after the commission realized that the status quo was not working it had realized that addressing what could be done to make the system better was a much harder question to answer. The commission had pulled the 10 years of data from the prison and community corrections system to see what had changed in the prison system in the past ten years. When the commission looked closely at who was entering prison and how long they were staying they had seen many trends arise. He elaborated that many low-level prisoners were staying in jail pretrial because they could not come up with cash for bail. Additionally, the vast majority of inmates were in jail for non-violent misdemeanors. He relayed that felony offenders were spending much longer in prison than they did ten years earlier.

Mr. Razo highlighted that the commission had discovered that the best pretrial systems detain defendants according to their risk of re-offense, not based on their ability to afford \$500 or \$1,000 bail. The commission saw that for many low-risk offenders - including many misdemeanants - cycling in and out of the system that prison was not the best option and could make a person more likely to commit a crime upon release. He furthered that the commission had discovered that while Alaska was sending its felony offenders to prison for longer and longer periods, those additional months and years in prison were not bringing increased public safety to the state. The discoveries had ultimately led the commission to its recommendations released to the legislature in December 2015. The commission had developed 21 consensus recommendations that would help the state reshape its correctional system, which included focusing prison beds on serious and violent offenders, to implement proven supervision strategies to reduce recidivism, and free up funds to invest in things

that were known to reduce crime. He had witnessed the problems of addiction in Alaska.

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Mr. Razo relayed that he had witnessed addiction problems on the commission's trips to Nome and Kotzebue. Additionally, the commission had visited Anvil Mountain Corrections Center in Nome. He shared that it had hurt his heart - especially as an Alaska Native man - to visit a place that was probably 98 percent full of Alaska Native men where they were watching television, playing cards, and not doing anything to deal with the problems that brought them there. He had seen been confronted with the epidemic when almost every inmate had indicated they were in jail for an alcohol related offence. The legislation incorporated the commission's recommendations was projected to save the state nearly \$411 million over the next 10 years. He urged the committee to pass the comprehensive package included in the bill and to reinvest a significant portion of the savings into critical and underfunded public safety services. He communicated that as the state had been spending an increasing amount on its prisons over the past 10 years, other critical public safety functions had gone unfunded. He urged the committee to reinvest a significant portion of the savings into in-prison and community-based treatment, reentry support services, violence prevention programming, and victims' services. He emphasized that the services were the critical supports that would help keep Alaska's communities safe and its victims whole. He referred to an earlier question about whether the changes would impact public safety. He strongly believed they would impact public safety and would make Alaska a much safer place. The changes would enable the state to begin to deal with the things that brought individuals into prison in the first place.

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Representative Wilson asked if the commission had an opportunity to review the CS. She asked about the changes in the bill and wondered if they were good, bad, or neutral.

Mr. Razo agreed with Lieutenant Sell; he had followed the bill through every committee and had looked at each of the 20-plus amendments that seemed to be made by each

committee. He had spoken out on amendments that he believed were not supported by the evidence seen by the commission. He spoke to detrimental sections that he believed should not be part of law. He believed the CS before the committee was substantially what the evidence supported and should be passed.

Representative Wilson asked if Mr. Razo had made the comments he had made were to the House Judiciary Committee. She noted it would be helpful to receive the comments in written form if possible.

Vice-Chair Saddler asked if Mr. Razo believed that the state currently had the treatment and behavioral health capacity to comply with the bill.

Mr. Razo answered in the negative. He detailed that it would take some investment to reach the necessary capacity. He furthered that the state did not have nearly enough detox beds to deal with individuals coming in with a detox problem. The state used prisons as a detox center with no medical supervision, which sometimes resulted in death because the state was not doing an adequate job of dealing with detox. He addressed substance abuse treatment and relayed that the state did not have enough inpatient beds in any part of the state to deal with the problem. He shared that the commission had gone on an AMHTA trip to Nome and had an opportunity to meet community providers. He stressed that the individuals were very talented, but they were some of the most under resourced employees he had ever seen. The individuals did not have the resources to meet the needs in their villages. He believed the problem existed statewide.

Vice-Chair Saddler asked about the quality of the assessment tools used by DOC and DPS when assessing an incoming prisoner or inmate.

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Mr. Razo replied that there was minimal risk assessment currently, which was actually not part of the system in terms of people coming into the criminal justice system. He was uncertain whether Vice-Chair Saddler was talking about individuals coming into prison or when they were arrested and brought before a judge. He explained that there were not currently risk-based tools for pretrial. There was

information available to a judge that was based on the information provided by the state and any argument or factors provided by the defendant or their attorney. He relayed that it was a judgement call. Over time, the judgement had resulted in almost 80 percent of the prison population being in prison without being convicted of a crime. Currently DOC was beginning to use risk assessment tools as people neared their release date. He underscored that the program needed to begin the moment a person went into the prison system. He expounded that the individual should be assessed immediately, given a program, and should be incentivized for doing the program or penalized for not doing the program. The risk/reward idea was not currently present in the state's prison system. He believed the risk/reward system should follow the person if they came out of the program. He stated that if individuals were successful their sentence and probation would be shorter and they would have a reward for successfully doing the program and not recidivating.

Vice-Chair Saddler believed that behavior modification worked most effectively when individuals were more individuated. He stated that the current system treated people by an age cohort, charges, ethnicity, or other. He was hoping the state had adequate tools to determine people's triggers and how they could be used most effectively to obtain the desired behavior.

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Representative Gara stated that the committee had heard that Medicaid reforms would bring in the federal funds to establish many of the behavioral health services the state did not currently have. He did not want to slow the bill down because the services were being built up. He spoke to the pretrial portion of the bill. He stated that there were two ways to get out of jail - to pay bail or with a third-party custodian (someone who lived with the offender 24 hours a day). He wondered about the pretrial diversion change in the bill and asked if it would avoid the problem of people who could not get the third-party custodian. He asked if Mr. Razo saw the third-party custodian issue getting out of control.

Mr. Razo answered that the commission saw the problem become significant over time. He spoke to the laundry list of possible conditions a person could have as they went

into their bail review; a person could come out of a review with around 30 conditions. There was no way the person could come up with the money or find a third-party custodian - it created an immense barrier. He added that generally the individuals were in jail for a non-serious, non-violent offence. The commission had taken a look at the problem created by third-party custodians; in the past it had been an alternative and at present it was almost a mandatory part of bail for someone to have a third-party custodian. He explained that it had changed immensely in the 10 years since he had left the practice of law. He believed it was unfortunate and had left many people in jail.

Representative Gara asked if the pretrial diversion would result in fewer people in jail. Mr. Razo answered in the affirmative.

Representative Edgmon found it fascinating that the bill presented a frontier of opportunity. He believed it could be very successful. He spoke to his experiences in villages around Bristol Bay and thought of so many kids who became a part of the system. He asked how the bill impacted rural and Native Alaskans. He remarked that the Attorney General Richards had relayed that the commission did not primarily focus on the subject of Alaska Native Tribes. He asked for Mr. Razo's thoughts on that frontier of opportunity and whether it was something the legislature could address in future policy measures.

[3:08:48 PM](#)

Mr. Razo responded that the commission had a very broad mandate to look at the Alaska criminal justice system. He detailed that the commission did not start off with justice reinvestment; it had worked for a number of months in committees to look at a number of areas the commission may focus upon as it fulfilled its obligations. As chair of the rural criminal justice group, he had taken the opportunity to hold three public hearings on tribes and tribal justice and to understand the developing and existing systems especially in Southeast and the Interior and who was helping to develop tribal justice and what the barriers were. He noted that there was some interesting public testimony on the topic from October/November 2014. He spoke to a disparity between rural and urban Alaska. He believed the bill would allow for DOC to have some options on how it

dealt with alternatives for release in rural Alaska, particularly related to pretrial. In rural Alaska, currently only the schools and health centers had bandwidth - meaning that electronic monitoring, ankle bracelets, and other were not available due to a lack of bandwidth. He hoped that in the future things that worked in urban Alaska would also work in rural areas (the bill would allow for that). In the meantime, he believed there was an opportunity to partner with institutions in villages that had been successful, in order to help monitor their village and tribal citizens with community-based justice. The sentencing recommendations would apply in prison and did not have much differentiation between rural and urban Alaska.

Mr. Razo continued that the community supervision after an individual is released from prison would be a bit different in rural areas. There were not sufficient probation officers to accomplish what the bill needed to be done. He detailed that reinvestment had to encompass hiring additional probation officers, hopefully because there were fewer people in jails requiring in-jail supervision. He communicated that increasing the number of probation officers in rural Alaska was paramount. He furthered that many individuals were stranded in Anchorage because there were not enough probation officers and there was not sufficient treatment available in rural Alaska. He believed the build-up of treatment and opportunities in hub communities would mean individuals would not have to travel so far away from home for treatment, which would result in a safer society. He elaborated that when an individual from rural Alaska was stranded in Anchorage for up to three years trying to get their treatment they tended to lose contact with their people and support systems and many times ended up on the streets. The individuals did their best to meet their probation conditions, but it was a difficult situation. He stated that the commission work was not done and it was subject to investigation requests from the legislature as it did its job.

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Representative Munoz asked about the sentencing guidelines for sexual offences. She asked why the commission had not made guideline recommendations in the presumptive ranges related to sexual offences.

Mr. Razo answered that the commission had found that by recommending the parole eligibility for sex offenders it could accomplish a great deal in dealing with the consequence of the substantial number of sex offenders coming into prison. He stated that frankly the most serious sex offences were unclassified and Class A and had been too "hot buttoned" for the commission to take up given the commission's operation as a consensus body. In general the commission had stayed away from Class A and unclassified sex offences. He furthered that sex offenders was a difficult topic to discuss even for a group of individuals as experiences as the commission members. He believed there had been a conscious decision to accomplish what they could. He knew the bill was a substantial departure from how the state was currently doing things in criminal justice. He believed there had been a concern that [taking up the serious sexual offences] would be a "bridge too far."

Representative Munoz asked if it was an area the commission felt would be worthy of continued consideration (with legislative direction).

Mr. Razo answered in the affirmative. He stated that in 2006 the legislature had doubled or quadrupled the sentencing lengths for sexual offenders. The commission had looked at how sentencing had changed. The commission had also observed that due to the increases, sex offender population in prison had grown 38 percent over the past decade. He believed the state had a continuing obligation to make recommendations on presumptive sentencing, which did include the difficult topic of sex offender sentencing.

Co-Chair Thompson asked Mr. Razo to email his comments on the amendments made to the bill.

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BRENDA STANFILL, COMMISSIONER, ALASKA CRIMINAL JUSTICE COMMISSION (via teleconference), shared that she was currently the executive director on the Interior Alaska Center for Non-Violent Living. She had been appointed to the commission's victim advocacy seat. She stated that criminal justice was very tough from a victim's standpoint. She spoke to the significant emotion, hurt, anger involved when a person's property was stolen, they were sexually assaulted, their child was hurt in some way through a

vehicle accident, and other; all of the items were emotionally charged. In order think about the data during the commission process she had to step back from the emotionally charged part of herself. The commission process had been data-driven, during which she had stepped back to do a significant amount of listening and learning about the criminal justice system. She had not known an extensive amount about the criminal justice system when she had begun on the commission. She had learned what sex offender treatment entailed and the difference between community and jail. She had tried to ensure that they were not violating the constitutional rights of victims, to make sure there were carve-outs that would happen throughout the legislative process, and to think through which groups needed to be engaged and involved.

Ms. Stanfill discussed that during the commission process they had held two victims' services roundtables (one in Fairbanks and one in Bethel) and had invited victims' services providers, victims' advocates, victims, and other. She relayed that Senator Coghill had participated in the roundtable in Fairbanks and the Bethel meeting had been attended by many people. The goal had been to hear the participants' thoughts on what was going right and wrong. There had been broad consensus that the current system was not working for anyone; hearing that had made her more open to thinking about what the state should do differently. The commission had taken all of the conversations from the roundtables and had incorporated them into the reinvestment section of the bill (i.e. more treatment opportunities, services for victims, and prevention activities). She was aware of conversations that had occurred about some of the things that people believed were missed in the bill. She countered that the items had not been missed; the commission had very intensive conversations. She relayed that the commission did not know every single crime involved in a Class B misdemeanor, a Class C felony, and other. The commission understood that there was significant work that would have to go into ensuring that it did what it intended to do. She believed it had happened.

Ms. Stanfill furthered that many of the modifications seen along the way had occurred as a result of Senator Coghill spending hours in meetings with the Office of Victims' Rights, the Network on Domestic Violence and Sexual Assault, and different victims' groups in order to determine anything that had been missed. The commission had

carved out many things and had known it would happen. She acknowledged that it may have changed the savings, the commission had determined that the items were necessary in order for the public to continue to feel safe; it did not mean to include any kind of crime against a person (as what it was removing) from being something people were arrested for. She noted that there had been some changes made on that level.

Ms. Stanfill believed the current bill was representative of the changes that victims' services requested. There were a couple of items included in the bill that she believed victims' services were a little nervous about. She spoke to good-time, earned time, and discretionary parole for sex offenders. She noted that Representative Munoz had asked if there should be additional study on the topic [of sex offender sentencing]. She relayed that whenever there was discussion about the issue of sex offenders - it was such a traumatic experience for victims and their families - it was highly emotionally charged and people had a hard time seeing that sex offenders actually did change in any way. Before the state was able to change some of those things without significant pushback from victim advocacy groups, it was necessary to do the research and studies to determine whether sex offender treatment was working and if the capacity existed. She explained that the bill represented the foundation of what the commission had to do in order to continue working. She felt strongly that the bill needed to pass because without it they would be spending the next year questioning how to move forward. She pointed to the commission's work on items like suspended entry of judgement that could get people out of the criminal justice system before they ever entered and the removal of a food stamp prohibition that would enable individuals to get back on their feet. The commission did not have significant discussion on licensing (work Senator Coghill had been doing for a long time). She did believe the bill looked as the commission had intended; there were some different things that had been added in addition to what the commission had intended. She believed it was up to the committee to determine whether the additional items would remain in place. The commission would like the committee to consider approving and passing the bill with the commission recommendations and reinvestment provisions.

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Ms. Stanfill spoke to the importance of recognizing savings that would result from the bill and thinking about things like restitution, additional treatment, and other things that would make victims whole. She discussed that jail was thought of as the "go-to," but it was necessary to think outside the box, which was scary, particularly from the victims' side where it could feel like if a person did not go to jail they were not being punished. She stated that the bill included big changes and stretch. She was not always that comfortable, but at the end of the day she believed the bill was going in the right direction. She encouraged the committee to really look at the bill. She added that the commission really needed to have the ability to continue its work.

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Representative Gara spoke about a former client who had a terrible drinking problem in the 1970s and many DUIs. The individual was a car mechanic and had built up a 40 or 50-year license revocation. His profession meant that he had to test drive cars; therefore, the man frequently got picked up by the police and put in jail even though he had been sober for 20 years. He wondered if there was any provision in the bill to reduce the license suspension to allow people to work if they had really proven they had done what they had been asked to do.

Ms. Stanfill responded that the topic was included in the bill under the licensing provision. She believed Senator Coghill's office could provide more detail. She elaborated that currently there was no process to undertake to get a license back once a lifetime revocation was reached at the felony level. She furthered that the bill established a mechanism to enable a person to request a review of the revocation and that it could be overturned once a person had shown they had changed and had been without a conviction for a certain period of time. She noted that the provision had not come from a commission recommendation, but the commission was not against the provision.

Representative Gara thought it was important for people to get their lives back if they earned it.

Co-Chair Thompson invited Senator Coghill to address the committee.

SENATOR JOHN COGHILL, SPONSOR, relayed that the driver's license provisions were included in Sections 97, 98, 99, 103, and 106 of the bill. He greatly appreciated the testimony provided in the current meeting especially by Lieutenant Sell. He concurred that the current system was not achieving the needed results in Alaska. He emphasized the gravity of the drug, alcohol, and behavioral health issues in Alaska; the individuals did end up in the jail system. He wanted to have people who had done terrible things to others locked up. He reasoned that if they were not fit for society or safe for themselves, they should not be out in society. The trouble was that 95 percent of the people in jail were released back into society. He wanted to hold people accountable, but provide opportunities to better their lot in life; if people elected not to better their lives they would go to jail. He believed a large portion of the state's prison population was related to mental health issues and a larger portion was related to substance abuse (ranging from a bar fight to severe addiction). He reasoned that those things could change, but may not; however, the current strategy was not changing. The bill reflected the commission's effort to put forward a results-based programmatic look at the issue. He believed the results were wise. He acknowledged that some of the provisions were controversial; however, the current strategy was not solving the problem. He would be glad to point out the issues that concerned him when it was his turn to discuss the legislation. He communicated that DOL, public defenders, and police would be available to discuss how the provisions worked.

Senator Coghill very sympathetic with police who had to deal with individuals who were becoming increasingly dangerous day-in and day-out. He understood that the state liked to have the "felony hammer" as a tool, but it was not working. He reasoned that the state should have misdemeanors that did work. The reinvestment portion of the bill was for government and other purposes. The government purposes involved pretrial and the way probation and parole were done. He elaborated that the process would be risk-based, would use ankle monitoring, and would do things to hold individuals accountable to get them into programs. Any reinvestment into society would go into domestic violence and assault areas and drug and alcohol rehabilitation. The process would include new concepts that would need to be examined along the way. He recalled that as a teacher he had always said "what is not inspected would probably be

rejected." He was asking for the commission to be extended and given specific things to look at. He stated that Alaska was on the wrong place on the list in terms of sexual assault and domestic violence; something had to change. He observed that the current system was obviously not working; long-term sentences had not had a positive impact. One of the goals in the bill was to move the sexual accountability training into the jails. Currently, many people were languishing in Juneau, Anchorage, and Fairbanks waiting for sex offender treatment and could not go home. He reasoned that if the services could be moved back into the jails through reinvestment it would mean individuals would come out at least having the benefit of undergoing treatment, which would mean they could go to work and possibly back home.

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Senator Coghill continued that every committee had a hot debate on the issue. He hoped that in the end of the bill process the legislation would bring positive results to the state. He believed the bill represented a good template. He believed there were some management tools and tweaks the committee could make, but for the most part, the basic elements of the bill were good and sound. He committed to working with the committee on the remaining fine points of the bill. The sponsor and his staff (Jordan Shilling) had numerous teleconferences with DOL, victims, probation officers, and other looking out how to hammer out the bill details. He noted that he had not allowed his staff to make policy calls, but he had allowed him to get the discussion going.

[3:34:16 PM](#)

Representative Gara remarked that Senator Coghill had taken on one of the "heavy lifts" during the current session and that he should be proud. He saw Senator Coghill's office as the expert on the issue. He relayed that the last thing he wanted to do was propose something that would tip the bill in the wrong way. He did not want to put the bill sponsor in a difficult position; he understood that Senator Coghill wanted the bill passed and was comfortable with it at present. He was interested to know which parts of the bill did not work as well now that it had been rewritten. He added he understood if Senator Coghill decided that getting

rid of those items would risk the passage of a good piece of legislation.

Senator Coghill replied that he would be glad to provide the information at a later time. He stated that there were 8 or 9 things he believed could be worked on. He mentioned some of the carve outs that had been put in the bill on the Senate side (e.g. good-time and parole related to sexual assault offences). He explained that the commission had provided a broad recommendation and the legislature had elected to narrow it back significantly, simply because there was a public condemnation issue and a fear of what could be done to change an [sex] offender's behavior. He explained that some of the statistics were not clear across the nation or in Alaska. There was a good statistical review from Pew - the organization would follow the results of the bill if implemented. He explained that as the organization followed the results the state would be able to begin compiling a better proven practice and statistical review. However, if the bill was not passed in the current year, it would not happen.

Senator Coghill discussed that some items had been put in by the judiciary committee that he believed were hitchhiking on the legislation. He would probably speak negatively about those items, which he believed entered the political realm and not a practical one. He had worked on some items with Representative Wilson on third-party monitoring that he would like to see remain or become strengthened. For example, he wanted to ensure that good-time credit for being in programs was maintained. He explained that it was part of the incentive package that he believed was so important. He countered the argument that the provisions were light on crime and believed it was being accountable. He believed that some of the accountability measures may have been pulled back too far. For example, currently a person would much rather finish their time in jail than go to a treatment program, because it was easier. He asked whether it was the right thing to do. He believed it was important to start asking the questions. He relayed that he could flag the provisions during the review of a sectional analysis at a later time.

[3:38:11 PM](#)

Co-Chair Thompson communicated that the committee would hear the bill again at a later date. He noted that there

were 23 people online available for questions from DOC, DOL, DHSS, and other.

Representative Wilson asked DOC to be prepared to report on how the system currently worked compared to the changes in the bill.

Co-Chair Thompson relayed that the department would provide the answers.

CSSSSB 91(FIN) AM was HEARD and HELD in committee for further consideration.

[3:39:52 PM](#)

RECESSED

[5:10:17 PM](#)

RECONVENED

^PRESENTATION: LABOR CONTRACTS REVIEW

[5:10:46 PM](#)

Co-Chair Neuman took over as chair. He discussed the agenda for the remainder of the meeting.

SHELDON FISHER, COMMISSIONER, DEPARTMENT OF ADMINISTRATION (DOA), provided a PowerPoint presentation titled "Alaska Department of Administration 2016 Labor Contracts" dated April 19, 2016 (copy on file). He addressed slide 2 and provided bargaining framework for the current labor negotiations. He explained that the scope and the framework of the negotiations were governed by the Public Employment Relations Act. The state began negotiations typically in the fall around October with a goal to conclude by the 60th day and to provide the terms to the legislature. He expressed intent to provide information on the status of wages, hours, and other terms were mandatory bargaining subjects. He noted that there was some permissive bargaining the state was allowed to negotiate on if it chose. He relayed that monetary terms required legislative approval. He noted that four contracts had been submitted to the legislature for approval.

Commissioner Fisher believed it was important to recognize that negotiations were a negotiation; if either side found the demands too unfavorable, they could largely maintain

status quo by choosing to do nothing. He furthered that once impasse was reached and mediation failed the employees had a right to strike. He noted that there were some exceptions to the rule associated with Class 1 employees that related to police and fire, jails and prisons, and other. However, by in large, employees had the right to strike and following impasse the state had the right to implement the last best offer. He added that both options were harmful to labor-management negotiations and were generally avoided. There tended to be incremental change in labor contracts, which was particularly true in a represented environment, but in his experience it was also true in a non-represented environment in the private sector. He explained that because changes in labor relations were disruptive to the employees, most organizations tried to make incremental changes when dealing with adjustments to their labor force.

[5:14:17 PM](#)

Commissioner Fisher turned to slide 3 and spoke to bargaining unit detail. He communicated that the state had reached agreement with four of the five contracts under negotiation. Nearly 87 percent of the state's employees were impacted by the current round of negotiations when factoring in the non-covered, exempt, and excluded employees. He detailed that the state had reached agreement with Labor, Trades, and Crafts (Local 71); the Teachers' Education Association of Mount Edgecumbe (TEAME); the Alaska State Employees Association (ASEA or GGU); and the Confidential Employees Association (CEA). The state was still under negotiation with the Alaska Public Employees Association (APEA), which was sometimes referred to as the supervisors' union. He believed each of the bargaining units came to the table prepared to make concessions; they had agreed to no cost of living allowance (COLA) increases for three years, furloughs, a reduction in benefits and many beginning to pay for their own healthcare, and work rule changes. He relayed that the state had given very little in return to gain those concessions. For FY 17, the concessions amounted to approximately \$6.5 million. Whereas, the state gave less than \$40,000 in concessions in return. He believed it was fair to say that the agreements had been reached because the bargaining units came prepared to accept concessions in recognition of the state's position [financially]. The state appreciated that perspective and he believed they had reached a reasonable

set of results for the state and employees. The chart on slide 3 included the date the agreement terms were provided to the legislature; the earliest agreement had been provided in January and the most recent had been provided on March 22, 2016.

Commissioner Fisher moved to slide 4 related to bargaining priorities. He relayed that when the state began the bargaining process it had focused primarily on monetary terms including cash compensation and benefits. The department had done a fair amount of analysis and believed that cash compensation as a whole was below market for state employees. He explained that it tended to be offset by the fact that benefits were above market. The state had made some concessions in the cash component, primarily no COLA increases and the furlough and had focused considerable energy around benefits, particularly healthcare benefits. He shared that over the past decade or so, healthcare costs tended to grow faster than inflation and salary cost. He expounded that the state's share of the burden had continued to grow; therefore, the department was working to structure arrangements that would reduce costs overall and more equitably share the cost between the employer and employee.

[5:18:27 PM](#)

Co-Chair Neuman noted that Representative Kawasaki and Co-Chair Thompson had joined the meeting. He commented that Representative Louise Stutes was present in the audience.

Commissioner Fisher continued to speak to slide 4. The negotiations had also involved addressing certain work rules, some of which were to create consistency between contracts. He believed the department had previously shared its desire to leverage the Integrated Resource Information System (IRIS) application to increasingly automate the way the state does business. He explained that it was very difficult when each bargaining unit had a different set of work rules and practices; therefore, the state had been working hard to standardize and create consistency among its contracts, which would allow automation. There had also been work on creating flexibility in state contracts.

Commissioner Fisher spoke to cash compensation on slide 5. He reiterated his earlier statement that the state tended to pay below market in terms of cash compensation. He added

that it was a general statement - there were areas where cash compensation was below market and other areas where it was above market. Generally speaking employees below market were professional employees, which included educated employees who tended to earn a salary at a higher range. He communicated that it tended to be the case that the greater the education, the more below market employees were. Additionally, the state's newest employees tended to be below market. He added that the newest employees were Tier IV and did not enjoy the benefit of a Defined Benefit (DB) retirement plan and were part of the Defined Contribution (DC) retirement plan.

Co-Chair Neuman asked for information about employees falling into the below and above market categories. He asked for examples.

Commissioner Fisher stated that the employees most below market were the highly educated professional employees (i.e. attorneys, skilled employees in the oil and gas employees, and other) who were highly skilled and in demand. Generally speaking, newer employees tended to be below market. He communicated that employees with lesser skills tended to be above market as did the more tenured employees. The more tenured employees also enjoyed the benefits of a DB retirement program.

Representative Gara remarked that there were about 7 pages of state employees making over \$125,000 per year. Many of the individuals were professionals and had to get paid that amount of money in order for the state to attract them. He believed the governor's office had been looking at the higher salaried employees and wondered if DOA was involved in that undertaking.

Commissioner Fisher affirmed that Representative Gara's statement about the number of employees [making over \$125,000 annually] was accurate. He agreed that by in large they were the higher skilled employees. The department's analysis suggested that even though they were highly compensated they were actually compensated below market. He did not know how the governor may or may not choose to address the issue.

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Commissioner Fisher continued with slide 5. He referred to a chart on the lower left side titled "Mid-Level Professional Salary Adjustments (COLA and MERIT) Range 16 GGU Salary Schedules eff July 2004-2015." He noted that he was on record specifying that the growth curve on the chart was very steep. However, he believed it was important to understand that overall cash compensation of state employees tended to be below market. He noted that by negotiating to eliminate COLA increases [for three years] the growth curve flattened out [shown in a chart on the right]. The chart on the right covered the same timeframe and showed that if the state had not paid a COLA, the merit and step increases would have resulted in an increase of about 40 percent in wages compared to an increase of about 30 percent in CPI [Consumer Price Index]. He discussed that the state tended to hire below market and let people grow during their career and the chart on the right felt pretty typical to what may be seen in many industries. He reiterated that the growth curve had been flattened by the elimination of COLAs and had achieved a more gradual and appropriate salary growth during an employee's tenure.

Vice-Chair Saddler asked if the chart on the right of slide 5 accurately represented that there had been no COLA adjustments in the last 10 years. He asked for clarification.

Commissioner Fisher replied that the chart on the left represented what had actually occurred; the chart on the right represented what would have happened if there had been no COLA increases. He explained that in the negotiations the parties had agreed to no COLA increases; therefore, going forward the state could expect a growth that was more consistent with the chart on the right.

Vice-Chair Saddler referred to the chart on the right and asked for verification that without COLA, the merit pay had increased GGU salaries on average by 11 percent more than inflation.

Commissioner Fisher answered in the affirmative. However, he highlighted that the state tended to hire below market.

Vice-Chair Saddler looked at the chart on the left and observed that with the combination of COLA and merit the same employee was more than double (36 to 37 percent) more than CPI and inflation.

Commissioner Fisher replied in the affirmative. He underscored that even with that kind of growth, state employees tended to be paid below market.

Representative Munoz referred back to slide 3, which showed the state had tentative agreements with ASEA, CEA, and TEAME. She asked what the legislation would do to the tentative agreements.

Commissioner Fisher clarified that the negotiated agreements also included LTC. He explained that he was currently only reporting on the negotiations and was not commenting on any particular piece of legislation.

Co-Chair Neuman confirmed that the committee was not presently discussing a piece of legislation.

Representative Edgmon remarked that the committee had recently heard testimony on HB 249. He recalled that a former deputy commissioner for DOA had stated that state pay increases were \$70 million (3.5 to 10 percent). He reasoned that the information did not seem to comport with the information in the presentation.

[5:28:12 PM](#)

Commissioner Fisher believed that what had been reported was that those types of increases occurred over a three-year period. He addressed the high end of slightly over 10 percent and explained that merit steps were increased annually by 3.5 percent during the first five years of employment; compounded the figure grew to over 10 percent. He addressed the low end and detailed that after the first five years an employee received a step increase every other year; depending on where one fell during the three years, they may only receive one step increase at 3.25 percent.

Commissioner Fisher continued to address slide 5. He relayed that in addition to the zero COLA increases for the next three years, the parties had also agreed to take a mandatory furlough, which would result in about \$1.8 million in savings in FY 17.

Co-Chair Thompson surmised that the legislature would approve or reject contracts. He asked about the cost to the

state if the contracts were not approved by the legislature.

Commissioner Fisher replied that if the contracts were not approved, the state's interpretation would be that the contracts were rejected and they would return to status quo; it would cost approximately \$6.5 million of additional expense in FY 17.

Co-Chair Thompson asked about the likelihood of achieving further concessions if the parties went back to the negotiating table.

Commissioner Fisher answered that the state had negotiated aggressively and very hard and he believed they had reached an agreement that was fair to employees and the state. He explained that all that needed to occur to maintain the status quo was for one party to choose to make no movement. He believed the bargaining units had come to the table in good faith recognizing the situation the state was in.

Co-Chair Thompson surmised that employees would not be making contributions to their health insurance and would not take furlough [if status quo was maintained].

Commissioner Fisher agreed that without the contracts the state would not achieve the savings. He elaborated that without the agreements, the state did not have the right to insist that classified employees take a furlough or contribute to healthcare. He clarified that healthcare varied depending on the bargaining unit; some units had a trust and others were part of AlaskaCare. In each case, there were healthcare savings associated with the contracts. He detailed that in some cases the state was contributing less to the trust and in some cases employees were contributing.

[5:32:12 PM](#)

Representative Gattis asked what zero, zero, zero meant. She had heard that it meant there were no raises; however, she countered that there were raises included. She asked if individuals were getting raises and what it would look like if they were not getting raises.

Commissioner Fisher answered that when he used the term "zero, zero, zero," he was referring to the COLA

negotiated. He detailed that it meant there would be not COLA in the first, second, or third year of the newly negotiated contracts. He stated that the left chart on slide 5 included two elements associated with cost increases: 1) COLA and 2) merit/step increases. He elaborated that the merit/step increases did continue. He explained that the legislature does not appropriate funds for merit and step increases. He elaborated that the assumption was that someone was retiring and someone was being hired and that the two offset each other; therefore, the labor cost remained flat. He expounded that it was not an incremental expense across the entire state budget, but it did result in a salary increase to the employee throughout their life and tenure as a state employee.

Representative Gattis looked at the issue from a private company perspective. She stated that in some places when people were laid off in other areas the business put money back into its bottom line. She reasoned that as a government, the state had the opportunity to put money back into its bottom line if it did not give pay raises (merit or steps). She observed that the state's strategy still equated to money being paid out even if it was compartmentalized by the DOA budget.

[5:36:01 PM](#)

Commissioner Fisher answered that he did not disagree with the characterization. He reiterated his earlier statement that he believed the chart on the left of slide 5 showed a steep increase. He believed it was important to flatten the growth; however, if the state wanted a viable workforce, eventually it would need to increase starting salaries as ending salaries were decreased in order to create the necessary balance.

Representative clarified that she was not disagreeing, but she wanted to get the issue on the table. She understood that they wanted to keep the state's employees. She wondered if the state did not pay merit or step increases, how much money would be saved.

Commissioner Fisher answered that the department was currently working on the analysis. He estimated that the savings was somewhere between \$20 million to \$25 million per year. He added that it was a bit less in the first year and a bit more in the outer years.

5:38:41 PM

Representative Munoz asked for the estimated value of the furloughs and concessions on healthcare.

Commissioner Fisher replied that the presentation included a chart in its later pages. The furloughs were about \$1.8 million and the healthcare was about \$4.5 million.

Vice-Chair Saddler asked for the total annual payroll for the employees covered by the current contract negotiations. Commissioner Fisher asked for clarification.

Vice-Chair Saddler pointed to slide 3 that included bargaining unit details. He pointed to the 16,661 employees listed on the slide. Commissioner Fisher answered that it was about \$1.2 billion for all state employees (16,661).

Vice-Chair Saddler asked for verification that the total annual payroll for the 16,661 employees (shown on slide 3) was \$1.2 billion. Commissioner Fisher answered in the affirmative. He could follow up with the exact number, but it was between \$1 billion and \$1.2 billion.

Vice-Chair Saddler asked what \$6 million in give-back represented in terms of total payroll. He referred to Commissioner Fisher's testimony that pay was below market. He asked what market index was used for comparison. Commissioner Fisher answered that it varied for each job, but the department had attempted to look at comparable positions in the Alaskan marketplace and had compared state employees.

5:41:08 PM

Vice-Chair Saddler spoke to inflation and COLA increases. He asked for verification that the most efficient and accurate COLA would identically track the CPI.

Commissioner Fisher asked Vice-Chair Saddler to repeat the question.

Vice-Chair Saddler restated his question. He assumed a COLA sought to cancel out the eroding influence of inflation. He surmised that the perfect COLA would be exactly equal to the CPI. Commissioner Fisher replied in the affirmative.

Vice-Chair Saddler pointed to the right chart on slide 5. He asked whether the green and red lines intersect immediately in the upcoming year if there was no COLA adjustment.

Commissioner Fisher answered that the red line represented a merit increase, which had not been intended to be a proxy for the cost of living. He elaborated that it had been intended to reflect that as an employee grew in the organization they were able to contribute more and the amounts had been set without regard to the CPI. He relayed that the red line would continue to diverge from the CPI (green line); it would also depend on the CPI amount. He furthered that the merit and step had been defined and the CPI would vary over time.

Vice-Chair Saddler referred to the right chart on slide 5 asked for verification that in the next fiscal year the pay levels would still be higher than the CPI even with no COLA increase.

Commissioner Fisher replied in the affirmative.

[5:43:54 PM](#)

Representative Wilson discussed her understanding that an employee received annual 3.25 percent merit increases for the first five years of employment. She asked for verification that beginning in year six they received a 3.5 percent increase every two years.

Commissioner Fisher answered that the annual increase was 3.5 percent for the first five years and thereafter it was 3.25 percent every other year.

Representative Wilson asked if the 3.25 percent increase was provided every other year indefinitely. Commissioner Fisher answered that the increase continued for the duration of the employee's tenure as a state employee.

Representative Wilson surmised that without COLA the red and green lines [representing merit pay and CPI respectively] would be much closer together when increases came every other year as opposed to during the first five years when increases were provided annually.

Commissioner Fisher answered that the chart included the first 10 years of employment for a state employee. For the first five years employees got an increase and then thereafter it started to stair step to every other year; it was the reason for the smooth and step periods shown in the red line (slide 5). He agreed that after the first five years an employee received an increase every other year and depending on what happened with inflation the employee may or may not keep up.

Representative Wilson mentioned discussion about the difference between an employee leaving and another employee beginning state employment. She stated that there were certain professions (e.g. attorneys, engineers, and other) where a new employee may start at the same range as an outgoing employee, but savings on merit would result. She spoke to other less skilled jobs where the state may save funds in the beginning of employment. She asked if there were other ways to give raises to employees if the merit increases went away.

Commissioner Fisher answered that in an employee's tenure there would potentially be an opportunity for promotional raises as they grew in responsibility and promotions. He asked department employee Kate Sheehan [Director, Division of Personnel and Labor Relations] if there were other mechanisms for special cases [Ms. Sheehan replied in the negative]. He relayed that there would not be other opportunities.

Representative Wilson surmised that if a person began at a range 12 and received increased duties, it would be another way - depending on the budget - for the employee to receive a promotion up to a range 13 or 14. She concluded that it would be separate from the merit pay.

Commissioner Fisher answered in the affirmative.

Representative Gattis asked for verification that merit and step pays were compounded. Commissioner Fisher replied in the affirmative.

Representative Kawasaki asked why - from a constitutional context - the state based its compensation in negotiations on merit.

Commissioner Fisher replied that the constitution clearly included the principle that state employment was a merit-based system; it included the notion that the state hired and promoted people based on merit and not some other element. He believed there was a notion that compensation should also be based on merit. He opined that while the constitutional overlay existed, there were a number of different structures that could satisfy the requirement. He did not believe the current structure was mandated by the constitution.

Representative Kawasaki believed merit was an important part of compensation and should remain. He shared Alaska constitutional Delegate [George] Sundborg's remarks on the state's civil service system and merit. He cited that Delegate Sundborg pointed out in the constitutional convention that the "spoil system" was the alternative and that state civil servants should keep state jobs from being distributed as political favors. He furthered that Delegate Sundborg believed the state should have a system developed based on competency and a permanent workforce.

[5:49:44 PM](#)

Commissioner Fisher did not disagree, but he noted that there were a variety of ways to think about merit compensation.

Representative Gara understood that given the state's fiscal situation, it was not possible to be very generous with raises at present. He pointed to the chart on the right of slide 5. He assumed that if the state tried to find a way to keep employees' wages in line with inflation that the state would lose valuable employees. He observed that people would want to try to get ahead in the world at some point.

Commissioner Fisher answered that it was an interesting point. He believed it depended a bit on the employee and the category. He thought there were a fair number of industries where employees reached a skill level and remained more or less with inflation from there on out. There were others who continued to gain skill and productivity and their salary tended to grow as well. He believed it depended on the category and type of employee. It was important to keep in mind that the state was most vulnerable in losing the employees with the greatest

mobility, skill, and education, because they tended to be undercompensated at present.

Vice-Chair Saddler spoke about merit pay and asked if there was any standard around whether merit was an absolute. He wondered if the state awarded the top 20-plus percent or everyone who met a certain level of performance.

Commissioner Fisher answered that the administration needed to improve the system. He explained that under the current merit system if an employee received an evaluation of "low acceptable" or "unacceptable" they did not receive a merit increase. In reality, the state agencies were not very effective in their performance management of employees and it tended to be that a very high percentage (over 95 percent) earned their merit and step increases.

Vice-Chair Saddler asked if an employee automatically received a merit increase if the employee did not receive their evaluation within a certain time around their hire-date anniversary.

Commissioner Fisher replied in the negative. He explained that because the state had not done a great job in the area, some employees had not received a merit increase for a meaningful period of time.

Vice-Chair Saddler asked if the employee would qualify for retroactive merit increase pay if for example, their merit increase was six months late.

[5:53:47 PM](#)

Commissioner Fisher explained that the first five years made up the merit period and pay increment increases occurred in the following years. During the merit period, Vice-Chair Saddler's first characterization was accurate. He detailed that an employee received merit increases automatically unless their supervisor took steps to deny the increase. Thereafter, the pay increment increases required a review; employees did not receive the increase if a review was not provided. He deferred to Ms. Sheehan to address retroactivity.

KATE SHEEHAN, DIRECTOR, DIVISION OF PERSONNEL AND LABOR RELATIONS, answered that if under Vice-Chair Saddler's example the employee was given a "mid-acceptable"

evaluation or better, the payment increase would be retroactive to the date of their pay increment anniversary date.

[5:55:08 PM](#)

Commissioner Fisher moved to slide 6 and spoke to benefits. He highlighted that historically, roughly half of state employees in the AlaskaCare participated in the economy benefit plan. He noted that many state employees were in health trusts and those employees already contributed to their healthcare. He elaborated that within the AlaskaCare plan, the economy plan did not have employee premiums, tended to have low deductibles, and other advantageous characteristics. He discussed that healthcare was growing faster than salary and inflations; for a variety of reasons the state believed it needed to change the benefit provided to employees and had negotiated an employee contribution. Additionally, the state had begun to negotiate more typical marketplace rates in terms of deductibles and copays. The state continued the path taken by the previous administration to negotiating leave caps on accruals.

Co-Chair Neuman had heard comment about a gold-plated plan. He asked what that was in reference to.

Commissioner Fisher answered that there were three state plans: economy, standard, and premium. He surmised that the premium plan was probably gold-plated and explained that it would be phased out after the current year. He believed it was fair to say that the state's healthcare plans tended to be on the generous side compared to the marketplace. The state was working to move them and leverage some of the techniques used by others. For example, techniques may include different steerage components on pharmaceuticals, different deductible rates, and other. The state was in the process of building the items out and recognized that the benefit plan needed to be more standard.

[5:58:31 PM](#)

Representative Wilson asked about the benefit of having some employees in the state's health plan in addition others in a health trust paid for by the state.

Commissioner Fisher answered that previously certain bargaining units had asked if they could develop a health

trust and have the state contribute the money it would have used inside the healthcare and allow employees to develop their own healthcare trust. He did not know that there was a huge benefit. He relayed that by in large the health trusts had been well managed. He believed the experience was fairly comparable. He added that the health trusts had required employee contributions earlier than the state. The trusts had been successful in areas that he believed the state was learning from. He did not know that it had been designed to deliver a benefit, it was just an alternative way of delivering healthcare.

Representative Wilson pointed out that sometimes it was cheaper for everyone when there were more people in a plan versus having smaller plans. She remarked on hearing from school districts in the past couple of years related to healthcare plans.

Commissioner Fisher answered that sometimes if a group was too small, the pooling was so small it was hard to spread the risk. He believed the state had a large enough group in the trusts and AlaskaCare. Second, there was an opportunity to negotiate better rates with providers if the group was larger. He relayed that there was language in the current budget requesting DOA to look at a healthcare authority, which would examine the issues.

Representative Wilson asked if the state sent letters out periodically to see if a person still had dependents and if they were still married. Commissioner Fisher answered in the affirmative and relayed that the process was currently underway. He believed the process should be done more frequently.

[6:01:47 PM](#)

Representative Kawasaki asked about slide 6 related to the market and wondered if the state was comparing apples to apples. For example, he wondered if the state was comparing its employees with comparable private sector employees. Commissioner Fisher answered in the affirmative. He elaborated that the department was trying to control for those differences as much as possible.

Representative Kawasaki asked for verification that the state was not comparing a person working at Walmart blended throughout the state versus state employees.

Commissioner Fisher answered in the negative. He explained that the state was trying to look at the varied category of employees. For example, a snow plow operator working for the state versus a snow plow operator working out of the state. The department looked at category by category.

Representative Kawasaki asked if Commissioner Fisher meant state service versus private sector employment. Commissioner Fisher replied in the affirmative.

Representative Kawasaki stated that his healthcare insurance had been significantly better in a previous job than it was at present. However, he was glad to hear that the state's benefits were above market. He shared that he had numerous friends who wanted to find a job within state service because of the benefits - particularly healthcare benefits. He wondered if there was a reason the benefits were above market. He asked if they helped increase the number of individuals who wanted to work for the state.

Commissioner Fisher answered that the department believed its compensation was about equal to market when factoring in its combination of cash and benefits; cash tended to be below market, while benefits tended to be above market. He elaborated that the combination of the two enabled the state to attract employees. He added that the negotiated changes put pressure on both sides; it was reducing growth in cash compensation and starting to diminish the value of state benefits.

[6:04:15 PM](#)

Representative Kawasaki noted that there were many people who wanted to work for the state specifically because of health and leave benefits and who were willing to sacrifice on salary. He asked if it would be harder to recruit new employees due to the recently negotiated contracts.

Commissioner Fisher replied that there was a short-term and long-term answer to the question. He spoke to the short-term and recognized that the market had changed - other employers had made cutbacks and adjustments. He noted that the analysis had shown the state more or less at market. In the short-term he did not anticipate having trouble. He added that there was always difficulty finding good quality people, but he did not believe it would be abnormally

challenging. However, longer-term as the market improved, private sector employers were able to make adjustments more quickly; therefore, it may become more difficult for the state in the future.

6:06:01 PM

Representative Gara hoped the department would be careful when making any changes to benefits. He explained that in the past the state had a premium dental plan; however, it was no longer offered. He believed state employees were currently covered up to \$1,000. He relayed a recent personal experience involving a crown and root canal, which had cost him 5 percent of his salary two years in a row. He remarked that he would be happy to pay for a premium dental plan if it existed. He wondered if in order to attract state employees, it would make more sense to consider having state employees contribute a bit more to their plan rather than taking away a good plan. He did not know what a fair amount would have been to charge state employees, but he believed it was crazy for a person to pay 5 percent of their salary for a tooth.

Commissioner Fisher agreed that the state needed to ensure it provided a quality product. He noted that the state really did not have a choice regarding the elimination of the premium plan. He elaborated that under the Affordable Care Act and the associated "Cadillac Tax," it was necessary to phase out the overall premium plan or all employees would pay a greater penalty. He believed that compared to the marketplace, the state's standard and economy plans were still quality, generous plans. He spoke to Representative Gara's dental experience and relayed that dental was fully funded by the employee. He believed the decision had been made at some point to move towards a more basic plan for dental insurance; it was something the state could revisit if desired.

Representative Gara referred to a flat rate for dependents. He relayed that his wife worked and had health insurance. He asked if his wife was automatically covered under his plan or if she would pay to be part of his plan.

Commissioner Fisher responded that the state had an employee-only plan and an employee plus family plan. He spoke to the flat rate and relayed that some plans had a number of gradations for the family (i.e. employee plus

spouse, employee plus spouse plus one or more children, and other). He shared that he personally paid a flat rate for his entire family and it was not graduated by each additional dependent. He stated that for a large family it could be a material benefit. He guessed that Representative Gara had selected an employee-only plan if his wife was covered somewhere else.

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Vice-Chair Saddler wondered if the governor, lieutenant governor, or legislators received a special healthcare and retirement package when entering state employment. Alternatively, he asked if they received the same benefits as any other state employee.

Commissioner Fisher answered that the individuals received the same benefits as any other state employee.

Vice-Chair Saddler had heard that for a brief period in the past there had been a retirement system that was calculated for the benefit of elected public officials. He believed the system had been called EPORS. He asked for details.

Commissioner Fisher replied that there was an EPORS (Elected Public Officers Retirement System) plan that still existed but was closed. He offered to follow up with specifics on the plan.

Co-Chair Neuman noted that had allowed for a broad range of questions but he wanted members to focus on the current contracts.

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Commissioner Fisher turned to slide 7 titled "Other Topics Addressed in this Round of Negotiations." He addressed that there were a number of work rules and other improvements that had been negotiated. He explained that the items were not currently associated with a large monetary value, but they did provide a framework for the state to improve its efficiencies. He remarked on his earlier testimony about the department's desire to leverage IRIS in order to automate numerous processes, and move to a shared service model. He explained that when different work rules existed in various bargaining unit agreements, it made it difficult to create automation. The department had been working with

bargaining units to standardize in a number of important areas that would provide benefits and increased efficiency.

Commissioner Fisher advanced to slide 8 titled "FY 2017 Savings." The slide illustrated a summary of negotiated savings across the four contracts. The chart did not attribute any savings to wages, even though compared to the historical average there was a material savings associated with the zero COLA increase. There was about \$4.5 million in FY 17 associated with healthcare changes and \$1.8 million attributed to furloughs across the four bargaining units. The final three columns showed some concessions made by the state including a geographic differential, advisors, and legal trust; combined, the items had cost the state less than \$40,000. He believed the bargaining units had come prepared to make concessions and recognized the state's [fiscal] situation.

Vice-Chair Saddler stated that the savings were a portion of a \$1.1 billion payroll. He asked if the total included wages and benefits or wages only. Commissioner Fisher responded that the number only included wages.

Vice-Chair Saddler remarked that the negotiations included approximately \$6 million in giveback for \$1.1 billion in payroll not including benefits, which he estimated would be an additional one-third.

Commissioner Fisher explained that the 4 bargaining units did not encompass \$1.4 billion. He observed that Vice-Chair Saddler's point was that in the overall compensation the savings were small. He highlighted that the state was also reducing the number of its employees; there were a number of things the state was doing in order to deal with cost in addition to the savings shown on slide 8.

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Commissioner Fisher advanced to slide 9 titled "What Happens when Legislature Rejects Contracts." He explained that if the contracts were rejected, the parties would reenter into negotiations and would either reach voluntary agreement or impasse. He detailed that if the negotiations resulted in impasse the bargaining units had the right to strike and the state had the right to implement its last best offer. Class 1 employees (i.e. police, fire, and jails) were not allowed to strike and had the right to seek

mandatory and binding arbitration. Any subsequent arbitration decision or voluntary agreement was submitted to the legislature for its approval of the monetary terms. He pointed out that if the legislature decided not to do anything it would be the equivalent of a rejection, although it had the downside that the department and unions did not have guidance about what was unacceptable. He elaborated that the situation had occurred in the past where the administration in essence submitted the same contract.

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Representative Kawasaki noted that in Fairbanks there was a Class 1 union that was not able to strike and had gone to binding arbitration; the union contract had also included an "Evergreen" clause, which meant the city would still be paying (not the new contract costs). He asked if the state Class 1 employee contracts included an Evergreen clause.

Commissioner Fisher stated that in the time period between the contract expiration and the finalization of arbitration, the state was required to maintain status quo, which meant things continued as if the contract was not expired during that interim period.

Representative Kawasaki asked for verification that there had been salary increases during that period of time, which would be maintained. Commissioner Fisher agreed. He elaborated that everything would stay the same until the arbitration decision was awarded and implemented.

Representative Kawasaki asked if the state would be obligated to pay the entire amount plus back pay and interest in penalties if the parties went to arbitration and the state lost.

Commissioner Fisher deferred the question to Ms. Sheehan.

Ms. Sheehan explained that if the parties entered an interest arbitration and both sides put forth their last best offers. If the unions were awarded their offer, the state would still be obligated to submit the agreement to the legislature; however, the state would be required to pay any retroactive payments or interest awarded.

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Vice-Chair Saddler asked who the arbitrators were and if arbitration decisions had tended to favor one side or the other. Ms. Sheehan responded that there were panels of arbitrators that set forth how they were selected in the collective bargaining agreements. Generally not every grievance arbitrator did interest arbitrations; therefore, the state tried to pick from the panel and it struck names to select the arbitrator. Typically, arbitrations had not been "baseball style"; each side usually got some of what they wanted and lost some of what they wanted.

Vice-Chair Saddler asked about the difference between an interest arbitrator and a grievance arbitrator. He also asked about the term "baseball style."

Ms. Sheehan answered that a grievance arbitration would occur if there was a contract violation, discipline that was grieved, and the grievous process was undertaken. She detailed that it was either class action or an individual employee. An interest arbitration occurred when the terms of a collective bargaining unit were in front of them and the interest arbitrator's job was to select the terms of the new agreement as if the parties voluntarily reached the agreement themselves. Baseball arbitration occurred when the arbitrator had to select either the state's or the union's complete package versus picking items here or there.

Vice-Chair Saddler surmised that the selecting the arbitrators was almost like a voir dire process. He elaborated that Ms. Sheehan had indicated that there were different panels of arbitrators from which the state could pick, strike, and challenge.

Ms. Sheehan replied that the department was required to compile a list of names from the Federal Mediation and Conciliation Service. She detailed that each side did research on the chosen list of names and names were struck in order to reach a permanent panel. There were 7 or 11 names on a panel depending on the collective bargaining agreement. She explained that names were struck until they reached an arbitrator to hear the case.

Representative Munoz spoke to savings in the negotiated agreements related to furlough and healthcare. She asked if

contracts were not funded whether they would return to the previous agreements on COLA.

Commissioner Fisher answered that if the contracts were not funded there would not be a specified COLA. He explained that there would not be a COLA expense if the contracts were rejected. However, the healthcare and furlough savings would be lost.

Representative Munoz addressed that the state's operating budget had been reduced the previous year by \$400 million and the legislature was looking at a reduction of \$280 million in the current year. She had heard it said that only about 56 positions had been reduced. She believed the number was significantly higher as a result of not filling vacant positions. She asked how many actual state workforce positions had been reduced in the past two years.

Commissioner Fisher agreed that there had been significant attrition that had not been backfilled when people left state employment or retired, including the Judiciary. He detailed that from December 31, 2014 through March 15, 2016 there had been a reduction of about 712 full-time permanent employees.

Representative Munoz asked if the standard or economy plans would be subject to the Cadillac Tax.

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Commissioner Fisher answered that the department was still working out the details. He elaborated that it would depend on some decisions that had yet to be made. He did not expect the economy plan to be subject to a Cadillac Tax, but there was some risk that the standard plan would be subject to the tax.

Representative Munoz asked for detail on the tax rate and how it would impact state employees. Commissioner Fisher replied that he would follow up with detail.

Representative Wilson referred to the Teachers' Education Association of Mount Edgecumbe. She spoke to concessions made in Fairbanks related to the school district. She wondered "why did everybody else show negatives and we are not doing the same thing for Mount Edgecumbe."

Commissioner Fisher answered that the state had begun negotiating the contract with TEAME over one year ago. He explained that the state did not seek or receive concessions in that small group. The state felt that given where they were at it was appropriate to continue the existing agreement.

Representative Wilson disagreed. She countered that teachers in her district were also very important. She asked if TEAME also received a geographic differential and of what amount.

Ms. Sheehan answered that TEAME received a 5 percent geographic differential.

Representative Wilson believed they were sending a negative message to other districts if the state school did not receive decreases but other schools had to make concessions.

Commissioner Fisher replied that during the negotiations other unions had repeatedly pointed out to the department that a number of school districts had given COLAs or other things. He believed the department could provide information showing that the Mount Edgecumbe teachers were not overcompensated compared to other teachers around the state.

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Co-Chair Thompson asked for verification that Sitka had a 5 percent geographic pay differential. Ms. Sheehan answered in the affirmative.

Co-Chair Thompson understood that Juneau also had a 5 percent geographic differential; however, Ketchikan had no differential for state employees. He believed it seemed strange. He asked when the geographic differential had last been addressed and studied.

Ms. Sheehan replied that the last study had been in 2008.

Representative Kawasaki asked if a bill were introduced...

Co-Chair Neuman interjected that he wanted to stick to the meeting subject on the current contracts. He stated that if a bill came to finance they would address the bill.

Representative Kawasaki asked whether existing tentative agreements between the five unions would be invalid if the legislature were to decide that future contracts would be funded based on the price of oil.

Commissioner Fisher replied that he did not know he could answer the question until the department's analysis was completed.

[6:28:14 PM](#)

Representative Wilson remarked that several years earlier the legislature had discussed leave accrual, which had ultimately been capped. She referred to a concern that the leave hours had been worth the amount an employee earned at the time leave was taken versus the amount it had been worth at the time of accrual. She asked if that had changed.

Ms. Sheehan answered that currently non-covered employees had cash value of leave: leave was cashed out at the rate it had been earned. General government union (GGU) employees hired into state service on or after July 1, 2013 also had cash value. For all other state employees leave was cashed out at the rate they currently earned.

Representative Wilson surmised that the structure had been changed by including a cutoff date, but some employees were grandfathered in. Ms. Sheehan responded in the affirmative pertaining to GGU.

Vice-Chair Saddler remarked that during discussions on oil contracts there had been discussion about "acts of God" and things that could not be controlled. He asked if there were any provisions in the negotiated contracts that would allow reductions in contracts due to natural disasters (e.g. a financial crisis due to a break in the pipeline).

Commissioner Fisher answered in the negative. He stated that the negotiations could be reopened to have the conversation, but there was no trigger mechanism.

Co-Chair Thompson addressed the agenda for the following meeting. He recessed the meeting to a call of the chair [note: the meeting never reconvened].

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ADJOURNMENT

6:30:27 PM

The meeting was adjourned at 6:30 p.m.