

HOUSE FINANCE COMMITTEE

April 27, 2016

9:00 a.m.

9:00:15 AM

CALL TO ORDER

Co-Chair Thompson called the House Finance Committee meeting to order at 9:00 a.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

Jordan Shilling, Staff, Senator John Coghill; Quinlan Steiner, Director, Public Defender Agency, Department of Administration; Nancy Meade, General Counsel, Alaska Court System; Senator John Coghill, Sponsor; Representative Matt Claman; Representative Lora Reinbold; Representative Louise Stutes; Representative Charisse Millett; Representative Liz Vasquez.

PRESENT VIA TELECONFERENCE

John Skidmore, Director, Criminal Division, Department of Law; Dean Williams, Commissioner, Department of Corrections; Claire Sullivan, Deputy Commissioner, Department of Corrections; Tracey Wollenberg, Deputy Public

Defender, Public Defender Agency; Doug Gardner, Attorney, Legislative Legal Services.

SUMMARY

CSSSB 91(FIN) am

OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS

HCS CSSSSB 91(FIN) was REPORTED out of committee with a "do pass" recommendation and with forthcoming new fiscal notes as follows: two zero fiscal notes from the Department of Administration; one zero fiscal note from the Department of Corrections; three fiscal impact notes from the Department of Health and Social Services; one zero fiscal note from the Department of Health and Social Services; one zero fiscal note from the Department of Public Safety; one fiscal impact note from the Department of Public Safety; one zero fiscal note from the Alaska Judicial System; one fiscal impact note from the Alaska Judicial System; one zero fiscal note from the House Finance Committee for the Department of Administration; four fiscal impact notes from the Department of Corrections; two fiscal impact notes from the House Finance Committee for the Department of Corrections; and one zero fiscal note from the Department of Law.

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."

[9:01:37 AM](#)

Representative Wilson looked at a summary of changes ["Summary of Changes Version V to T" (copy on file)] for the recently adopted Committee Substitute (CS). She referred to the following change shown on page 2 of the summary:

Fines
Section 64 (ver. V)

Maintains the maximum fine for a Class A misdemeanor at \$10,000.

Representative Wilson elaborated that the maximum fine for a Class A misdemeanor had been \$25,000. She asked why the fine had been changed to \$10,000 in the new CS.

JORDAN SHILLING, STAFF, SENATOR JOHN COGHILL, replied that the change would maintain existing law, which was \$10,000.

Representative Wilson wondered why. Mr. Shilling replied that he was uncertain why the maximum fine was \$10,000 in current law.

Representative Wilson explained that she was trying to ascertain why it had been determined that the \$25,000 figure should be reduced back to \$10,000. Mr. Shilling replied that he did not know why the decision had been made to change the figure back to \$10,000, but he believed there may have been thought that \$25,000 was excessive for a Class A misdemeanor.

Representative Wilson stated that the reasoning would be nice to know. She referred to page 38, lines 10 through 19 of the legislation and noted that it was an amendment she had submitted. She asked for clarification on a 120-day provision and what would occur if all six of the items on page 38 were included:

(g) A court granting credit against a sentence of imprisonment under (d) of this section may grant credit of not more than 120 days against a total term of imprisonment imposed for

- 1) a felony crime against a person under AS 11.41;
- 2) a crime involving domestic violence as defined in AS 18.66.990;
- 3) a sex offense as defined in AS 12.63.100;
- 4) an offense under AS 11.71 involving the delivery of a controlled substance to a person under 19 years of age;
- 5) burglary in the first degree under AS 11.46.300; or
- 6) arson in the first degree under AS 11.46.400.

QUINLAN STEINER, DIRECTOR, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION, responded that one of the concerns he had discussed about a cap on electronic monitoring (EM) credit for mid-range to low-level offences was that individuals out on bail release who were on EM would potentially be working on a program that could extend beyond 120 days (i.e. a program could extend to six or eight months). He detailed that on mid-range to low-level offences, if a person received a sentence of above 120 days or six months, they would end up serving jail time after they had kept their life together and worked on addressing their issues while on EM. Therefore, the result would be contrary to the intent of the bill, which was to promote rehabilitation and treatment. The data indicated that the risk of recidivism increased when individuals who were mid-range to low-level risk went into jail for even 24 hours. He furthered that even short periods of jail time could derail a person's progress; it did not take more than a few days in jail for a person to lose their job. He stated that it became a cascading effect of losing a job, family, and other. He stated that caps on the higher level offences may not have the same affect; however, he would have concern about the provision if it applied to mid-range offences.

[9:05:44 AM](#)

Representative Wilson asked which of the items in the provision [page 38, lines 10 through 19] Mr. Steiner would recommend deleting.

Mr. Steiner replied that he would remove items related to the Class B felony range and lower - crimes against a person, crimes involving domestic violence, burglary, and potentially arson. He stated that those individuals, especially in crimes against a person, may be the ones that the provision would have the biggest impact on in terms of public safety. He furthered that if the individuals addressed their issues and recidivism went down, it was about more than not using drugs and alcohol - additionally, it was about not hurting people.

Representative Wilson relayed that the provision was her amendment that had been placed in the CS. She had just found out about the issues [Mr. Steiner was speaking to] the prior evening. She referred to legislation she had sponsored the prior session (HB 15) related to treatment and the incentive to receive treatment while on EM. She stated that the restrictions on what a person could and could not do on EM were tight. She explained that concern by the EM community was that without some caveat, the bill had included a 120-day cap for everything, which would be problematic. She agreed with Mr. Steiner and relayed that she planned to offer a conceptual amendment later in the meeting, which would delete items 1, 2, 5, and 6. She stated that the whole point was about allowing treatment. She did not want to undo the intent of her bill from the prior session (HB 15).

Representative Gara spoke to a provision in the CS that he believed may be unintentionally in the document. He discussed that much of the bill would move towards probation instead of long jail sentences for first-time offenders. He stated that there had been no correlation between longer jail sentences and reduction in recidivism and there had been a correlation between longer jail sentences and increasing recidivism. He asked for the accuracy of his statements.

Mr. Shilling replied that the statements were mostly accurate.

Representative Gara stated that the two facts were among the reasons for the entire framework of the bill. He asked if the statement was fair. Mr. Shilling agreed.

Representative Gara discussed that limited licenses were granted to individuals with a felony DUI who undergo a treatment program, but only if they had access to a therapeutic court. He noted that he would offer an amendment to address the individuals without access to a therapeutic court. He remarked that the conditions for getting a license back after jail time were significant including a treatment program and the installation of an interlock device in an offender's vehicle. He asked how comfortable Mr. Steiner was with the list of conditions imposed on the individuals that the state was protecting public safety, while enabling individuals to be able to drive and get back to work.

Mr. Steiner replied that there were substantial steps a person had to take to get the limited license. He stated that often people asked whether individuals were declared "cured." He stated that it was not really possible. The issue was whether a person had complied with the treatment for issues that had brought them into contact with the criminal justice system and had led to a DUI. He relayed that it was necessary to balance the completion of a program with the negative impact of not being able to drive; the lack of work and lack of ability to work had its own criminogenic effect, which could increase recidivism. He believed that limiting the language to only therapeutic courts was a bit restrictive; there was not access to treatment for everyone around the state. Access to a therapeutic court was limited further by the number of placements and willingness to negotiate by the state to get a resolution that puts a person in a therapeutic court. He communicated that it would make sense if there was a way to define some other treatment program that fit the requirements and had evidence-based data of a successful outcome for a good percentage of individuals.

[9:11:38 AM](#)

Representative Gara remarked that he had done his best to work with the court system on drafting an amendment that did what Mr. Steiner discussed. He noted that the bill addressed misdemeanor theft, which included stealing something (not breaking into a home). He asked how by

virtue of inflation a crime that was formerly a misdemeanor had become a felony. He asked about the response to the situation in the prior bill version.

Mr. Steiner replied in the affirmative. He explained that if something cost \$500 in 1978 when statutes had originally been implemented, the cost for the item would be 3.5 times more expensive at present. He detailed that over time costs crept up in what became a felony versus a misdemeanor. There was also a natural disparity between urban and rural centers where things were much more expensive. He relayed that raising the level or indexing it helped ameliorate the impact of the difference between rural and urban Alaska. He believed the commission's [Alaska Criminal Justice Commission] recommendation at \$2,500 or \$2,000 was based on inflation and the fact that increasing the felony threshold was not associated with increasing crime; it was possible to process the cases at a much lower cost, while achieving the same benefit in terms of promoting treatment without having a felony conviction on someone's record. The felony conviction itself had a huge impact on a person's ability to work in the future.

Representative Gara noted that the threshold in 1978 had been \$500; anything over that amount was a felony. He asked if the current dividing line was still \$500 between a misdemeanor and felony.

Mr. Steiner answered that the threshold had been increased to \$750 two years earlier.

Representative Gara stated that his understanding of the commission's recommendation was to inflation proof and change the amount to \$2,000. He surmised that the recommendation aimed at insuring that inflation alone did not turn a crime from a misdemeanor into a felony.

Mr. Steiner answered that the commission's recommendation had been to index the amount for inflation. He believed the recommendation had been to look at the amount every five years, not annually. He believed adjusting the amount annually may cause confusion as cases often took a year to resolve.

Co-Chair Thompson noted that Representatives Matt Claman, Dan Ortiz, and Lora Reinbold were present in the room.

Representative Gara stated that in prior bill versions there had been a presumption that unless a person committed a Class C felony that included one of the 35 aggravators (e.g. crime against a person, involving drugs, domestic violence, and other), a first-time felon would receive probation but no jail time. He was uncertain whether the removal of the provision was intentional. He asked Mr. Steiner how important the provision was.

Mr. Steiner answered that it was very difficult for him to speak to the various decisions that had been made in the CS. He relayed that the commission had recommended that a first-time Class C felony have a sentence of zero to 18 months of active supervision on probation. He believed the current CS was in response to some concerns from the Office of Victims' Rights that there were Class C felonies that were serious and may warrant some active jail time.

[9:17:00 AM](#)

Representative Gara noted that the previous bill version had included a presumption of no jail time, but the presumption did not apply when an aggravator was included in the crime (e.g. physical injury, dangerous instrument, drug crime, domestic violence, and other).

Mr. Steiner answered that it was his understanding that if any aggravator were proven that a person could serve active imprisonment for a Class C felony.

Representative Pruitt referred to page 54, Section 87 of the current CS. He asked about items published in CourtView. He stated that a new provision had been added under the section. He asked what the provision did by adding the language "all criminal charges against the defendant in the case have been dismissed after a suspended entry of judgment under AS 12.55.078." He stated that the Senate Finance Committee had a different version specifying that there would be a notation that it had been suspended. He asked what was not being posted in CourtView under the CS.

Mr. Steiner answered that the CS required that if criminal charges against a defendant had been dismissed in the suspended entry of judgement (SEJ) process, the case would not be published on CourtView if the individual complied

with conditions under the SEJ portion of the bill. He deferred to Ms. Mead for further detail.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, replied that the effect of Section 87 was that generally any criminal case that ended in an acquittal or dismissal of all charges was removed from CourtView (public access) after 60 days. Section 87 of the CS clarified that the law also applied when a person went through the SEJ proceeding. She explained that with the SEJ a person at the outset of a case pled guilty and was then given conditions to comply with possibly for six months to one year; it only applied to certain offences and if the person complied with all of the conditions (e.g. treatment and other) the case was dismissed at the end. The section clarified that those dismissals were to be treated the same as every other dismissal of a criminal case and the court would be required to remove them from CourtView 60 days after the dismissal.

[9:20:47 AM](#)

Representative Pruitt stated that the Senate Finance Committee version had indicated there would be a notation that a case had been dismissed, but it was still public record. He wondered why the provision had been changed from the prior version.

Co-Chair Thompson directed discussion to the current Committee Substitute.

Representative Pruitt wanted to know why the provision had been changed in the CS. He was trying to understand the reasoning for removing dismissed cases entirely from the public's view. He had agreed with the original bill and believed the change in the CS was substantial. The current bill provision applied to a person who had pled guilty, whereas, the original bill applied to a person who had been arrested and not convicted.

Ms. Mead answered that the language in a prior bill version had been a policy call made by another committee. She added that having the issue defined one way or the other provided more clarity for the court system in order for it to know the legislature's directive. She believed the thinking behind the decision to remove the cases from CourtView was that people's names on the site even with notations were

not fully understood by the public and that people consequently suffer negative consequences as a result. She stated that it was a policy call for the legislature.

9:23:03 AM

Representative Kawasaki discussed that there were a couple of amendments related to therapeutic courts and limited driver licenses.

Co-Chair Thompson noted that the committee would be able to ask Ms. Mead questions during the amendment process.

Representative Kawasaki referred to a change on page 54 of the legislation pertaining to an arrest without a warrant specifying that the accused must be placed before a judge or magistrate within 24 hours, absent compelling circumstances. He stated that the length of time had been longer in previous bill versions. He wondered if the amount of time was appropriate.

Ms. Mead replied that by policy, the court arraigned everyone within 24 hours. The statute had been changed several years earlier from 24 hours to 48 hours. In some circumstances the time exceeded 24 hours, but nearly all arraignments took place within 24 hours, which was not a problem for the court system to implement. She stated that the compelling circumstances to exceed 24 hours may result when a defendant was not able to appear due to intoxication, drug issues, or for other reasons.

Representative Kawasaki spoke to a change in the CS related to when a peace officer could issue a citation or make an arrest. He explained that previously the bill specified that a peace officer could make an arrest when they reasonably believed a person was a danger to others or self. He asked why "or self" had been removed and queried the effect of the removal.

Mr. Shilling answered that the words "or self" had been removed in previous bill versions. He elaborated that there was general agreement that a different statute already provided law enforcement officers with the authority to detain an individual under certain circumstances where they were a danger to themselves; therefore, it was not necessary to include the language in AS 47.

Representative Wilson spoke to simple possession related to the date rape drug GHB. She asked if GHB was prescribed by physicians for any medical purpose. Mr. Shilling replied that Wikipedia.com specified that the drug could be used for narcolepsy.

Representative Wilson asked if a person could be arrested for possessing the drug if it was prescribed to them. Mr. Shilling did not know. He imagined that if the drug was legally prescribed by a physician that it would not constitute misconduct involving a controlled substance.

Representative Wilson stressed the importance of the issue. She stated that the bill contained no caveat for legally prescribed medication. She elaborated that the bill language specified that a person in possession of GHB would be arrested for simple possession. She did not want to arrest individuals for possession if they were taking the drug for a medical purpose.

Mr. Shilling replied that there were a number of controlled substances that were on the books currently that were legally prescribed by physicians. He deferred the question to the Department of Law (DOL).

[9:27:44 AM](#)

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW (via teleconference), replied that it was not a violation of the criminal law when a person was in possession of a controlled substance that had been prescribed. There were specific statutes specifying that possession was permissible and authorized when a substance had been prescribed.

Vice-Chair Saddler asked if simple possession was distinct from possession with the intent to distribute.

Mr. Skidmore replied that he did not ever use the term simple possession. The term used by DOL was "possessed"; if a person possessed a drug - what distinguished it from other types of possession was possession with the intent to distribute. The law required a prosecutor to prove that an individual had possession of the drug at the time they had the conscious objective to distribute it to other individuals. The difference was having the drug or having it with the intent to give to another person.

Vice-Chair Saddler asked if the implication that simple possession was considered illegal. He believed Representative Wilson was asking whether it implied illegal possession when a person had a legal prescription for a drug.

Mr. Skidmore answered that statute criminalized the possession of a substance, but provided a reason possession would not be illegal. The exception was when a person was in possession of a substance through a valid prescription. For example, if someone was found in possession of GHB, law enforcement would look to determine whether a person had a valid prescription that included their name and information. If so, the individual would not be charged or arrested.

Representative Gattis pointed to the term "simple possession" that was included in the bill. She noted that DOL did not use the term. She wondered what term the bill should use in order to ensure clarity for all parties.

Mr. Skidmore replied that the term "possession" should be used in order to remain consistent with the current statutory structure. The statutory structure addressed possession with intent, when it was anything above possessing a substance one's self. He believed the legislative history would tell DOL that it was supposed to read the bill's use of "simple possession" the same as possession. However, from a practitioner's standpoint using the term "possession" was the cleanest.

Representative Gattis asked where the term "simple" had come from. Mr. Shilling replied that it was a term of art to differentiate between someone possessing a substance for recreational use and a person with the intent to sell or manufacture the substance.

Representative Gattis reiterated her question.

[9:32:16 AM](#)

Mr. Shilling answered that he had used the term personally to differentiate between a person in possession of a substance rather than delivering or manufacturing it.

Representative Gattis asked for verification that the term "simple" had come from Mr. Shilling. Mr. Shilling answered in the affirmative.

Representative Wilson asked when a person would ever recreationally use a date rape drug. Mr. Shilling answered that it would be the exception. He believed the amendment had been offered by the other body and accepted into the bill was because there was an overall assumption that if a person possessed the drug [GHB], they intended to use it for non-recreational purposes.

Representative Wilson referred to other reasons a person may have a prescription for GHB. She asked if there was any way to make the bill clearer related to the issue. She elaborated that sometimes people put pills in another container because they were taking only one sometime during the day. Based on Mr. Skidmore's testimony she believed a person would have to have the prescription bottle with their name on it on their person. She did not want people to be afraid to take their medication. She stated that simple possession meant having the pill on their person.

Mr. Shilling answered that based on Mr. Skidmore's testimony he understood that there was existing statute that accommodated individuals who took prescriptions.

Co-Chair Thompson used a hypothetical scenario to illustrate the point. He believed that if he was carrying a pill that he intended to take in the near future, he surmised that he could prove he had the prescription bottle at home. He did not believe there would be a major problem under the circumstance. He would expect law enforcement to look into the situation if the pill was discovered and he would be able to prove with the prescription that he was legally in possession of the drug.

Representative Wilson stated that Co-Chair Thompson's example may be true, but she surmised that law enforcement would probably arrest the person first. She asked for the statutory reference that included the exception for legal prescriptions.

Mr. Skidmore asked the committee to wait while he located the statute.

[9:36:07 AM](#)

AT EASE

[9:41:09 AM](#)

RECONVENED

Mr. Skidmore relayed that he had not yet located the section in statute. He remarked that the state had never prosecuted a person for the issue. He would follow up with the provision once he had located it.

Representative Wilson asked if the language really needed to be in the bill. She asked if it was illegal under existing law for a person to possess GHB without a prescription.

Mr. Skidmore answered that the statutes indicated when possession of a controlled substance was or was not illegal. Without a statute specifying that the possession of a substance was illegal, the substance was considered legal even if it was scheduled as a substance. He believed that related to the specific provision, the possession of all other types of drugs was reduced from various felony levels down to a Class A misdemeanor level. The particular provision specified that GHB would be elevated back to a felony. He stated that if there was a statute specifying that a substance was illegal, additional language was not needed; however, it was a policy decision if the debate was about whether the substance should be a felony or a misdemeanor.

^AMENDMENTS

[9:44:12 AM](#)

Representative Wilson MOVED to ADOPT Amendment 1 29-LS0541\U.3 (Gardner, 4/25/16) (copy on file):

Page 2, line 5, following "INTENT."
Insert "(a)

Page 2, following line 8:
Insert a new subsection to read:
"(b) It is the intent of the legislature that reinvestment be made into providing additional law enforcement resources in communities throughout the state."

Co-Chair Thompson OBJECTED for discussion.

Representative Wilson explained the amendment had been brought to her by another member who wanted to ensure that there would be the option to reinvest any remaining funds into additional law enforcement resources in communities throughout the state. She stated that it was intent language and would only take effect when there were remaining funds available.

Vice-Chair Saddler stated that many of the amendments had been drafted to a prior version of the bill. He clarified that the committee was currently addressing version T, but amendments had been written to versions U and V. He asked amendment sponsors to specify where the amendment would impact the version before the committee.

Representative Wilson read her amendment with the appropriate page numbers [amendment and page numbers shown above].

Co-Chair Neuman spoke in support of the amendment. He stated that many people felt that the bill would result in letting more criminals out on the street. He had been active in trying to help a trooper go to some community councils for community watch programs in order to increase community awareness about how to identify a crime, suspicious vehicles, and other related things. He could see where there could be some need for the assistance if there was money available.

Co-Chair Thompson was uncertain whether he supported or opposed the amendment. From the perspective as a former mayor he explained that the city would occasionally receive federal money to hire three additional police officers. Consequently, the city would hire the police officers, but the money would go away at some point in the future, which meant the community would have to pick up the difference. He thought it could put a heavy burden on communities if it was not continuing funding for police enforcement.

Representative Wilson responded that the amendment only included intent language. She did not see that the amendment would tell a community what it had to do. She noted that the committee had heard that treatment was not available in every community. For example, a person may have to travel from Dillingham to Anchorage to receive

therapy. She continued that the individual may find that they still needed more resources. She imagined it would be in the form of a grant brought forward by a community if they claimed to be negatively impacted by the bill. She stated that it may even lead to legislation in the future to fix a problem that may arise from the bill. She reiterated that it would only go into effect if there was money left over after the therapy portion of the bill. She did not envision the money going towards positions - it would act more like a grant. Additionally, the state did not know how much money would be coming out of different taxes and reinvestment.

Representative Gara understood that it was excess money; however, the amendment did not specify that it was excess money. He MOVED to AMEND Amendment 1 to add the words "of excess funds" following the word "reinvestment."

Vice-Chair Saddler OBJECTED for clarity. He believed the amendment to Amendment 1 pertained to the excess of the taxes collected under AS 43.61.010.

Representative Gara stated that AS 43.61.010 was already listed in the first sentence and it was therefore implied.

There being NO further OBJECTION, Amendment 1 was AMENDED.

Representative Gara addressed the amended Amendment 1. He spoke to a shortage of community law enforcement and troopers in many areas of the state. He referred to testimony earlier in the session from Colonel Jim Cockrell [director, Division of Alaska State Troopers, Department of Public Safety] that he felt it was dangerous to send his troopers out to make an arrest with no backup. He asked if the amendment could be further amended to read that remaining money would go towards "providing additional law enforcement resources" instead of providing additional law enforcement resources in communities throughout the state." The amendment would enable the funds to either go to a community or the troopers.

[9:51:12 AM](#)
AT EASE

[9:52:46 AM](#)
RECONVENED

Representative Wilson clarified that the intent of the amendment related to law enforcement resources, which could include Village Public Safety Officers (VPSO), city police, university police, and other. She believed keeping the amendment general allowed flexibility for communities.

Co-Chair Thompson WITHDREW his OBJECTION to Amendment 1.

Representative Edgmon OBJECTED to the amendment. He questioned whether the amendment was necessary. He stated that intent language of the bill addressed covering the shortfall. He furthered that funding for law enforcement normally went through the Department of Public Safety (DPS). There were federal funding streams that were also used. He referred to VPSOs and noted that he did not see any of the money going out to the regional nonprofits. He did not believe the amendment had been a recommendation from the commission. He believed the amendment was well intentioned and he supported the underlying purpose, but he thought it was superfluous to the intent of the bill.

Representative Wilson appreciated the comments, but she remarked that the bill was large. She had heard from law enforcement and communities. She stated that if the bill worked, the money would not be necessary because the bill should make it easier for public safety, communities should be safer, more people should go back to work, and fewer people should be in prison. However, the amendment helped to specify that the legislature recognized there could be some unintended consequences. She elaborated that a community would have to make its case to demonstrate its need for the funds. She expounded that the amendment recognized that state troopers and VPSOs could not do everything and there may be a cause within a program that may make a difference if started in a community. Currently, if something similar arose a community would need to go through the regular budget process. She explained that the community may not need it for a significant amount of time and the action required may be a quick fix, which could potentially be provided by the amendment.

Co-Chair Neuman stated that it had been mentioned that the intent of the amendment could be to hire additional troopers or police officers. He stated that the legislature covered that issue in the operating budget. He believed the legislature would object if the department decided the state was going to start funding troopers with excess money

that may come from marijuana or other. He furthered that it was unknown whether the money would come year-to-year and he viewed extra funds as something to help a community watch program or drug and alcohol awareness. He did not see the amendment as hiring personnel; if the amendment was adopted he would vocalize that the funds should not go towards hiring personnel.

[9:57:25 AM](#)

Vice-Chair Saddler supported the amendment. He remarked that there were several places in the bill where funds from taxes raised under AS 43.61.010 were allocated. The amendment specified that any excess funds could go to additional law enforcement and resources in communities.

Representative Gara understood that the maker of the amendment intended that any excess funds could go to troopers, VPSOs, and local law enforcement.

Representative Edgmon WITHDREW his OBJECTION. He stood by his original statement. He believed the amendment was innocuous, but the chance that the intent language ever came to bear was very remote. He believed the amendment was superfluous. He contended that there were many other sections in the bill that could include intent language.

There being NO further OBJECTION Amendment 1 as amended was ADOPTED.

[9:59:30 AM](#)

Representative Wilson MOVED to ADOPT Amendment 2, 29-LS0541\V.16 (Martin/Gardner, 4/18/16) (copy on file). [Note: due to the length of the amendment it has not been included in the minutes.]

Co-Chair Thompson OBJECTED for discussion.

Representative Wilson explained that the amendment had been written to bill version V. She stated that under the amendment common law civil in rem forfeiture actions were abolished if used instead of a criminal proceeding. The purpose of the amendment was to eliminate a loophole she believed was in existing law.

Representative Kawasaki stated that the amendment looked like a similar bill the committee had considered in the past. He asked if it was exactly the same as the bill that had passed the body.

Representative Wilson replied that it was not exactly the same because it had been wrong. She explained that she had gone back to DOL to make sure that the amendment would reflect the intent of a bill that had previously passed out of committee. She stated that it had been due to a charge before, which did not always happen. She expounded that after working with DOL they had included the language "abolished if used instead of a criminal proceeding." The particular statute should not be used instead of a criminal proceeding. She wanted existing statutes to be used in order to prevent taking peoples' items without charging them first. The language in the amendment remained the intent of what had passed the committee.

Representative Gara wanted to ensure the amendment did not violate the single subject rule. He wanted to clarify that it would be the intent of the committee for the language in Amendment 2 to be removed from the bill if at a later time it was determined to violate the single subject rule. He believed that it was the intent of the maker of the amendment.

Representative Wilson replied that Legislative Legal Services had defined single subject of SB 91 to generally be criminal law and procedure. The amendment specified that civil in rem forfeiture could not be used in place of a criminal proceeding; therefore, it did fit under the single subject rule.

Representative Gara reiterated that he did not want the entire bill to be thrown out if the amendment violated the single subject. He wanted to ensure that the committee intended that the language in Amendment 2 would be removed from the bill if it was determined to violate the single subject rule.

Representative Wilson responded that she had no problem with that specification.

Vice-Chair Saddler believed the amendment fell under the single subject rule, but he wanted to consider whether it was appropriate to put it in the current bill.

Representative Kawasaki echoed the comments by Vice-Chair Saddler. He reasoned that the amendment had been reported out of committee in the form of a bill in the past; therefore he was waffling on whether to support it. He noted that the committee could add many things to the bill, but it was not necessarily the right thing to do.

[10:03:29 AM](#)

Representative Gattis spoke in support of the amendment. She had supported the bill on the House floor and she believed it was the right thing to do. Her only challenge was related to the single subject rule. She stated that the amendment would clearly not be adopted if it was found to violate the single subject rule.

Co-Chair Neuman opposed the amendment. He did not know if it was a good amendment or not and did not know how it impacted the rest of the bill. He stated that the bill would let more people out of prison and would shorten prison times. He stressed the importance of knowing cause and effect of the items in the bill. He was very concerned about making amendments to the bill and wondered if the amendments had gone fully through the discovery process. He stated that the legislative process was a full committee process that included other committees as well. He did not know the cause and effect of the amendment. He did not want to take a chance on the bill.

Representative Wilson stated that it was sad to even have to put the provision in law. She believed there should always be criminal proceedings before looking at taking people's items. She stated that the amendment was about criminal actions, the police, and the system - she believed it was appropriate for the bill. She was frustrated to learn that the state took things that belonged to individuals (e.g. vehicles, money, and other items) without a criminal proceeding. She stressed that it had been a good bill and was a good amendment. She asserted that there were many things in the bill that had been put in as amendments brought forward by members. She stated that the language in the amendment had been vetted much more and had gone through the House Floor and the Senate Judiciary Committee. She was more concerned that the legislature was not taking care of something so important.

Co-Chair Thompson stated that when the amendment language had originally been inserted into the CS they had received a memorandum specifying that amendment would violate the single subject rule. However, another legal opinion had been received specifying that the amendment would not violate the single subject rule. He wanted to make sure that if the amendment passed that it did not destroy the bill. He was confused by the differing legal opinions.

Representative Wilson stated that the memorandum specified that "it may" [violate the single subject rule]. She believed there were many things in the bill that fell into that category, which had been added in the form of amendments. She stated that it was very difficult for attorneys to say yes or no on anything related to the topic. She furthered that the memorandum stated that the amendment "may not fall under the single subject." She communicated that she had done more research on the topic - the single subject was about crime and criminal law and procedures. She stated that her amendment fell underneath criminal law and procedure. She believed it fell under the single subject rule; however, she had no issue removing the section at a later time if there was question. She noted that there was existing procedure if the situation occurred.

Representative Gara suggested adding a severability clause in the amendment. He wanted to offer an amendment to Amendment 2.

[10:08:12 AM](#)
AT EASE

[10:12:00 AM](#)
RECONVENED

Co-Chair Thompson moved Amendment 2 to the bottom of the list of amendments.

Representative Wilson MOVED to ADOPT Amendment 3 29-LS0541\U.2 (Gardner, 4/25/16) (copy on file):

Page 8, lines 9 - 10:
Delete "\$1,000 [\$750]"
Insert "\$750"

Page 8, line 13:

Delete "\$1,000 [\$750]"
Insert "\$750"

Co-Chair Thompson OBJECTED for discussion.

Representative Wilson explained that the amendment applied to page 8, lines 9 through 10, and would replace "\$1,000" with "\$750." She detailed that the amendment had been brought to her by colleagues from Mat-Su due to concern about a significant amount of ATV and snow machine theft. The reasoning behind reducing the number to \$750 was the belief that \$1,000 was less of a theft deterrent.

Co-Chair Thompson asked for clarification.

Representative Wilson explained that if the amount was \$1,000 she believed it changed the crime to a misdemeanor. She stated that if the number was maintained at the current \$750 the punishment would be greater than it would be if the amount was increased to \$1,000.

Vice-Chair Saddler clarified that in the current CS (version T) the amendment would apply to page 8, line 15 and 21.

Representative Wilson agreed.

Representative Gara spoke in opposition to the amendment. He stated that people who commit crimes did not consider whether a crime would be a felony or misdemeanor. More importantly, he believed a person's sentence and criminal conviction should relate to what they did. He detailed that in 1975 the threshold between a felony and a misdemeanor was \$500 for theft. He stressed that adjusted for inflation, the same crime was currently about \$2,000. The goal was not to send more people to jail for doing the same thing. He asserted that the amendment would make it into a felony for stealing something worth about one-third of its worth in 1975, which would triple the number of people who became felons. He believed the figure should be rational and they should not let inflation turn a person who commits a misdemeanor into a felon. He stressed that a person's criminal conviction should relate to their conduct, not inflation.

Representative Pruitt spoke in support of the amendment. He recalled prior work on the House Judiciary Committee. He

believed it had been Annie Carpeneti [formerly an assistant attorney general with DOL] who would talk about making sure DOL had tools available to be able to do its work. He continued that the majority of the time DOL would find what a person could potentially be charged with, but as a motivation to receive the desired outcome the department would tell a person they would charge them with "x." He opined that by increasing the amount the legislature was eliminating an available tool. He continued that as the legislature had lowered amounts they had actually eliminated the tools to negotiate. He remarked that the number had been up to \$2,000 and he appreciated bringing the amount down to \$1,000. He stated that there had been significant debate on increasing the number from \$500 to \$750 when the figure had been changed a couple of years earlier. He added that there had been a goal to move it at \$1,500 at the time. He believed leaving the tool in the toolbox at \$750 would provide DOL with the flexibility to charge one way or another. He expounded that the flexibility could allow the department to try to motivate the individual charged with a crime to work on correcting or thinking about their actions. He supported returning to the figure of \$750 that had been negotiated two years earlier.

Co-Chair Thompson noted that Representative Charisse Millett was present in the audience.

[10:18:23 AM](#)

Co-Chair Neuman asked if there were portions in SB 91 that addressed allowing a person charged with a felony to go back to get the charge taken off their record if the felony threshold was lowered.

Mr. Shilling answered that Alaska did not have an expungement statute. It was his understanding that a felony or misdemeanor would remain on a person's CourtView record permanently for life.

Representative Gattis supported the amendment. She noted that individuals from Mat-Su had asked for support on the issue and wanted the ability to send a strong message. She referred to theft of tools from jobsites. She believed it was important.

Representative Guttenberg spoke in opposition to the amendment. He liked that many of the provisions in SB 91 were data-driven. He had not heard whether the difference between \$1,000 and \$750 meant anything. He did not believe individuals considered whether an item they may steal would fall under the category of a felony or misdemeanor. He was uncertain the amendment would accomplish the desired result. He stressed that without knowing whether it would have the desired result he would not support the amendment.

Co-Chair Thompson noted that Representative Louise Stutes was present in the audience.

Representative Wilson provided a wrap up on the amendment. She believed it was important to consider whether the state was protecting criminals or the residents who had been violated. She furthered that residents believed they would have more violations and more personal belongings taken if the threshold was increased to \$1,000.

Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Saddler, Wilson, Gattis, Pruitt, Neuman
OPPOSED: Edgmon, Gara, Guttenberg, Kawasaki, Munoz, Thompson

The MOTION to Adopt Amendment 3 FAILED (5/6).

Representative Kawasaki MOVED to ADOPT Amendment 4 29-LS0541\V.37 (Gardner, 4/22/16) (copy on file):

Page 33, following line 12:

Insert a new subsection to read:

"(1) A person who is ordered as a condition of release under this section to be on electronic monitoring may not be subject to a search of the person's dwelling by a pretrial services officer or peace officer except upon probable cause."

Co-Chair Thompson OBJECTED for discussion.

Representative Kawasaki noted that the amendment pertained to page 31, Section 52 of the CS. He explained that the amendment specified that a pretrial or peace officer would

be required to have probable cause to search the residence of a person [on electronic monitoring]. Currently when a person was released from jail on a pretrial status, they were allowed to go about their business; they had been charged but not adjudicated. He furthered that there were a multitude of conditions a person had to go through when under pretrial status including obeying all court orders, laws, making court appearances, notifying their attorney if they were doing something out of the way, and other. Additionally, the judicial services officers could also apply additional restrictions including where a person could travel, which residence they could maintain, whether they could own a deadly firearm or weapon, whether they could possess alcohol, and other. He stated that the purpose of the amendment was related to current law; the ninth court recently had reaffirmed in a 2007 case (U.S. v Scott) that the government could not conduct the search of an individual released while awaiting trial based on less than probable cause even when their Fourth Amendment rights were waived as a condition of pretrial release. He did not want the individuals in pretrial who had not been charged to further have to give up their Fourth Amendment rights.

[10:25:06 AM](#)

Representative Gara surmised that the amendment was not necessary if the courts were already saying that probable cause was required. He questioned letting a person out on bail with one of the conditions being no alcohol in their home. He asked if probable cause was a current standard.

Mr. Shilling replied that current law allowed the courts to order someone to refrain from consuming alcohol, but also to submit to a search warrant of the person, person's property, residence, vehicle, or any other property over which the person had control, in order to look for the presence of alcoholic beverages at the standard of reasonable suspicion. He believed the standard of reasonable suspicion was lower than probable cause. He believed the amendment conflicted with current law. He stated that it was a policy call and he would prefer to have Senator John Coghill [SB 91 bill sponsor] speak to the issue. He believed the amendment would make it more difficult for the state to ensure an individual was complying with their conditions of release. He furthered that if a person was to be in prison pretrial they would have no liberty and would be subject to search. He

expounded that the amendment applied to individuals who had been released on electronic monitoring with the contingency that they follow the rules. He believed it could be a bit of a public safety concern if the state made it more difficult for a pretrial services officer to ensure a person was following the rules. He deferred to the Department of Corrections (DOC) and bill the sponsor for further insight.

[10:27:52 AM](#)

Mr. Skidmore stated that current law (AS 12.30.016) established that an officer was able to search a person released pretrial, based upon reasonable suspicion. The amendment would constitute a change by requiring probable cause, which was higher than reasonable suspicion. He agreed with Mr. Shilling that it was a policy decision.

Representative Wilson believed most pretrial [electronic monitoring] was done by private companies. She furthered that individuals were on EM primarily because they had requested the option underneath very precise stipulations. She wondered when a pretrial services officer would be controlling individuals on EM (she believed it would go through DOC and not DOL).

Mr. Shilling stated that currently the private EM companies did not do the type of EM envisioned under SB 91. He detailed that it would be court ordered EM upon arraignment; the individuals would be under the supervision of a pretrial services officer on DOC EM. He stated that it was something that was not currently occurring. He pointed out that there were not private EM companies in all parts of the state; the pretrial services program envisioned doing monitoring where there were currently not private companies.

Co-Chair Thompson asked Mr. Shilling to specify what a PSO was. Mr. Shilling answered that he was referring to a pretrial services officer.

Representative Wilson stated that "there isn't private electronic monitoring there because there's nobody to do if the corrections doesn't participate in the program." She wondered whether current law enabled pretrial services officers to search a person's residence with any cause.

Mr. Shilling affirmed that because currently there were no pretrial services officers, they were not referred to in the statute as authorizing a search without a warrant at the standard of reasonable suspicion. The current statute applied only to peace officers.

Representative Wilson asked how probable cause differed from current statute related to peace officers. Mr. Shilling deferred to Mr. Skidmore.

Mr. Skidmore answered that reasonable suspicion and probable cause were both defined in court cases and were very fact specific about what qualified. He relayed that reasonable suspicion was a lower standard. He elaborated that it meant there was a reasonable basis to suspect that a person was violating their terms of probation. Probable cause was higher, but it was not a high standard. He stated that higher standards went from preponderance, clear and convincing, and proof beyond a reasonable doubt. He stated that probable cause was still a low standard, but in the law reasonable suspicion was considered slightly lower. He would have to provide case law to give a more detailed description.

[10:32:42 AM](#)

Representative Wilson asked for verification that currently there was nothing in place for pretrial services officers.

Mr. Skidmore responded that currently pretrial officers did not exist; therefore, the ability for a person released pretrial to be searched on the basis of reasonable suspicion was an order by the court that would authorize a police officer to conduct the search because there were currently no pretrial services officers. He understood that the bill proposed creating pretrial services officer positions that the court would authorize to conduct the search.

Representative Wilson supported the amendment. She reminded everyone that people in pretrial had not yet been proven guilty. She stated that if the law was not set in the bill before the committee, the pretrial services officers would have the ability to search a person's residence without reasonable or probable cause. She reiterated that individuals in pretrial had not been proven guilty and

could be innocent. She supported protecting an individual's privacy.

Representative Kawasaki asked if Mr. Skidmore was familiar with the 2007 case U.S. v Scott. Mr. Skidmore replied that he had not read the case.

Representative Kawasaki spoke about the case and read the question before the court:

Should a pretrial releasee be subject to Fourth Amendment searches and seizures based on probable cause or reasonable suspicion?

Representative Kawasaki furthered that the Ninth Circuit Court affirmed a lower district court's decision that the government may not conduct a search of an individual released while awaiting trial based on less than probable cause even when Fourth Amendment rights were waived as a condition of the person's pretrial release. He asked how DOL operated currently when it came to pretrial individuals who were released and had signed something waiving their Fourth Amendment rights.

Mr. Skidmore addressed how peace officers would handle the situation currently. He explained that officers were authorized to conduct a search on reasonable suspicion if an individual was released pretrial and the courts had given the authorization. He detailed that under the Fourth Amendment, the government or law enforcement officers may not search unless authorized by a court. Generally, they were looking for probable cause, but the court in Alaska had authorized an officer to search. He noted that under current statute a person was not automatically subject to a reasonable suspicion search - the court had to set the condition at the time of setting bail. Once the court set the condition, the officer was authorized to engage in the search. He elaborated that if the proposal was to have a pretrial services officer search without the court's authorization, he agreed that U.S. v Scott would be controlling. However, under the other circumstance, he would need to read the case carefully to provide a legal analysis as to whether the case invalidated the Alaska law, which post-dated U.S. v Scott. He did not have a reason to believe that the case was controlling over Alaska's current statute. He was hesitant to comment further on the issue until reading the case.

10:37:28 AM

Vice-Chair Saddler referred to earlier testimony that if someone was currently in pretrial status and were incarcerated they would be subject to search. His understanding was that EM released a pretrial prisoner largely on the same expectations. He did not believe having a reasonable suspicion standard for search of a pretrial prisoner on EM was inappropriate. He opined that it should be parallel to the circumstances under which a search would be conducted if a person was incarcerated. He asked for the accuracy of his statements.

Mr. Skidmore agreed that an incarcerated person was subject to search in both pretrial and post-trial. He expounded that when the person was released on EM there was certainly the concept that it was to be under similar conditions as equivalent to being incarcerated. He had not seen any cases that specifically looked at searches. He could not tell the committee how the courts would analyze it, but he understood the point Vice-Chair Saddler was making.

Co-Chair Neuman spoke to a concern by Representative Wilson related to a person being innocent until proven guilty in a court of law. He stated that people would not find themselves in a position under a condition of release on parole unless the courts felt there was a high amount of evidence against a person for probable cause. He provided a scenario related to DUI and obvious drinking. The person had not yet been arrested and convicted, but there would certainly be probable cause that alcohol was involved (i.e. the person's license would be taken away). He surmised that if a person was charged, it was the court specifying that there was cause to maintain the conditions under a person's parole.

Mr. Skidmore replied that it was easy to get tripped up with language in criminal law. He read a description of probable cause and reasonable suspicion:

Probable cause is the standard that is used by the courts in issuing a search warrant. It is also the standard that the courts use to determine whether or not someone could be arrested and charged with an offense. Reasonable suspicion is the standard that is

used for an officer to stop someone, a citizen on the streets, to investigate.

Mr. Skidmore referred to the scenario provided by Co-Chair Neuman related to a DUI and relayed that reasonable suspicion was required for an officer to stop a vehicle. Whereas, probable cause would be required for an officer to arrest a person for the DUI.

[10:41:28 AM](#)

Co-Chair Neuman addressed the scenario of a person with a DUI who was out of jail on EM to ensure they stayed in their home or did not leave the state. He believed the amendment would prevent an officer of the court from checking to see if the person had alcohol in their home or was drinking alcohol. He asked if his statements were accurate.

Mr. Skidmore replied that Amendment 4 would require the officer to have enough evidence to actually arrest the person before they were able to check for alcohol in the home.

Representative Kawasaki provided wrap up on the amendment. He explained that the amendment dealt specifically with individuals on pretrial, who had been accused and charged and were awaiting trial. He stressed that they were not yet guilty and were not criminals. The Fourth Amendment enforced the notion that every person had their own castle, which was supposed to be secure from unreasonable searches and seizures. Currently in statute and in the bill, the state would allow a pretrial service officer to have reasonable suspicion to enter a person's home. He wanted to raise the level to probable cause. He furthered that if a pretrial services officer had to go to a person's home for a certain reason and sees that the person was drunk, which was a condition of their release, it would be probable cause. He reiterated that the amendment pertained to a person who was innocent until proven guilty. He noted that the U.S. v Scott case was the basis for the amendment.

Representative Gattis requested to hear the bill sponsor's view on the amendment.

Representative Edgmon did not support the amendment for two reasons. First, he believed there was a departure in

language of adding pretrial services officer. The second reason related to the threshold of probable cause. He had worked on the DOC budget for several years and understood that the conditions attached to EM were very prescriptive and detailed. He surmised that the reasonable suspicion language was appropriate. He believed it should be a standalone subject and a bill in the future; it warranted a more in depth discussion in the future.

SENATOR JOHN COGHILL, SPONSOR, agreed that the state did not currently have a pretrial services officer. The bill contemplated putting in a pretrial services organization that would hold people accountable for:

- 1) Were they a danger to the public or to themselves?
- 2) Would they show up for court?

Senator Coghill stated that many times there were people coming into the charges with bail conditions; the conditions ranged from minor to serious. Instead of keeping the individuals in prison, the bill would let a person be at liberty to improve their lot in life. He addressed probable cause and reasonable suspicion. He stated that under reasonable suspicion, if an officer suspected a person was doing something, they could bring them back into the accountability that the condition was set for. However, probable cause would probably result from something bad happening. He stated that if under reasonable suspicion a person failed court orders, the condition of release had been violated. He opined that reasonable suspicion was more appropriate due to the accountability factors. He understood where probable cause would be appropriate if a new crime was involved, which he believed would already be in place. It was true that the bill was contemplating a pretrial services group that would be tasked with monitoring EM contracts and doing some monitoring themselves. He suggested thinking about that if someone was in jail and something bad was occurring, whether it would fall under probable cause or reasonable suspicion. He believed in the jail circumstance it would be reasonable suspicion.

Senator Coghill used a scenario where the court felt that a person was not a flight risk and no danger to the public, but they had a substance abuse problem. Under reasonable suspicion the pretrial services officers could interject themselves if they believed a person had misused alcohol,

instead of waiting for something bad to happen. He leaned more towards the reasonable suspicion language. He did understand that on the one hand there could be a gang member where many bad things had already happened; whereas someone under a light order and was inattentive to their duty, probable cause could be more appropriate. He understood it was a difficult scale, but accountability was important in getting people to improve their lot in life. He supported the language "reasonable suspicion." He believed any judge who found a failure under the condition would act appropriately. He stated that the debate was entering a new level that he was not conversant in. He relayed that during his time working on the bill over the past two years he had spoken with DOL, the public defender, police, and people who had been in jail. They had not had the opportunity to have the conversation about the amendment with the various parties. He stated that it was a policy call; both reasonable suspicion and probable cause were at the lower end of the scale. However, because the bill would implement a new concept under the pretrial services and the goal was to get individuals into positions where they improved their lives instead of doing seat time in jail. He stated that if the individuals were not improving their lot in life, the state would have to do something different. He reiterated his support for the reasonable suspicion language. He stated that normally he would have a roundtable conversation on every policy call. He remarked that the committee would not have that opportunity on many of the things it would debate during the current meeting. He advised heading in the direction of using the bill's current language instead of going in the direction of the amendment.

[10:51:17 AM](#)

Representative Gattis observed that it was a fine balance between letting individuals out of jail where they had traditionally served jail times and making sure the public knew the state and legislators were paying attention. She saw both sides of the issue. She appreciated the amendment, but she wanted to see the balance and wanted the state to watch the process to verify that it worked. She stated that she would be a reluctant "no vote" on the amendment.

Co-Chair Neuman reiterated his opposition to the amendment. He restated the scenario of a person with a DUI where an officer of the court could not go find out if the person

had been drinking alcohol. He stated that it could be a child in need case where OCS may not have the ability to go to a house to determine if the kids were safe. He believed there were many instances where the change in language could hinder the state's ability to enforce laws. He believed the amendment would remove a very important tool the courts currently have - to make sure people who break the law are doing what they are supposed to be doing. He wanted to ensure that if the state let people out of jail early that it could monitor whether they were abiding by the terms. He believed the state should have the ability to ensure that individuals with substance abuse problems and other were staying clean. He agreed that a person was innocent until proven guilty, but if a person got themselves into the position, he believed there was a reason the person had been arrested in the first place.

Vice-Chair Saddler opposed the amendment. He noted that the committee had heard that a person's Fourth Amendment rights to protection and security was not absolute and could be limited by a search warrant, an appropriate court authority, and a court ordered condition of release (e.g. conditions granted for EM release). He stated that the committee had also heard Mr. Skidmore say that the U.S. v Scott decision was likely not applicable in the current situation.

Representative Wilson had heard Mr. Skidmore say that currently reasonable doubt and probable cause only pertained to police officers (if a person went to court), not pretrial services officers. She stressed that it was completely different. She continued that the committee did not know what kind of training the pretrial services officers would have. She used the DUI scenario and stated that if the EM alarm went off for alcohol it would constitute probable cause. She believed that the way the bill was currently written pretrial services officers would be able to enter a person's home for no reason. She understood the language as it related to police officers, but she did not believe the bill contained any process for pretrial services officers.

Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Wilson, Guttenberg, Kawasaki

OPPOSED: Edgmon, Gara, Gattis, Munoz, Pruitt, Saddler, Neuman, Thompson

The MOTION to adopt Amendment 4 FAILED (3/8).

10:56:46 AM

RECESSED

12:14:45 PM

RECONVENED

Representative Kawasaki WITHDREW Amendment 5 29-LS0541\V.38 (Gardner, 4/22/16) (copy on file).

Representative Gara MOVED to ADOPT Amendment 6 29-LS0541\V.63 (Gardner, 4/25/16) (copy on file):

Page 53, line 19, following "than":
Insert "(1)"

Page 53, line 20, following "section":
Insert "i"

Page 53, following line 20:
Insert a new paragraph to read:
"(2) 90 days if the conviction is for a violation of
(A) AS 11.61.116(c)(1) and the person is 21 years of age or older or
(B) AS 11.61.120(a)(6) and the person is 21 years of age or older."

Co-Chair Thompson OBJECTED for discussion.

Representative Gara began to explain the amendment that related to Class B misdemeanors. He believed that SB 91 did numerous positive things for people who commit Class B misdemeanors. He noted that the individuals tended to only receive probation. He continued that the bill addressed a specific Class B misdemeanor for a situation that sometimes occurred in schools, where someone tried to harass a person by sending out a naked picture of that person.

Representative Kawasaki asked where the amendment was located in the CS.

Representative Gara replied that the amendment was drafted to the prior bill version V (House Judiciary Committee version).

Representative Wilson pointed to page 53, line 19.

[12:16:54 PM](#)

AT EASE

[12:19:34 PM](#)

RECONVENED

Representative Gara reiterated that Amendment 6 had been written to the prior bill version V; therefore, the amendment would be conceptual in order to ensure it went into the correct location of the new CS.

Co-Chair Thompson clarified that the amendment would apply to page 51, Section 83 of the new CS (version T).

Representative Gara confirmed that in the new CS the amendment pertained to Section 83; in the prior bill version V it applied to Section 88.

Vice-Chair Saddler asked for the exact location on page 51. [Note: another committee member pointed to the location on the page.]

Co-Chair Thompson reiterated his OBJECTION to Amendment 6.

Representative Gara explained the amendment. He restated his earlier explanation of a specific Class B misdemeanor crime where a person sent out a picture usually of a young girl under the age of 16 with the intent to humiliate the person. He relayed that under current law the crime carried a zero to 90-day sentence. He reasoned that currently a young kid committing the crime would probably receive no jail time. He furthered that the bill would make the maximum jail time for a Class B misdemeanor 10 days. He believed it was fine for most cases; however, the amendment would maintain existing law (zero to 90 days) in a situation where a person over the age of 21 distributed a naked picture of a person under the age of 16. He believed that in most cases there would probably be no jail time, but he wanted to maintain existing law for the specific circumstance.

Co-Chair Neuman did not support the amendment and did not know what it did. He believed it was conjecture and did not know what it meant that a person would probably receive no jail time.

Co-Chair Thompson invited Mr. Shilling to the table in the event of questions.

Representative Wilson wanted to look at a copy of AS Title 3.

Representative Gattis spoke against the amendment. She stated that it was the first time the committee was dealing with the issue in the amendment. She stated that there were many times people could take pictures of someone and humiliate them. She believed the amendment went too far into the weeds.

Representative Pruitt stressed that sentencing time under current law was 90 days and the bill would decrease it to 10 days. He disputed comments about the inability to know what the amendment did. He reiterated that current law carried a [maximum] sentence of 90 days. The amendment addressed a situation where an adult distributed [a photo] of a young person under the age of 16 with the intent to humiliate that person. He strongly opposed lowering the sentence time to 10 days in the specific circumstance. He explained that the maximum 90-day sentence did not necessarily mean a person would spend 90 days in jail; many times a plea bargain was negotiated (just like every statute the bill dealt with). He stressed the importance of making sure the tools were in place; it was about protecting minors and children. The courts currently had the tools, but the bill would remove that option. He furthered that if an adult distributed naked photos of a girl under the age of 16 to humiliate her, it was possible the girl may commit suicide due to humiliation. He did not believe a 10-day limit on the specific situation was acceptable. He felt very strongly about the importance of the amendment.

[12:26:24 PM](#)

Representative Kawasaki asked why the age 21 had been used as opposed to the age of 18. He recognized there were high schools that probably had students who were 18 years old,

but he assumed there were not high schools with 19 or 20 year old students.

Representative Gara understood that there was confusion about the amendment. He stressed that no new crime was being created by the amendment. He pointed to current statute AS 11.61.116(c)(1) that pertained to sending an explicit image of a minor with the intent to annoy or humiliate the other person (an electronic photograph or video that depicted the private body parts of that person). The bill would change sentencing for a Class B misdemeanor to a maximum of 10 days. He asked about a scenario where a person committing the crime was over the age of 21 and the victim was a 15 year-old. He believed it seemed much more serious than a scenario where the victim and perpetrator were both kids in high school. The amendment used the age of 21 because at that age the person was no longer in high school. He believed the crime was bad in any scenario, but it was especially bad if the offender was over the age of 21 and the victim was underage. He stressed that a person should know much better at that point in life. He reiterated that the amendment would maintain current law for the scenario, which was sentencing of zero to 90 days. He did not mean to conjecture what kind of sentencing a person would get. He stated that the public defender and prosecutors would say that for a Class B misdemeanor a person usually did not get much if any jail time. He could not tell what the sentence would be for sure; it depended on the level of the conduct.

Representative Wilson stated that a person was considered an adult at the age of 18. She wondered if it would be Class B misdemeanor by itself for the 10 days versus more than one contact. She wondered how often it happened.

Representative Gara responded that he did not believe the crime happened very often, but he did not know the frequency. He noted that the public defender could possibly provide the number of cases. He stated that the amendment did not change the crime from a Class B misdemeanor; it maintained the current law for an individual over the age of 21. He stressed that a 21-year old was approximately 6 years older than the victim. He reiterated that current law carried a sentence of zero to 90 days. He understood the intent of the bill for the other Class B misdemeanors.

Representative Wilson expressed confusion about exactly what section of law the amendment applied to and the crimes that fell under a Class B misdemeanor. She did not understand the 6-year age difference Representative Gara had referred to. She questioned whether it was more appropriate to use age 21 versus age 18. Additionally, she wondered about the reasoning behind reducing the maximum sentencing from 90 days down to 10 days.

Mr. Shilling replied that the commission had discussed Class B misdemeanors, they had looked at whether jail time and limited bed space was a good use for the lowest level misdemeanants. There were over 80 Class B misdemeanors in Title 11. The amendment would set one apart from the others to give the enhanced sentencing range. He had recently spoken with DOC and had learned that no one had been incarcerated in 2015 for the crime. He believed using the range of up to 90 days would not have much effect as far as DOC was concerned. He deferred to Mr. Steiner for further detail.

[12:32:10 PM](#)

Mr. Steiner spoke to the commission's rationale on the topic. He explained that the commission had looked at data indicating that for low-level offences and low-risk individuals, the jail time increased recidivism. The commission had determined that for low-level misdemeanors that additional jail time was costing money, was not increasing public safety, and actually reducing public safety. Therefore, as a broad proposition, the commission had recommended a cap for all the lowest level crimes - there would be some amount of jail time to address the issue, but not so much as to be unnecessary and expensive. The commission did not go through every single offence and discuss them individually; the items had been discussed in classes.

Representative Munoz remarked that statute referred to a minor age 16 and under, but it did not address 21 years of age. She asked how the amendment would affect the current law. She wondered whether individuals under the age of 21 would be immune from the section of law.

Mr. Steiner replied that if the language was adopted no one would be immune from the code, it would merely change the sentencing provision. He detailed that if a person was

under 21 the cap of 10 days would apply; however, if a person was age 21 or older there would be no reduction and it would remain at the current 90-day cap. He had not been able to fully analyze the implications of the amendment.

Vice-Chair Saddler stated that the bill included language specifying a sentencing cap of 10 days. He asked for verification that a person between the ages of 18 and 21 would be subject to the 10-day sentencing cap, whereas a person over the age of 21 would be subject to a 90-day sentencing cap.

Mr. Steiner replied that it was his understanding.

Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gara, Guttenberg, Kawasaki, Munoz, Pruitt, Saddler

OPPOSED: Edgmon, Gattis, Wilson, Neuman, Thompson

The MOTION PASSED (6/5). There being NO further OBJECTION, Amendment 6 was ADOPTED.

Representative Kawasaki MOVED to ADOPT Amendment 7 29-LS0541\V.49 (Martin/Gardner, 4/22/16) (copy on file). [Note: due to the length of the amendment it has not been included in the minutes.]

Co-Chair Thompson OBJECTED for discussion.

Representative Kawasaki explained that the amendment would add a Section 85 on page 53, line 1 (bill version T). He detailed that if there was an agency investigating a sexual assault, the law enforcement agency shall not involve the employer. He clarified that if there were two employees and the offence happened within their employment range, the department or investigators would not speak to the employer unless the victim expressly permitted the disclosure or the agency determined the disclosure was necessary to investigate or prevent a crime. He elaborated that it was similar to something the state had to deal with related to sexual assaults that had occurred in the Alaska National Guard in the recent past. He furthered that the National Guard had discovered that a sexual offence involving two employees had consistently been occurring. He believed the

employer may be in a position where they may not want to allow information to be proceeded because it could bring down the reputation of a company.

12:38:28 PM

Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gara, Guttenberg, Kawasaki

OPPOSED: Gattis, Munoz, Pruitt, Saddler, Wilson, Edgmon, Thompson, Neuman

The MOTION to adopt Amendment 7 FAILED (3/8).

12:39:15 PM

Representative Kawasaki MOVED Amendment 8 29-LS0541\V.50 (Martin/Gardner, 4/22/16) (copy on file). He relayed that after speaking with staff on the Council on Domestic Violence and Sexual Assault, he had learned that there were currently ways the reporting occurred. One way he would like to see reporting occur in the future was with an online system, where individuals would not have to speak face-to-face with a counselor. He stated there were some technical issues in dealing with the online reporting system; therefore he WITHDREW Amendment 8.

Representative Gara MOVED to ADOPT Amendment 9 29-LS0541\V.64 (Gardner, 4/25/16) (copy on file):

Page 62, following line 26:

Insert new subsections to read:

"(h) Notwithstanding (g)(2) of this section, if a person resides in a community where a court-ordered treatment program under AS 28.35.028 is not available, the person shall

- 1) provide proof to the court that the person has successfully completed a rehabilitative treatment program appropriate for the person's alcohol or substance abuse condition; the program must
 - A. include planning and treatment for alcohol or drug addiction;
 - B. include emphasis on personal responsibility;
 - C. require payment of restitution to victims and completion of community work service;

- D. include physician-approved treatment of physical addiction and treatment of the psychological causes of addiction; and
 - E. include a monitoring program and physical placement or housing in communities where the court finds that a monitoring program and placement or housing is available;
- 2) provide proof by clear and convincing evidence to the court that the person is currently sober and has maintained sobriety for a period of at least 18 months; and
 - 3) provide written notice to the district attorney's office of the person's request for a limited license under this section.
- (i) A person is not entitled to court-appointed counsel under (h) of this section,"

Reletter the following subsection accordingly.

Page 62, line 31, following "AS 28.35.028":

Insert "or a rehabilitative treatment program under (h) of this section"

Page 67, line 7, following "AS 28.35.028":

Insert "or a rehabilitative treatment program under AS 28.15.201(h)"

Page 123, line 29:

Delete "AS 28.15.201(g) and (h)"

Insert "AS 28.15.201(g) - (j)"

Co-Chair Thompson OBJECTED for discussion.

Representative Gara explained that the amendment had been drafted to the prior bill version V (page 62, line 26); in the new CS (version T) it applied to page 56, line 6. He relayed that the amendment tried to bring equity to individuals living in a location with no therapeutic court. Currently, Section 89 of the bill let a person with a felony DUI get a limited license if the person met a number of conditions including, participating in a court-approved treatment program and therapeutic court, providing proof of rehabilitation success, installation of an ignition interlock device on their vehicle, providing proof of insurance, and demonstrating that they had not driven illegally since the arrest or violated probation. The amendment applied to individuals living in a community with

no therapeutic court; it specified that a person fulfill all of the conditions required under Section 89, with the exception of the therapeutic court. Line 6 of the amendment specified that a person would have to provide clear and convincing evidence to the court that they had successfully completed a rehabilitative treatment program appropriate for the person's alcohol or substance abuse condition. He explained that the goal was to provide a parallel system to allow an individual to get a limited license back for a person living in a rural community (e.g. Nome or Aleknagik). There were a number of communities that did not have a therapeutic court, but that were on the road system. The only major difference between Amendment 9 and Section 89 of the CS was the allowance of a therapeutic treatment program in place of the therapeutic court. The individual would also have to show that they had successfully completed the program and had been sober for at least 18 months, which was the length of time the therapeutic courts lasted. He reiterated that every requirement from the other part of the bill was included in the conditions. The amendment would bring equity for people who did not have access to a therapeutic court. He added that he had worked closely with the court system to ensure that none of the other requirements were missed.

Co-Chair Thompson asked Ms. Mead to address the committee. He remarked that Amendments 9 and 10 were somewhat related. He believed the commission had been asked to address the topic. He wondered when the commission would have a report back.

Ms. Mead replied that the Alaska Criminal Justice Commission had been tasked (by SB 64 [2014 legislation establishing the Alaska Criminal Justice Commission]) to do a study of many provisions of Title 28 - driving provisions including administrative revocations and other parts. They had also been tasked with looking into limited licenses and the efficacy of ignition interlock devices. The commission was currently working to determine what may be the best way to issue limited licenses. She believed the commission would include the information in its annual report before the next regular legislative session.

Co-Chair Thompson asked if the report would be available in the fall/winter of 2016. Ms. Mead replied "approximately yes."

Co-Chair Thompson thought the provision in Amendment 9 may be premature before hearing from the commission. Ms. Mead replied that the commission would come up with recommendations. She had worked with the amendment sponsor to ensure that it was doable. She affirmed that the commission was working to establish something that may be more comprehensive, but she did not know what they would come up with.

[12:45:53 PM](#)

Representative Kawasaki spoke in support of the amendment. He stated that it related to equity and the ability for people to get similar things statewide. He asked if there were just five therapeutic reports located in Fairbanks, Anchorage, Juneau, Kenai, and Palmer.

Ms. Mead replied that there were six therapeutic courts, which also included Ketchikan. She listed the therapeutic court locations: Ketchikan, Juneau, Bethel, Fairbanks, Palmer, and Anchorage.

Representative Kawasaki spoke to a similar amendment he had drafted, which aimed to obtain equity for individuals living without a therapeutic court. He asked if unspecified rehabilitative treatment programs could be the same or equal to what was currently offered in a therapeutic court setting.

Ms. Mead answered that it was the crux of the amendment. She believed the bill sponsor's goal was to have something objective. The court was not incredibly involved in the provisions under SB 91. She continued that a person would be entitled to a limited license as a felon if they graduated from a therapeutic court and completed the additional conditions, which included [but not limited to] insurance, ignition interlock, and not losing a license previously. The amendment was different and would mean the court would have a hearing to determine whether the rehabilitative treatment program was appropriate for the person and to make a finding by clear and convincing evidence that the person was sober. She furthered that the court would have a hearing on the issue and would weigh facts and evidence to determine whether the treatment program was on par with therapeutic courts.

Representative Kawasaki wanted to ensure it was a comparable proposal to therapeutic courts, which he believed was an 18-month program. He remarked that he was friends with a therapeutic court judge who called his participants daily and met frequently with the individuals.

Ms. Mead answered that she did not know of any other program in the state that was as intense as therapeutic court, with the exception of treatment programs. She detailed that a person could live in residential treatment where she supposed the participants had constant contact with treatment providers. She expounded that therapeutic courts sometimes had a residential component - they had a well-studied and highly organized system of dealing with people's substance abuse or alcohol programs. She elucidated that the person met with a judge at the beginning of the (18-month minimum) program - which went in phases and tapered off towards the end of the 18 months. She described that participants met with the judge several times a week; it was a team approach including people from the Division of Behavioral Health, the public defender or defense attorney, the prosecuting attorney, the judge, and the social workers. She furthered that social workers had private pre-meetings with the judge and then interviewed the participant in a court room about how they were doing in every aspect of life. She stated that the process was very hands-on and intensive. She did not know whether something similar existed outside the therapeutic court community.

[12:50:09 PM](#)

Representative Kawasaki stated a therapeutic court graduation was an amazing and positive experience. He asked about the recidivism rate for individuals who had gone through the program.

Ms. Mead replied that felons who completed the therapeutic court program had a one-third lower recidivism rate. Felons who went through a therapeutic court for any time period had a somewhat lower recidivism rate. There was a dropout rate for therapeutic courts due to the intensity of the program. She stated that misdemeanants had a one-third lower recidivism rate when they completed the program.

Representative Guttenberg agreed that attending a therapeutic court graduation was amazing to see what went

on and what the individuals had gone through. He spoke to item 2 of Amendment 9 that required a person to provide proof by clear and convincing evidence to the court that they were currently sober and had maintained sobriety for a period of at least 18 months. He observed that it seemed like a tougher standard than participating in a therapeutic court. He asked how difficult it was for a person to maintain and prove sobriety while living on their own without oversight. He believed it was clearly a higher standard.

Ms. Mead answered that SB 91 did not require any findings of the person being sober; it was objective. She explained that if a person finished therapeutic court they satisfied the requirement. The Amendment 9 requirement for a person to provide clear and convincing evidence of maintaining sobriety would be subjective. She was uncertain how judicial officers would define sobriety or make the finding. She believed that based on the amendment language, the 18 months could be coexistent with the time spent in a treatment program. She did not know exactly how it would work and believed it would be difficult.

[12:53:15 PM](#)

Representative Gattis asked about the study that the commission would provide. She asked if the amendment would hinder the study going forward. She knew therapeutic courts worked and she had family members who had completed the program. She had lived in areas that did not have access to therapeutic courts and understood the goal of the amendment, but she did not want to foul up the work the commission was doing.

Ms. Mead answered that the study, which would come out later in the year, was related to driver's licenses and other provisions of Title 28 as opposed to a specific study on therapeutic courts and their effectiveness. She expected the study from the Alaska Criminal Justice Commission would provide some suggestions about how to change driver's license restrictions. The commission was studying whether the revocations for DUI were appropriate and what changes may serve the public safety and policy better, including whether there should be felony limited licenses and under what circumstances. She guessed that the recommendations would not look the same as the amendment, but she did not know.

Representative Edgmon believed the amendment was good, but was concerned about getting ahead of a more comprehensive look at the issue by the commission. He remarked that there could be merit to working on the issue later on instead of addressing it in the current bill.

Representative Gara relayed that he understood there would be a study. He reasoned that they did not know whether the study would have any traction in the legislature and currently there was no way for someone without access to a therapeutic court to receive a limited license in order to go to work. He reasoned the legislature could wait a year and prevent access to limited licenses to some people based on where they live, but the legislature did not even know what the recommendations would be and whether it would agree with them. He had heard that the commission may provide recommendations that did not even require alcoholism and drug treatment and may only require a shorter period of license revocation. He had offered the amendment with the understanding that if a better idea came out of the commission, the proposal would be replaced with the new idea. He furthered that until something like that passed - which could take significant time - he wanted to have something in place. He had tried to be very careful to maintain all of the other conditions a person must prove to obtain a limited license (e.g. the installation of an ignition interlock device on the vehicle and that a person had not broken the law). The amendment also required a person to prove they had been sober for 18 months, which was not a therapeutic court requirement; it was a stronger standard to provide additional protection to the public. He stressed that if the committee did not include the provision in the bill, it was not possible to know whether there would be another provision for individuals living in an area without access to a therapeutic court (e.g. Homer, Kenai, and other). He was amenable to replacing what the amendment would implement if the commission came up with a more comprehensive idea in the future.

[12:58:04 PM](#)

Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Guttenberg, Kawasaki, Edgmon, Gara

OPPOSED: Gattis, Munoz, Pruitt, Saddler, Wilson, Neuman, Thompson

The MOTION to adopt Amendment 9 FAILED (4/7).

12:58:55 PM

Representative Kawasaki WITHDREW Amendment 10 29-LS0541\V.34 (Gardner, 4/22/16) (copy on file).

Representative Kawasaki MOVED to ADOPT Amendment 11 29-LS0541\V.45 (Martin/Gardner, 4/22/16) (copy on file). [Note: due to the length of the amendment it has not been included in the minutes.]

Co-Chair Thompson OBJECTED for discussion. He noted that the amendment applied to page 63 of the CS.

Representative Kawasaki explained that the amendment added a new section specifically addressing the caseload of probation officers. He stated that currently the bill proposed major shifts in the way DOC did business; it shifted many individuals in jail to out of jail systems or onto parole. He referred to numerous studies and practical sense that because parole and probation supervision was heavily based on surveillance and caseload, heavy caseloads meant less time spent on each individual case. The amendment specified that caseload maximums for probation officers would not exceed 60. He referenced other studies showing that criminal recidivism was lower for offenders who were supervised by officers with lower caseloads. He reiterated that it was common sense that probation officers with heavy caseloads had a difficult time managing the cases. The amendment reflected that there would be many individuals out on probation. He believed that under the circumstances, the legislature should make sure they did not recidivate.

Co-Chair Neuman spoke in opposition to the amendment. He did not know what impact the amendment would have on the current budget. He detailed that when determining the budget the legislature looked at the number of personnel and what the state could afford through conversations with the department commissioners. He spoke to reduced personnel due to budgetary reasons. He believed people probably wished the state could afford more correctional officers and troopers, but "it was not in the cards." He reiterated

that he did not know what the cost of the amendment would be.

Representative Kawasaki recognized there was a cost to the amendment that would be reflected in a future fiscal note. He stressed that the bill would change the way DOC worked and the number of individuals out on probation and parole would increase. He stated that the individuals would either succeed or fail on probation. He thought it was important to look at how much the state would be spending on probation. He referred to a U.S. Department of Justice study stating that criminal recidivism was lower for offenders supervised by officers with lower caseloads. He stated that if there were large caseloads, the individuals would recidivate more.

Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Guttenberg, Kawasaki, Gara

OPPOSED: Munoz, Pruitt, Saddler, Wilson, Edgmon, Gattis, Thompson, Neuman

The MOTION to adopt Amendment 11 FAILED (3/8).

[1:04:06 PM](#)

Representative Kawasaki WITHDREW Amendment 12 29-LS0541\V.35 (Martin/Gardner, 4/22/16) (copy on file).

Representative Kawasaki MOVED to ADOPT Amendment 13 29-LS0541\V.36 (Martin/Gardner, 4/22/16) (copy on file):

Page 78, line 2:

Delete "55"

Insert "65"

Co-Chair Thompson OBJECTED for discussion. He pointed to page 70, line 17 of the CS.

Representative Kawasaki explained the amendment related to geriatric parole. He recognized the associated cost of the aging population within the prison system. He also recognized that according to the Alaska Criminal Justice Commission that offenders at a certain age tended to recidivate significantly less. He observed that the bill

version before the committee had increased the geriatric parole age to 60. He referred to Louisiana with a geriatric parole for prisoners over the age of 45, while the age in Maryland and North Carolina was 65. He detailed that age 60 was around the median age for geriatric parole. He believed there were other ways to parole individuals in the system who had medical conditions that would prevent them from recidivating. Additionally, there was discretionary parole and the new administrative parole that he had concern about. He WITHDREW Amendment 13.

[1:06:43 PM](#)

Vice-Chair Saddler clarified that the current age of geriatric parole had been increased to 60 in the CS.

Representative Guttenberg MOVED to ADOPT Amendment 14 29-LS054\V.57 (Gardner, 4/22/16) (copy on file) on page 93, line 4 of the CS:

Page 105, line 3:
Delete '50 percent of'

Page 105, lines 5 - 7:
Delete all material and insert:
"(d) The legislature may use the annual estimated balance in the fund to make appropriations as follows:
(1) 50 percent to the Department of Corrections, the Department of Health and Social Services, or the Department of Public Safety for recidivism reduction programs; and
(2) 50 percent for drug and alcohol abuse prevention and treatment grant programs administered by the Department of Health and Social Services."

Co-Chair Thompson OBJECTED for discussion.

Representative Guttenberg explained that the bill established a recidivism reduction fund, where 50 percent of the marijuana tax would be deposited. He had always believed that taxes off the marijuana industry should go to alcohol and drug treatment. He furthered that as written in the bill, the 50 percent targeted recidivism reduction programs. The amendment would designate the remaining 50 percent for drug and alcohol abuse prevention and treatment grant programs administered by the Department of Health and Social Services. He reasoned that there were people who

needed the programs, but were not court ordered and had not committed crimes. He considered that a person probably had committed a crime (but had not been caught) if they believed they needed alcohol or drug abuse treatment. He wanted to ensure that the money out of the marijuana taxes went into the treatment, given the insufficient number of programs in the state. He believed the money was appropriately used in the recidivism program as well.

Representative Munoz thought it was a good idea on the surface; however, she pointed out that Amendment 1 had passed, which directed excess funds to law enforcement.

Co-Chair Neuman spoke in opposition to the amendment. He relayed that he was an advocate of trying to put more money towards prevention and treatment; however, the legislature did not know how much money the fund would bring in. He added that they did not know what the impacts of SB 91 would be in terms of any savings. He believed it was premature to spend money that the state did not have.

Representative Guttenberg discussed that the state marijuana board raised money to support itself with receipt authority. He did not want to see the money merely absorbed into the budget. He stressed the importance of the programs, which were needed and were too few in number. He clarified that it would not create a designated fund, but would target the unknown amount of money [towards treatment]. He understood that the calculations in other states that had created the programs were varied; however, he believed there would be a better chance the funds would go towards addressing treatment.

Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Kawasaki, Wilson, Gara, Guttenberg

OPPOSED: Munoz, Pruitt, Saddler, Edgmon, Gattis, Neuman, Thompson

The MOTION to adopt Amendment 14 FAILED (4/7).

[1:11:46 PM](#)

Representative Kawasaki MOVED to ADOPT Amendment 15 29-LS0541\V.17 (Gardner, 4/20/16) (copy on file). [Note: due

to the length of the amendment it has not been included in the minutes.]

Co-Chair Thompson OBJECTED for discussion.

Representative Kawasaki explained that the amendment would help to ensure that individuals under the supervision of DOC could be reformed and find jobs. He detailed that currently individuals convicted of assault in the fourth degree were barred from specific types of employment. He expounded that many laws had been implemented in the past decades that prevented a person from finding gainful employment. He furthered that the bill made some good reforms (e.g. limited licenses for individuals with DUIs and things to help individuals get back on their feet in order to reduce recidivism). The amendment addressed a barrier to employment - individuals convicted of the crime would not be able to work in a healthcare setting for five years after conviction. He opined that it was too long. He believed it was important to think about the multitude of laws that prevented people from getting back on their feet. He WITHDREW the amendment with the intent to potentially offer it at a later date.

[1:13:28 PM](#)

Representative Guttenberg WITHDREW Amendment 16 29-LS8007\A.6 (Martin, 4/22/16) (copy on file).

Representative Guttenberg MOVED to ADOPT Amendment 16a 29-LS0541\T.1 (Gardner, 4/26/16) (copy on file) [Note: due to the length of the amendment it has not been included in the minutes].

Co-Chair Thompson OBJECTED for discussion.

Representative Guttenberg spoke to the amendment. The section had been put in by another committee in the House and had subsequently been removed. He thought the amendment was very appropriate. He discussed that the bill related to crime, procedure, and restitution. The amendment addressed murder and restitution, which already appeared in the bill title. He explained that if a trooper was murdered the family would receive the benefits the trooper would have received upon retirement.

Co-Chair Neuman regretfully spoke in opposition to the amendment. He stated that the issue had arisen because there had been Alaska State Troopers recently killed in the line of duty in the Talkeetna area and their spouses had been left without benefits. He believed the issue needed to be addressed and he suspected it would happen in the following legislative session. He thought the topic warranted further discussion throughout the legislative committee process. He noted that there was a legal opinion from Legislative Legal Services (dated April 16, 2016 from Doug Gardner) specifying that the amendment would very likely violate the single subject rule, which would put entire provisions of the bill at risk for invalidation. Additionally, he had asked Legislative Legal Services about statutory definitions of an Alaska peace officer or fire fighter. The definition he had received was as follows:

An employee occupying a position as a peace officer, chief of police, regional police safety officer, correction officer, correctional superintendent, fire fighter, fire chief, probation officer, may include University police, but would not include a Village Public Safety Officer.

Co-Chair Neuman added that the definition would include some employees under the Department of Fish and Game and the Department of Transportation and Public Facilities. He noted that there were high frequencies of accidents in the positions. He did not know how far reaching the amendment was. He considered the state's troopers to be heroes. He spoke to the cost in the fiscal note, which ranged from \$174,000 or so. Additionally, another \$557,000 would be taken from the Retiree Health Fund in the first year; it also added further unfunded liabilities. He believed it was a good concept, but he did not believe the current bill was the appropriate place to address the issue. Currently the state capped Public Employees' Retirement System (PERS) at 22 percent at the municipal level (there was a 12 percent unfunded liability and a 10 percent cap); actual cost was closer to 26 percent and the state picked up any additional costs. He elaborated that due to changes made in 2008 to Teachers' Retirement System (TRS) and PERS there was discussion underway to look at changes within the systems related to municipal revenue and the portion the state could contribute. He stressed the importance of the issue included in the amendment and he believed the administration was currently working on the issue related

to two troopers who had been killed in the line of duty. He noted that in the past, former Governor Sean Parnell had provided for spouses of fallen officers.

1:20:05 PM

Representative Kawasaki spoke in support of the Amendment 16a. He stated that the amendment aimed to protect spouses who had lost their husband or wife. He noted that there was a small fiscal note that would likely be \$174,000. The amount rose slowly up to \$226,000 in the next five years. He emphasized that the impact to the normal cost rate of the Defined Benefit Plan was minimal at 0.01 percent and 0.00 percent overall. He referred to two troopers who had lost their lives. He stated that it was a chance to make a difference for the lives of individuals who had lost their spouses in the line of duty. He commented on questions about whether the amendment would fit into the bill's title. He observed that the bill contained issues ranging from corrections, Permanent Fund Dividends, driver licenses, and food stamps. He stated that the amendment would fit in the title of the bill if the committee allowed. He remarked that there was a severability clause in case there was a legal challenge at some point in the future; therefore, the law would not impact the remaining bill.

Vice-Chair Saddler echoed comments made by Co-Chair Neuman. He believed the issue was worthwhile and deserved its own consideration. He generally tried to look at entire pieces of legislation interjected into other legislation with a skeptical eye. He agreed that the issue needed to be addressed and was important enough that it should stand alone. He believed a fiscal note for a previous iteration of the provision had been \$577,000 from the trust [Retiree Health Fund]. He was concerned that the amendment may have implications for other state workers with similar or greater degrees of fatalities in the line of work. He added that there were questions regarding the single subject rule and severability. He did not believe it was appropriate to cloud the bill with additional topics.

Representative Guttenberg stated that crime and restitution were already in the title of the bill. He furthered that SB 91 was an omnibus crime bill, which contained many subjects. Additionally, the amendment contained a severability clause specifying that the amendment would be

removed from the bill if the courts rule that the bill violated the single subject rule. He understood that Legislative Legal Services did not like "Christmas treeing" bills, but the legal opinion also addressed "log rolling," which was the practice of inserting several dissimilar incongruous subjects in one bill. He emphasized that it was not the case with the amendment at hand. He stressed that the troopers had been murdered in Tanana three years earlier. He stressed that three years had gone by and there had been no legislative action. He emphasized that the fiscal note would remain the same. He believed the families deserved restitution after three years.

Co-Chair Thompson read from a Legislative Legal Services opinion dated April 27, 2016:

If a court finds that there is a single subject violation, it is likely that the entire bill may fail because it will be impossible for a court to determine which part of the bill should be saved. Even with the severability clause, a court may still strike down the entire bill on single subject grounds as that constitutional requirement applies to the entire bill.

Co-Chair Thompson remarked that it was a difficult thing for everyone to figure out. Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Munoz, Gara, Guttenberg, Kawasaki,
OPPOSED: Pruitt, Saddler, Wilson, Edgmon, Gattis, Thompson,
Neuman

The MOTION to adopt Amendment 16a FAILED (4/7).

[1:26:47 PM](#)

AT EASE

[1:27:19 PM](#)

RECONVENED

Representative Pruitt MOVED to ADOPT Amendment 17 29-LS0541\V.65 (Gardner, 4/26/15) (copy on file):

Page 49, following line 16:
Insert a new bill section to read:

" Sec. 83. AS 12.55.125(b) is amended to read:
(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree or murder of an unborn child under AS 11.41 .1 50(a)(2) - (4) shall be sentenced to a definite term of imprisonment of at least 15 [10] years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adoptive parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470."

Renumber the following bill sections accordingly.

Page 52, line 2, through page 53, line 1:

Delete all material.

Renumber the following bill sections accordingly.

Page 121, following line 23:

Insert a new paragraph to read:

"(30) AS 12.55.125(b), as amended by sec. 83 of this Act;"

Renumber the following paragraphs accordingly.

Page 121, line 24:

Delete all material.

Renumber the following paragraphs accordingly.

Page 125, line 31:

Delete "sec. 83"

Insert "sec. 84"

Page 126, line 1:

Delete "sec. 84"

Insert "sec. 85"

Page 126, line 2:

Delete "sec. 85"

Insert "sec. 86"

Co-Chair Thompson OBJECTED for discussion.

Representative Pruitt explained Amendment 17. He discussed that one area of the bill increased the minimum on murder in the first degree; however, it had not been proportionately increased for murder in the second degree. He explained that the change would increase the prison time from 10 years up to 20 years. He had initially considered offering an amendment to implement the 20-year sentence; however, he had decided to offer an amendment for a 15-year sentence as a compromise. He referred to a guide from the Alaska Peace Officers Association and read that murder in the second degree included the intent to cause physical serious physical injury or knowing conduct is substantially certain to cause death or certain physical injury, causes the death of any person. He furthered that murder in the second degree was also committed if death resulted when the suspect was attempting, committing, or fleeing from crimes including arson in the first degree, kidnapping, sexual assault in the first or second degree, and sexual abuse of a minor in the first or second degree. He stated that an individual could commit the crime of sexual assault in the first degree and the minimum sentencing for the crime was 20 years based on 13 years or older - 20 to 30 years would be the minimum. He stated that "on something like this that could include something in that same vein, in the process, it actually starts with the minimum a little bit lower." He believed it was appropriate to be cognizant of the issue, to be consistent, and to come up with a compromise. He noted that Mr. Shilling could speak to the issue further if needed.

Mr. Shilling affirmed that Senator Coghill was supportive of the concept. He added that the other body had increased the mandatory minimum for murder in the second degree from 10 up to 15 years. He furthered that there were very clear differences between the way the state sentenced sexual

assaults and murder, but Senator Coghill was supportive of the change.

1:31:18 PM

AT EASE

1:32:20 PM

RECONVENED

Representative Gara remarked that he did not want to make the amendment on the fly because he believed the issue was already covered by the aggravators in the sentencing statute. He detailed that if a person committed a particularly egregious crime, especially with intent, the aggravators applied. The sentencing range in current statute was 10 to 99 years; a person's sentence increased depending on whether the aggravators applied. One version of the crime was where a person intended to cause serious physical injury to another person without knowledge the person was pregnant and the result was a loss of the baby. He believed it should be a felony and it fell under a sentencing minimum of 10 years. He continued that all of the aggravators then applied to increase the sentence above 10 years. He spoke to the 35 aggravators listed in AS 12.55.155 including whether a person sustained physical injury, whether there was deliberate cruelty, whether a dangerous instrument was used, whether the victim was particularly vulnerable, and more. He stated that under all of the circumstances listed, a person would receive a lengthy sentence. He did not want to just select a number that also would apply to a person who assaulted someone without the knowledge the victim was pregnant. He furthered that if the perpetrator had known about the pregnancy the aggravator would apply. He was more comfortable with the current version of the bill. He added that no one was saying that any of the conduct was tolerable; it was all categorized as a felony. He stated that if a person knew the victim was pregnant they would receive a long sentence. However, it would add five years to a person's sentence in a situation where they did not know the victim was pregnant. He hoped people would feel comfortable with the existing aggravators that allowed sentencing to be individualized to a person's actual conduct.

Co-Chair Thompson WITHDREW his OBJECTION.

There being NO further OBJECTION, Amendment 17 was ADOPTED.

Co-Chair Thompson returned to Amendment 2. He noted that the amendment brought up the problem of the single subject violation and how it could jeopardize the entire bill.

Representative Wilson MOVED to AMEND Amendment 2. She read the amendment, which would add a severability clause related to the single subject rule:

Severability. If this Act is held invalid by a court of competent jurisdiction under the requirement of art. II, sec. 13, Constitution of the State of Alaska, that every bill be confined to one subject, the provisions of sec 2 of this Act shall be severed so that the remainder of this Act is not affected.

Co-Chair Thompson OBJECTED for discussion.

[1:37:28 PM](#)

AT EASE

[2:00:04 PM](#)

RECONVENED

Co-Chair Thompson WITHDREW his OBJECTION to the amendment to Amendment 2.

Representative Gara OBJECTED to ensure that no damage to the bill was caused. He stated that Amendment 2 now applied to Section 2 and the severability clause specified that if the amendment violated the single subject rule, the amendment would be removed from the bill. He clarified that previously applied to Section 1.

Representative Wilson replied in the affirmative.

There being NO further OBJECTION, the amendment to Amendment 2 was ADOPTED.

Co-Chair Thompson MAINTAINED his OBJECTION to Amendment 2. He spoke against going forward with the amendment in order to be consistent with his objection to an earlier amendment, which also included a severability clause.

Representative Wilson spoke to the amendment. She cited a 2010 Alaska Supreme Court case Croft v. Parnell and read

from the single subject and severability memorandum from Legislative Legal Services dated April 27, 2016:

All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.

Representative Wilson continued that Legislative Legal Services had defined the single subject of SB 91 to generally be criminal law and procedure. The amendment specified that civil in rem forfeiture could not be used in place of a criminal proceeding. She understood the comments provided by Co-Chair Thompson, but she contended that Amendment 2 did not fall into the same category as an earlier amendment. She stressed that Amendment 2 did pertain to criminal law and procedure. Although she did not believe it was necessary, she had no problem including the severability clause.

A roll call vote was taken on the motion.

IN FAVOR: Pruitt, Wilson, Gara, Gattis, Guttenberg, Kawasaki, Munoz,

OPPOSED: Thompson, Saddler, Edgmon, Neuman

The MOTION to adopt Amendment 2 as amended PASSED (7/4).

[2:03:45 PM](#)

RECESSED

[4:59:30 PM](#)

RECONVENED

Representative Pruitt MOVED to ADOPT Amendment 18 29-LS0541I\V.55 (Gardner, 4/22/16) (copy on file) [Note: due to the length of the amendment it has not been included in the minutes].

Co-Chair Thompson OBJECTED for discussion.

Representative Pruitt explained the amendment related to identification cards and driver's licenses for parolees. He referred to a provision commonly referred to as a red

stripe (on driver's licenses) that applied when a court ruled that an individual could not purchase alcohol. The amendment would add the following language to the provision: or as a condition of probation or parole for any other crime. He explained the genesis of the amendment. He discussed a case in Anchorage where a young woman was killed [Bree Moore] by her boyfriend the day he had been released from anger management therapy. He detailed that the man had purchased alcohol to celebrate being out and had proceeded to get drunk and kill his girlfriend. The red stripe law had not been effective in preventing the man from purchasing alcohol for a couple of reasons. The amendment was aimed at fixing one of the reasons; the other reason may not necessarily be solved by the amendment, but he was trying to figure out if there was time to deal with it during session. He explained that when a person went into prison their license was taken and it was given back when they were released even if the license was supposed to have a red stripe. He furthered that the court did send the information to the Division of Motor Vehicles (DMV) and DMV sent a letter giving a person 30 days to obtain a new license; however, not everyone followed through and the license was not always checked when a person went to buy alcohol. He added that the license would also appear valid unless the seller checked it with the DMV. He explained that the situation was more complex and he was working to determine if there was the ability to put forward some language - DOC and the Department of Administration needed to collaborate on the issue. The amendment would require an individual to get the red stripe on their license as a condition of probation or parole. He noted that it was not a current requirement - a person could still potentially buy alcohol with the license without the red stripe, even if it was a condition of their parole.

Representative Wilson asked if identification cards could be covered as well.

Representative Pruitt replied that it was a very valid point. Currently the red stripe law required both identification cards and driver's licenses. The amendment included identification cards.

Representative Wilson believed the bill would take the handling of driver's licenses out of the hands of DOC; however, identification cards would still be handled by DOC. She asked if the bill needed to include identification

cards because it would fall underneath the department's responsibility.

Senator Coghill replied that DOC was required to do pre-release planning and he believed the issue could be taken care of during that process. He believed that identification cards and driver's licenses could be included and would have to go through the process for probation and parole.

Representative Wilson asked to hear from DOC. She believed the bill had been changed to exclude driver's licenses from DOC's responsibility.

Mr. Shilling answered that there was a provision in the bill authorizing DOC to issue an identification card only; however, it was permissive, but not compulsory.

Representative Wilson reiterated her request to hear from DOC.

[5:06:59 PM](#)

DEAN WILLIAMS, COMMISSIONER, DEPARTMENT OF CORRECTIONS (via teleconference), deferred the question to his colleague.

Senator Coghill pointed to page 89, line 24 of the CS requiring DOC to assist a prisoner in obtaining a valid state identification card. He agreed with Representative Wilson that the requirement for a driver's license was not included.

Representative Wilson asked whether the department needed legislation - when it was helping a person to get an identification card - to ensure that the identification card had the red stripe if part of the person's release conditions was avoiding alcohol.

CLAIRE SULLIVAN, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS (via teleconference), answered that she had been a probation officer in recent years and the department had been assisting prisoners with obtaining their identification card upon release. She detailed that the department provided documentation for the person to take upon release - there had been no way for an inmate to take care of the issue while in custody. She stated that it was strictly something that only DMV could take care of in its

offices. She stated that the department could continue the process, but it would be very difficult to enable a person to obtain their identification card prior to release.

Representative Wilson asked how DOC tried to ensure that the person's identification card would include something showing that alcohol was a part of their probation conditions. She wanted to avoid a situation where a person could use an old identification card.

Ms. Sullivan answered that parole conditions were sent to DMV prior to a person's release; therefore, a red stripe would be included on the new license when issued. She furthered that frequently when a person was released from custody their identification was expired and a new card was required.

Representative Gara asked if the amendment was workable as written. Ms. Sullivan asked for clarification.

Representative Gara restated his question. Ms. Sullivan would have to review the amendment to provide an answer.

Representative Pruitt clarified that all the amendment was able to do was add "a condition of probation or parole" to the requirements of the red stripe law. The second page of the amendment instructed the board to submit information to DOA notifying them that the red stripe was a condition of parole. He stated that there were two pieces to solving Butch Moore's [Ms. Moore's father] problem. He explained that the red stripe law had some failure in truthfully being administered. He wanted to solve the problem, which he believed involved forcing DOC and DOA to work together on the issue. He further explained that when a prisoner was released from prison they received their old identification card or license back. The individual also received a check upon release, which required a form of identification to cash. The amendment addressed the first component of Mr. Moore's problem. He reiterated that the amendment only added "probation or parole" into the requirements on the red stripe law. The amendment could only address one part of the problem because the second part was very complex.

[5:14:25 PM](#)

Ms. Mead believed that page 2 of the amendment related to Section 99 of the bill had some inherent problems. She

explained that every time the court recorded probation that had an alcohol restriction, the amendment would have the court report the order to DMV within two days. She stressed that a high number of cases had included that order as a probation condition - she estimated the number at 20,000 probation orders, which would have to be transmitted to DMV per year. She did not know that the department would want all of the orders and she did not know about the logistics of making the transmittal. She suspected it may be quite a hurdle for the court system and DMV.

Representative Pruitt appreciated the remarks. He stated that unfortunately during his work on the amendment the issue had not arisen previously. He asked if there were 20,000 individuals who were not allowed access to alcohol as a condition of parole.

Ms. Mead answered that the court did not handle parole, but it did handle probation conditions; every conviction included a sentence with probation conditions imposed by the court that would go into effect once the person was released from jail. She did not know that 20,000 was an accurate number, but there were about that many felony and misdemeanor convictions per year. She stated that even 10,000 would be a task.

Representative Pruitt replied that he had been given a very rough number of 6,000 parolees (approximately one-quarter of the release population). He asked how enforce the red stripe law.

Ms. Mead answered that she could not think of a way at present - she had just seen the amendment for the first time. She pointed out that she did not know the precise figure; however, many convicted felons and misdemeanants were told to refrain from the use of alcohol during their probationary term. She furthered that sometimes the probation condition said "refrain from the use of alcohol to excess." She explained that it was not easy or straightforward looking at the probation conditions. She currently did not know how to solve the problem.

Co-Chair Thompson asked if the commission [Alaska Criminal Justice Commission] should look at the issue.

Ms. Mead replied that it may be a great idea. She stated that it may be part of the commission's Title 28 review.

She communicated that the red stripe provision fell under Title 28 and potentially the commission was looking at how to make it better or broader if the legislature so desired.

Representative Pruitt recognized the comments made by Ms. Mead and communicated that he could withdraw the amendment if it would cause problems. He was frustrated that the law had been in place for 8 years and how to work it out had still not been determined.

[5:19:59 PM](#)

Representative Gara stated that the goal was to solve a real problem. He asked if there could be a conceptual amendment to ask the commission to take a look at the issue. He wondered if it was the appropriate way to address the problem.

Senator Coghill relayed that the commission would be contemplating some of the Title 28 issues. The bill had looked at trying to bring DMV and the court system closer together on some of the license revocation issues. The Title 4 rewrite had been light in the current year and it remained something that needed to be addressed. He stated that between Title 28 and Title 4 there were still many unsolved problems. He had looked at the issue early on and had run into some of the same snags the committee was currently discussing. He believed they should start with the pre-parole and probation planning. He did not know the solution to the particular issue. He reiterated that the commission would be looking at the two titles pretty significantly. He believed the legislature could ask the commission to look at the issue, but he noted that the legislature had asked the commission to do a lot in a short amount of time.

Co-Chair Thompson asked how to ensure the commission would look at the issue.

Senator Coghill replied that the committee could include intent language asking the commission to look at the issue. He could look into language the legislature could include related to duties or intent. He believed the situation [the amendment was working to address] was a conundrum.

Representative Pruitt WITHDREW Amendment 18 with the intent to see about offering intent language on the House floor.

He stated that it would be worthwhile if one life could be saved by figuring out the issue.

Ms. Mead added that current law required any DUI and refusals to receive the red stripe. She detailed that every night the court system transmitted all of those judgements to DMV. She believed it worked well, but it was only a small subset of the overall population.

Representative Pruitt stressed that the issue needed to be figured out. He explained that individuals could still use their old license after release from custody. He detailed that the state had the individuals in its custody, but gave them back the same license. He detailed that there were many inebriates in his district who used the same license to get alcohol. He furthered that there were still people driving and accessing alcohol. He remarked that an Anchorage assemblyperson who was a former police officer had stressed that it [the red stripe provision] did not work. He agreed that the practicality and actual application needed to be determined. He pledged to work on intent language. He reiterated that the state had a tool and needed to figure out how to appropriately utilize it.

[5:24:42 PM](#)

Co-Chair Thompson MOVED to ADOPT Amendment 19 29-LS0541\T.7 (Gardner, 4/26/16) (copy on file):

Page 50, line 13, following "violated":
Insert "(A)"

Page 50, line 14, following "years":
Insert ".i

(B) AS 28.35.030(n)(1)(A) or 28.35.032(p)(1)(A), 120 days to 239 days;
(C) AS 28.35.030(n)(1)(B) or 28.35.032(p)(1)(B), 240 days to 359 days;
(D) AS 28.35.030(n)(1)(C) or 23.35.032(p)(1)(C), 360 days to two years"

Page 112, line 30:
Delete "AS 12.55.125(e)"
Insert "AS 12.55.125(e)(1) - (3)"

Page 113, following line 3:

Insert a new subsection to read:

"(v) The amendment to AS 12.55.125(e) by the addition of new subparagraphs (4)(B) - (D), providing presumptive ranges for violation of AS 28.35.030(n) and 28.35 .032(p), apply to offenses committed on or after the effective date of sec. 81 of this Act, except that references to previous convictions in AS 28.35 .030(n) and 28.35.032(p) apply to convictions occurring before, on, or after the effective date of sec. 81 of this Act."

Representative Wilson OBJECTED for discussion.

Co-Chair Thompson explained that the amendment would accommodate mandatory minimums for DUIs and refusal of felonies from the 120-day sentencing range. He detailed that because felony DUIs already had their own mandatory sentencing ranges, the amendment would reverse the status quo for first-time felon DUIs as much as possible. The amendment addressed the three different lengths of sentencing. He asked Mr. Steiner and Mr. Skidmore to speak to the amendment.

Mr. Steiner communicated that a conflict between the current bill and the current scheme for felony DUIs had been identified. The bill had included a presumptive range that was inconsistent with the mandatory minimum. The amendment would put back the existing scheme as closely as possible with regard to first felony DUIs. The mandatory minimums for a first-time felony were currently 120 to 240 days (depending on how many priors a person had). He explained that the language was consistent with the current scheme and was an exception from the current bill because they had been inconsistent.

Mr. Skidmore agreed with Mr. Steiner's description of Amendment 19. He explained that the lookback period for felony DUIs could be different when counting priors for the mandatory minimum. He stated that carving out the exception for first-time DUI offenders did comport with the other laws on mandatory minimums for a DUI.

Representative Wilson WITHDREW her OBJECTION.

Representative Gara OBJECTED for discussion. He asked for verification that the amendment addressed felony DUI presumptive sentences. He asked for confirmation that for a

person's first felony DUI (their third DUI in a given period) the minimum jail went from 120 days to 240 days to 360 days.

Mr. Steiner answered in the affirmative for a first felony DUI. He detailed that a first felony could have two priors that made the felony, but could also have a third prior that went outside. He clarified that a person's fourth could be a person's first felony and not second. The amendment addressed the sentencing scheme for first felony DUIs.

Representative Gara relayed that he had done some research on the issue as well, recognizing that the new sentencing scheme was much more flexible. He had been told by Legislative Legal Services that Class C felony crimes with a mandatory minimum would remain. He surmised that the amendment made it safer to ensure they remained; therefore, he WITHDREW his OBJECTION.

Vice-Chair Saddler OBJECTED for discussion. He referred to AS 28.35.030(n)(1)(A) and asked whether the sentencing range would change to "120 days to 239 days" for a person with two previous misdemeanor DUIs and one felony DUI.

Mr. Steiner replied in the negative. He explained that a person's first felony DUI would be their third DUI with two prior misdemeanor DUIs within a ten-year period. He clarified that the amendment did not change the current law to 120 days - current law required a minimum of 120 days.

Vice-Chair Saddler clarified his question. He had been asking if a person had two previous misdemeanor DUIs and one felony DUI (all within a ten-year period) whether the sentencing would be 120 to 239 days. Mr. Steiner replied in the affirmative.

Vice-Chair Saddler observed that the amendment would stiffen up the sentencing a bit. He WITHDREW his OBJECTION.

There being NO further OBJECTION, Amendment 19 was ADOPTED.

[5:30:35 PM](#)

Representative Gara WITHDREW Amendment 20 29-LS0541\T.3 (Gardner, 4/26/16) (copy on file).

Representative Gara MOVED to ADOPT Amendment 21 29-LS0541\T.6 (Gardner, 4/26/16) (copy on file) [Note: due to the length of the amendment it has not been included in the minutes].

Co-Chair Thompson OBJECTED for discussion.

Representative Gara explained that the amendment was designed to prevent a misdemeanor from becoming a felony by virtue of inflation in five years. He believed the dividing line between a theft misdemeanor and theft felony was \$1,000 under the bill. He furthered that by virtue of inflation something worth \$980 if stolen at present would be worth \$1,020 in three years' time. He explained that more people would be put in jail, but the crime would not change. The amendment was something the criminal justice commission had proposed; the commission had proposed looking at the issue over time instead of addressing it every 20 years (the dividing line had only been changed once since 1978 and many misdemeanors had become felonies due to inflation). The amendment would maintain the dividing line at \$1,000, but it would adjust for inflation over time. He requested to hear from the sponsor on the amendment.

Senator Coghill did not support the amendment. He replied that he had not been a fan of inflation proofing along the way. He relayed that he had previously communicated to Representative Gara that he would consider moving to a lower number. He stated that it was something the commission had recommended under a consensus driven process, but the amendment was far from the commission's consensus, which had been \$2,000. He added that the commission had also recommended many other things that the legislature had rejected under SB 91. He relayed that there had been significant debate on the topic in the legislature, which he believed was appropriate; however, he did not know if indexing the number for inflation was the right thing to do.

Representative Gara asked for verification that the dividing line between a misdemeanor and felony was currently \$1,000 in the CS.

Senator Coghill replied in the affirmative.

Representative Gara believed the sentencing commission had recommended increasing the figure to \$2,000 and inflation proofing it. He stated that the figure was currently \$1,000 with no inflation proofing. The commission had recommended \$2,000 and inflation proofing. He asked if the sponsor would support the flat \$2,000 with no inflation proofing. He remarked that \$2,000 basically reflected inflation that had occurred since 1978. He asked if the bill sponsor would be supportive of the \$2,000 amount without inflation.

Senator Coghill answered that had voted for the \$2,000 figure before the bill had come to the House. He understood that the debate was difficult. He referred to a comment by a committee member that when a person was stolen from it represented a violation against that person. He stressed that people felt very strongly about personal property crimes. He believed the \$2,000 was appropriate. He referred to good information showing that it was an appropriate figure nationwide. He shared that one of the reasons he had supported the higher level was that he would like to see people court ordered to repay property owners. He believed the state's misdemeanants were better suited to that than were its felonies. He supported heading in the \$2,000 direction. He reiterated that he was not a fan of inflation proofing.

Representative Gara stated that he had misunderstood the sponsor earlier on; therefore, he WITHDREW Amendment 21.

Representative Gara MOVED to ADOPT Amendment 20 29-LS0541\T.3 (Gardner, 4/26/16) (copy on file) [Note: due to the length of the amendment it has not been included in the minutes].

Representative Wilson OBJECTED.

[5:37:36 PM](#)

Representative Gara explained that if the \$500 dividing line between a misdemeanor and felony theft adopted in the 1970s was inflation proofed it would be approximately \$1,800 at present. He reminded the committee that he was referring to theft that did not include burglary and robbery. He stated that if the will of the body was to avoid inflation proofing, he proposed adopting a \$2,000 dividing line. He stated that time would pass and inflation would continue to increase. He believed it was wrong to

have a misdemeanor become a felony merely by virtue of inflation. He explained that the amendment would essentially bring the statute back to where it had been at the time of its adoption in the 1970s. He added that moving the dividing line to \$2,000 was one of the criminal justice commission's recommendations.

Co-Chair Neuman spoke against the amendment. He stated that it had been made clear that the action under Amendment 20 had been a recommendation by the commission and that Senator Coghill had specified there were some recommendations the legislature had taken and some it had not. The people he represented believed that if a person committed theft they should be punished. He guessed that if someone stole his 4-wheeler he could try to decide if it cost \$1,000 or \$2,000, but the bottom line was they stole his property. He believed it seemed they were trying to make a sentence lighter for theft, which he did not like. He stated "a crook is a crook." He suspected that the same person who felt it was fine to steal a \$999 4-wheeler instead of 4-wheeler over \$1,000 would probably steal anything else. He did not believe the person would consider the value of an item. He did not know what the amendment would do if a person stole someone's tools, which prevented the victim from going to work. He wondered if the value would be of the replacement tools or other. He had supported lowering the number to \$750. He did not agree with raising the price. He stated that 90 percent of the theft crimes in the Mat-Su were perpetrated by a person doing drugs. He stated that treatment was needed to stop the cycle. He reiterated his opposition to the amendment.

Vice-Chair Saddler asked where else fines, sanctions, or penalties were inflation indexed in statute.

Mr. Shilling replied that the only thing he could think of was that the minimum wage adjusted annually with the consumer price index (CPI) following a voter initiative.

Vice-Chair Saddler remarked that the amendment would introduce a new concept into criminal penalties.

Co-Chair Thompson explained that the amendment would not include inflation proofing; it would increase the number to a flat \$2,000.

Vice-Chair Saddler asked if the amendment would make \$2,000 the threshold between a misdemeanor and felony.

Senator Coghill verified that it [\$2,000] was the dividing line between a misdemeanor and felony for a property crime. He detailed that it did not reflect replacement value, but actual value.

Vice-Chair Saddler asked if it was throughout each of the instances shown in the amendment. Senator Coghill replied in the affirmative.

[5:43:10 PM](#)

Representative Edgmon asked about the other side of the conversation. He remarked that there was a reason the commission had recommended the increase from \$1,000 to \$2,000. He asked Senator Coghill to address why the increase would have positive outcomes.

Co-Chair Thompson clarified that the threshold in current law was \$750.

Representative Edgmon understood. He believed there must be some evidence showing that increasing the amount would result in positive outcomes.

Senator Coghill replied that the commission had done significant review based on its research of the felony threshold across the United States. The research showed an average of about \$1,500 and that when the threshold had increased it did not indicate a corresponding rise in crime. He explained that felony theft included a grand jury, discovery, and a plea bargaining process. He believed police officers and prosecutors probably liked that it gave a heavy hammer on thievery. However, quite often the crime was bargained down to a misdemeanor. He stated that it required revving up a costly machine to get to a misdemeanor anyway. The commission had also found that the barrier crimes were quite high; even if a person was charged for a felony and did not get charged, there were still significant barriers to entry into the workforce. He believed the commission had considered a whole range of things. One of the considerations for Alaska was the difference in cost for an item in urban versus rural areas (e.g. due to the high cost of items in rural Alaska a person could break a door and become a felon). The

commission had considered how to balance the threshold in Alaska's economy, while using an evidence-based approach to using the most amount of resources for the neediest circumstances. The commission found that the \$2,000 struck a good average where crime did not increase and felonies were accountable. He believed accountability was a big factor in the commission's findings. He deferred to Mr. Shilling for further detail.

Mr. Shilling elaborated that the commission had been looking at how inflation over time had eroded the value and that individuals were spending longer periods of time in prison for crimes that would have been a misdemeanor one or two decades earlier. He believed the research clearly showed that longer jail time for the low level, nonviolent offenders did not prevent a person from committing future crime. In actuality, the research showed that putting a low level, low risk person in prison could make them more likely to commit new crimes in the future. He stated that raising or lowering the felony theft threshold did not lead to more or less property crime. It was nearly irrefutable that lowering the threshold would not serve as a deterrent; theft was generally a crime of impulse. He furthered that from 2001 to 2011, 23 states had increased their thresholds; none had seen an increase in property crime. Actually, the 23 states that had increased the threshold had seen a greater average decrease in property crime than the 27 states that did not.

[5:48:14 PM](#)

Representative Edgmon stated that there seemed to be negative aspects. He thought of some incidents where he did not believe the penalty had been tough enough. However, based on his experience with DOC, the cost curve involved, and the studies showing that putting someone in jail for something serious meant they would probably return to prison in the future. He supported the amendment, but believed it was a close call.

Senator Coghill was sympathetic to the fact that typically drug and alcohol issues were associated with property crimes. Some of the issues were related to things like damaging property in a bar or slamming someone's car door; however, some of the crime involved stealing a person's property (e.g. a snow machine). He stated that anytime a person stole a snow machine and broke into a person's house

it would be over \$2,000. Likewise, the cost of stealing someone's car would exceed \$2,000; breaking a camera could even be a \$2,000 cost. He stated that the threshold had been hotly debated and he believed people were not convinced that the state would be able to curb the drug and alcohol problem, which he believed was a key point. He tended to agree; it was necessary to put things in place to turn the corner on the drug and alcohol crime that was causing people to steal from their neighbors. He was in favor of the \$2,000 limit, but he was aware of how chafed people were when they were stolen from and that the state had not been able to change the drug and alcohol problem in its cities. He was not unsympathetic to people who did not support the increase to \$2,000, but he believed \$2,000 was a reasonable felony limit. He stressed that the state had to make misdemeanants count; some people believed that misdemeanants did not count. He believed it was necessary to get to a place where misdemeanors meant something to thieves.

Representative Wilson stated that she had an elderly couple who had come to her office after returning from vacation to find things stolen. The couple did not care whether the cost of the items were \$500 or \$1,500 because they had been victimized. She expounded that the hearings had taken months and the first individual only received probation. She stated that between the two thieves, not one day of jail time was served. She did not see the system working at \$1,000 and she was not willing to increase the level to \$2,000 yet. She believed it was a victims' rights issue. She noted that the committee had the discussion earlier between a \$750 or \$1,000 threshold. She believed that no one knew whether it was \$650 or \$1,200 when people were stealing. She strongly believed that a person should pay when they took something from someone. She surmised that whatever punishment was given was probably not sufficient for a person who had something stolen. She did not want to tell her constituents who had been victimized that the number had been increased. She agreed that misdemeanors needed to mean something more. She stressed that just because a person did not break in to someone's home did not take away the fact that they had been on that person's property. She stated that the feeling did not go away when a person was stolen from. She shared that her car had been broken into and not much was stolen, but it had taken a long time for her to get over that someone thought it was okay to invade her space. She opined that property crime

was almost worse because it was committed when a person was not home. She had not seen specific data related to Alaska regarding the \$1,000 or \$2,000 threshold. She reiterated that she could not vote to increase the threshold until the other part of the situation was solved.

5:53:20 PM

Representative Gara stated that it was automatically a felony if a person broke into someone's home. The amendment pertained to theft that did not include breaking into a house. He understood the debate, but the bottom line was that theft would still be a crime. He stated that the legislature had become accustomed to thinking that a misdemeanor was not a crime. He stressed that a misdemeanor was a crime and went on a person's record. He stated that when the same thing was made a felony due to inflation, there were many jobs a person would no longer qualify for. He thought increasing the amount to \$2,000 would mean that a misdemeanor in 1978 would remain a misdemeanor at present. Additionally, it would mean that individuals would be able to get a job. He stressed that the individuals would still be criminals.

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Edgmon, Gara, Guttenberg, Kawasaki, Munoz

OPPOSED: Saddler, Wilson, Gattis, Pruitt, Thompson, Neuman

The MOTION to adopt Amendment 21 FAILED (5/6).

5:55:28 PM

Representative Kawasaki MOVED to ADOPT Amendment 22 29-LS0541\T.4 (Gardner, 4/26/16) (copy on file):

Page 19, lines 10 - 11:

Delete "listed in AS 11.71.140(e)"

Page 22, line 16:

Delete "AS 11.71.040(a)(3)(A)(i) or"

Insert "AS"

Page 22, line 7:

Delete "IA,"

Co-Chair Thompson OBJECTED for discussion.

Representative Kawasaki referred to page 19 of the bill and explained that under controlled substances schedule IA, the CS added one schedule of drugs listed under 11.71.140(e). He furthered that it pertained to the chemical substance GHB (Gama Hydroxybutyrate) and some analogs to that. He did not know why the substance had been specifically targeted and added into the CS. He referenced a summary of changes sheet (copy on file) that referred to GHB as a commonly used date rape drug. He stated that if a person was currently between the ages of 20 and 40 they had probably heard of GHB. He elaborated that it was easily manufactured and transferred, usually in a liquid form. He noted that he had never taken GHB. He believed felonizing simple possession as proposed under the CS could potentially create a significant number of youthful felons and put them into the system.

Vice-Chair Saddler asked if misconduct involving a controlled substance in the third degree was a misdemeanor or felony. Mr. Shilling asked if Vice-Chair Saddler was speaking to current law or the CS.

Vice-Chair Saddler asked about the bill. Mr. Shilling answered that it was currently a Class B felony and the bill would change it to a Class C felony.

Vice-Chair Saddler asked for verification that [misconduct involving a controlled substance in the] third degree was a Class B felony. Mr. Skidmore answered in the affirmative.

Vice-Chair Saddler surmised that under the CS (without the amendment) the possession of GHB (page 19, lines 10 and 11) would be a Class B felony. Mr. Shilling clarified that it would be a Class C felony for possession of GHB.

Vice-Chair Saddler referred to page 18 of the bill showing that it would be a Class B felony in the third degree and on page 19, line 11 it would be included in the list of things that would be a Class B felony.

Mr. Shilling answered that possession would be a Class C felony. He believed Vice-Chair Saddler was misreading the bill, but he deferred the question to DOL.

Mr. Skidmore replied that under current law, misconduct involving a controlled substance in the third degree was a Class B felony. Under SB 91 it was reduced to a Class C felony.

Mr. Shilling understood that it was confusing because the bill "kind of gutted" misconduct involving a controlled substance in the second degree; anything under that had shifted down. He detailed that what had previously been categorized as third degree had been changed to fourth degree in the bill. He added that he believed Amendment 22 contained a typo. He believed that line 8 of the amendment should read page 22, line 17 as opposed to line 7.

[6:00:50 PM](#)

Representative Wilson asked about the differences between current law, SB 91, and the amendment.

Mr. Skidmore replied that there were several things that happened in SB 91 with drug offences. He explained that under current law third degree was a Class B felony, but the bill changed it to a C felony. Additionally, SB 91 had completely eliminated one statute (misconduct involving a controlled substance in the second degree) and had rolled it into a different provision of law. He spoke specifically to GHB and relayed that all possession of controlled substances had been moved to Class A misdemeanors. He explained that there had been an amendment on the Senate floor to have GHB remain a Class C felony. He believed Amendment 22 would remove the exception and move GHB back into the category with all of the other controlled substances as a Class A misdemeanor.

Representative Kawasaki provided wrap up on the amendment. He believed SB 91 was working to get at the heart of crime and to reform the entire system. He believed the state put too many people in prison who had basic behavioral health issues including alcohol and substance abuse issues. He opined that they belonged in health facilities, not prisons. He furthered that the bill focused on high level drug offenders selling drugs rather than taking it out on the people who have a drug or alcohol problem. The amendment addressed GHB that the bill would make a felony for simple possession. He believed it would harm a huge group of people who did not understand the consequences of what possession meant. Currently the bill included things

like the date rape drug Rohypnol (a prescription drug people could get over the counter), which would only be criminalized as a Class B misdemeanor. He stated that GHB, which was easy to make in a high school chemistry classroom, would suddenly be listed as a much higher offence.

Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Edgmon, Guttenberg, Kawasaki, Munoz, Gara, Gattis
OPPOSED: Wilson, Pruitt, Saddler, Neuman, Thompson

The MOTION to adopt Amendment 22 PASSED (6/5).

6:05:36 PM

Representative Munoz MOVED to ADOPT Amendment 23 29-LS0541\T.2 (Martin/Gardner, 4/26/16) (copy on file):

Page 107, following line 26:

Insert a new bill section to read:

"* Sec. 170. The uncodified Jaw of the State of Alaska is amended by adding a new section to read:

REPORT ON OFFENSES OF SEXUAL ABUSE OF A MINOR. The Alaska

Criminal Justice Commission established in AS 44.19.641 shall prepare a report on offenses of sexual abuse of a minor where the defendant and victim are both under 19 years of age. The commission shall deliver the report, not later than December 1, 2016, to the governor, the senate secretary, and the chief clerk of the house of representatives and notify the legislature that the report is available."

Renumber the following bill sections accordingly.

Co-Chair Thompson OBJECTED for discussion.

Mr. Steiner spoke to the amendment. He pointed out that the Alaska Criminal Justice Commission had been asked to review sex offences in general (elsewhere in the bill), the broad range for the appropriateness of classification, sentencing, and consequences. The current amendment was already covered by the prior part of the bill - the commission would look at the full range of conduct related

to sex offences and would make recommendations based upon data. He expected the review to begin sometime in the next year and did not know when it would be reported on by the commission.

Representative Munoz relayed that she was comfortable with the direction given to the commission and she planned to withdraw the amendment. She stated that clearly it had been an issue discussed by the committee and was an area that needed focus and attention. She stated that the amendment pertained to a situation when two parties under the age of 19 were involved. She believed if there were three years or more between the individuals, even if the relationship was consensual, the law specified that the relationship was not consensual if the individuals were under the age of 16. She explained that unfortunately there were situations where a young person could be accused of involvement and if found guilty they could serve a very long and harsh prison sentence. She stressed the importance of addressing the situation, particularly in the area of sentencing. She reiterated that she was comfortable the commission would look at the issue and she looked forward to the recommendations. She WITHDREW Amendment 23.

Co-Chair Thompson MOVED to ADOPT Amendment 24 29-LS0541\T.9 (Martin/Gardner, 4/27/16) (copy on file):

Page 49, lines 5 - 8:

Delete "if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies"

Insert "[IF, AS A CONDITION OF PROBATION UNDER AS 12.55.086, THE DEFENDANT IS REQUIRED TO SERVE AN ACTIVE TERM OF IMPRISONMENT WITHIN THE RANGE SPECIFIED IN THIS PARAGRAPH, UNLESS THE COURT FINDS THAT A MITIGATION FACTOR UNDER AS 12.55.155 APPLIES]"

Page 50, lines 2 - 8:

Delete "[TWO YEARS; A DEFENDANT SENTENCED UNDER THIS PARAGRAPH MAY, IF THE COURT FINDS IT APPROPRIATE, BE GRANTED A SUSPENDED IMPOSITION OF SENTENCE UNDER AS 12.55.085, AND THE COURT MAY, AS A CONDITION OF PROBATION UNDER AS 12.55.086, REQUIRE THE DEFENDANT TO

SERVE AN ACTIVE TERM OF IMPRISONMENT WITHIN THE RANGE SPECIFIED IN THIS PARAGRAPH]"

Insert "[TWO YEARS]; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 [,AND THE COURT MAY, AS A CONDITION OF PROBATION UNDER AS 12.55.086, REQUIRE THE DEFENDANT TO SERVE AN ACTIVE TERM OF IMPRISONMENT WITHIN THE RANGE SPECIFIED IN THIS PARAGRAPH]"

Representative Wilson OBJECTED for discussion.

Co-Chair Thompson explained the amendment was a technical fix clarifying that the court could still impose a suspended imposition of sentence (SIS) for a person with no prior felony convictions who was convicted of a Class B or Class C felony if they were otherwise eligible for an SIS under the existing statute. He relayed that the language change was necessary in light of the reduction of the presumptive range for Class B or Class C felonies. The amendment provided that a suspended imposition of sentence was permitted, but it no longer specified that an active term of imprisonment was required. A court could still impose an active term of imprisonment as a condition of probation for an SIS subject to limits that apply generally to all individuals convicted. He asked the departments to elaborate further.

Mr. Skidmore replied that based on Co-Chair Thompson's description he surmised that the amendment was adjusting the amount of time a person could be on probation under the SIS.

[6:10:01 PM](#)

Mr. Steiner deferred to a colleague.

TRACEY WOLLENBERG, DEPUTY PUBLIC DEFENDER, PUBLIC DEFENDER AGENCY (via teleconference), affirmed that the description provided by Co-Chair Thompson was correct. She stated that the technical amendment made two changes. The amendment would delete language related to SIS on page 50, lines 2 through 8. She detailed that the deleted definition had been overly inclusive and inadvertently deleted the provision allowing the court to impose or grant a suspended imposition of sentence if the court found it appropriate

and the person was otherwise eligible under AS 12.55.085 (SIS statute). She explained that the amendment would put the language back in and continued to delete the language specifying that the court may require the defendant to serve an active term of imprisonment within the range. The court could still have the authority to impose an active term of imprisonment under a separate statute (AS 12.55.086); it would remain subject to the presumptive range of zero to 120 days. The second change was on page 49, lines 3 through 8. The amendment would leave in the language stating that a defendant sentenced to a first felony Class B was entitled to receive an SIS if the person was otherwise eligible and the court deemed it appropriate. It would remove the provision specifying that a defendant was required to serve an active term of imprisonment within the range specified in the paragraph because the range specified in the paragraph had been reduced to zero to two [years]. She elaborated that the language inadvertently applied that a person who received an SIS may be required to serve some active term of imprisonment while a person who received a conviction of record was not. The amendment essentially preserved existing law by allowing the court to impose an SIS for first felony offenders convicted of a Class B or Class C felony and adjusted the language to account for the reduction in the presumptive ranges.

Representative Wilson WITHDREW her OBJECTION.

There being NO further OBJECTION, Amendment 24 was ADOPTED.

[6:13:16 PM](#)

Representative Gara MOVED to ADOPT Amendment 25 29-LS0541\T.8 (Gardner, 4/27/16) (copy on file):

Page 50, line 2:

Delete "zero to 120 days"

Insert "probation, with a suspended term of imprisonment of zero to 18 months"

Co-Chair Thompson OBJECTED for discussion.

Representative Gara explained that the previous bill version had included the contents of the amendment. The amendment would return to the previous language, which had been included in the bill all along and had been recommended by the Alaska Criminal Justice Commission. When

the bill had been presented to the committee they had been told that Class C felonies for a first-time offender would be up to 120 days of probation, but jail time could be substantial if provisions of probation were violated. He believed the commission and bill sponsor had been trying to make sure the provision did not cover the most serious crimes. The current statute for sentencing (Class C felonies included a maximum sentencing of five years) remained if the crime involved anything defined as an aggravator under AS 12.55.155. He noted that the amendment was explained in a memorandum handed out by Co-Chair Thompson's office [from Legislative Legal Services dated April 27, 2016 (copy on file)]. The same sentences of up to five years or the current statutory presumptive term would remain for physical injury, cruelty to others, a crime involving a dangerous instrument, if the victim had been vulnerable based on age, if the person had a criminal history involving assaultive behavior, if there had been threats of physical injury, if there was aggravated assaultive behavior, drug crimes, weapon crimes, and other (there were 35 aggravators in statute). The provision as it had originally been written reflected concerns from public testimony, the bill sponsor, and the commission. He stated that at a certain level longer jail sentences did not make a person less likely to commit a crime. He furthered that placing a first-time offender on probation and hounding them with a probation officer would have a better result in terms of long-term public safety. He stated that the consequence for violating probation was that a jail term went back into effect. He asked for verification that the item had been a recommendation by the commission. He reiterated that the language had been in the bill all along.

Senator Coghill affirmed that jail time for Class C felonies had been less likely to occur. He believed the Office of Victims' Rights had been the most vocal in pushing back. The provision had changed because some people felt like a personal crime or violent crime under a Class C felony needed to have the potential for jail time.

Mr. Shilling affirmed that the sponsor's reply reflected an accurate description of the commission's recommendation and how the bill had changed.

Representative Gara requested to hear from Mr. Steiner.

Mr. Steiner answered that the reasons as described had been the commission's focus. He detailed that lengthy jail sentences had not been producing any reduction in recidivism and jail time could actually increase recidivism. The focus of the initiative was that probation in conjunction with treatment and supervision reduced recidivism, which had been the basis of the recommendation.

[6:19:34 PM](#)

Co-Chair Thompson WITHDREW his OBJECTION.

Representative Pruitt strongly OBJECTED. He had been working with the Office of Victims' Rights on the topic, which was very passionate about the particular item. He read a list of Class C felonies, which included stalking in the first degree, sexual assault in the third degree (a person engaging in sexual contact with a person who is mentally incapable, incapacitated, or otherwise unaware and unable to consent), indecent exposure of the first degree, burglary in the second degree, vehicle theft in the first degree (including theft of a car or police car), promoting contraband in the first degree (illegally taking firearms or drugs into a prison), possession of child pornography, cruelty to animals, recruiting a gang member in the first degree, unlawful furnishing of explosives, sex trafficking in the third degree, assault in the third degree, and other. He referred to public testimony related to assault in the third degree and read portions of the testimony:

Bruce was highly intoxicated and taking excessive doses of prescription Oxycodone and Flexeril due to a recent back surgery. He had become aggressive, agitated, verbally abusive. I left the room and went to plug in my phone. I could hear him pick up the AR-15 loaded with a 30-round clip. I could hear the gun and his body slam into the baseboard heater. I could hear him get up and walk to the end of the hallway. I back myself into the closet. I see him stop where the hardwood in the hallway ends. He lies down on the floor in the prone position. I see him position himself so he's looking through the scope. His head is leaning slightly to the right as he adjusts the scope to his right eye, I see his finger on the trigger. He's yelling at me. I'm crying, begging him to let me go and then he pulls the trigger. The bullet hits the sheetrock in the closet 24 inches from the left side

of my head. I hear him yelling at me to get out of the closet. I stand up and go to the window and start screaming asking people to help. He's yelling at me.

Representative Pruitt summarized that the woman grabbed the barrel of the gun and fought with the man as he hit her in the face multiple times with the gun barrel. He stressed that if it had been the man's first-time Class C felony offence he would not have gone to jail under the amendment. He emphasized cases like the one he had read were the reason the Office of Victims' Rights was passionate about the issue. He stated that the current bill allowed a judge to sentence up to 120 days for first-time offenders convicted of a Class C felony. He reminded committee members that under Article 1, Section 12 of the state's constitution there were things that should be taken into account including protection of the public, community condemnation of the offender, the rights of the victim, and offender rehabilitation. He surmised that the amendment only focused on offender rehabilitation. He continued that if a person feared a violent offender, that person may need some time away to get back on their feet. One of the worst things for a domestic violence individual was that they could not get away from the situation. The amendment would mean the person would potentially not go to jail and would not give the victim time to get back on their feet. He did not want to cast any dispersions about why anyone would want to include the amendment because he understood the situations they were considering, but he believed in the need to consider the victims and the scenarios where victims may not see their offender serve any jail time. The provision in the amendment could present a scenario where a person convicted of a misdemeanor could serve jail time, but a felon may not. He stressed that they were not discussing light issues; the issues were complex and aggravating. He wanted to continue to maintain an environment of defense for victims. He reiterated his opposition to the amendment.

Co-Chair Neuman asked if the situation described by Representative Pruitt would be charged as a Class C misdemeanor.

Mr. Steiner answered that it would be hard to make a conclusion based on the information provided. He believed it would be possible to conclude that firing the gun had been an attempt to commit murder or to put someone in fear.

He furthered that there could be surrounding facts that may make the crime more serious, in which case it could be classified as an aggravated Class C felony. He was reluctant to draw a particular conclusion.

Co-Chair Neuman asked what the crime would have been if the person was intending to scare someone into doing something. He surmised that the scenario provided by Representative Pruitt sounded like a situation where the offender was threatening the woman to try to get her to do something.

Mr. Steiner answered that classically an assault with a weapon was a Class C felony. However, he was reluctant to conclude how the state would charge the offender based on the circumstances provided.

Co-Chair Neuman concluded that the scenario provided would be a class C felony. He extrapolated that the amendment would mean the offender could serve only probation time.

Mr. Steiner answered that depending on the circumstances it could be the result.

Representative Gara provided a wrap up on Amendment 25. He did not want to let people off easy for violent crimes, sexual assault, or crimes involving weapons. He stressed that the amendment would not do that. He clarified that a person would receive a sentence of up to five years if the crime was covered by the aggravators in AS 12.55.155. He furthered that one of the aggravators specified "if the defendant employed a dangerous instrument in furtherance of the defense"; therefore, the circumstance described by Representative Pruitt would mean the offender would go to jail for up to five years. He elaborated that if a crime involved hurting someone (e.g. domestic violence, sexual assault, or other) the person would not benefit from the provision in the amendment and would go to jail for up to five years. The first of the aggravators was: if a person sustained a physical injury as a direct result of the defendant's conduct. He stressed that domestic violence and sexual assault were injuries. He furthered that every situation that involved an injury, the use of a weapon, or domestic violence, was covered by the aggravator portion of the statute and would result in jail time. He supported the amendment because the protections requiring jail time for serious crimes were in existing statute.

[6:31:16 PM](#)

Representative Pruitt MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Edgmon, Gara, Guttenberg, Munoz, Kawasaki, Thompson

OPPOSED: Gattis, Pruitt, Saddler, Wilson, Neuman

The MOTION PASSED (6/5). There being NO further OBJECTION, Amendment 25 was ADOPTED.

[6:32:21 PM](#)

Representative Gara MOVED to RECIND action on Amendment 9.

[6:32:35 PM](#)

AT EASE

[6:33:12 PM](#)

RECONVENED

Representative Gara MOVED to RECIND action on Amendment 9. There being NO OBJECTION, it was so ordered.

Representative Gara MOVED to ADOPT Amendment 9 29-LS0541\V.64 (Gardner, 4/25/16) (copy on file):

Page 62, following line 26:

Insert new subsections to read:

"(h) Notwithstanding (g)(2) of this section, if a person resides in a community where a court-ordered treatment program under AS 28.35.028 is not available, the person shall

- 4) provide proof to the court that the person has successfully completed a rehabilitative treatment program appropriate for the person's alcohol or substance abuse condition; the program must
 - F. include planning and treatment for alcohol or drug addiction;
 - G. include emphasis on personal responsibility;
 - H. require payment of restitution to victims and completion of community work service;
 - I. include physician-approved treatment of physical addiction and treatment of the psychological causes of addiction; and

- J. include a monitoring program and physical placement or housing in communities where the court finds that a monitoring program and placement or housing is available;
 - 5) provide proof by clear and convincing evidence to the court that the person is currently sober and has maintained sobriety for a period of at least 18 months; and
 - 6) provide written notice to the district attorney's office of the person's request for a limited license under this section.
- (i) A person is not entitled to court-appointed counsel under (h) of this section,"

Reletter the following subsection accordingly.

Page 62, line 31, following "AS 28.35.028":

Insert "or a rehabilitative treatment program under (h) of this section"

Page 67, line 7, following "AS 28.35.028":

Insert "or a rehabilitative treatment program under AS 28.15.201(h)"

Page 123, line 29:

Delete "AS 28.15.201(g) and (h)"

Insert "AS 28.15.201(g) - (j)"

Co-Chair Thompson OBJECTED for discussion.

Representative Gara explained that in consultation with a number of committee members, people had considered the issue during the course of the day. He relayed that the amendment tried to bring equity to individuals living in a location with no therapeutic court. Currently, a person with a felony DUI could get a limited license if the person met a number of conditions including the installation of an ignition interlock device on their vehicle and other. The amendment applied to individuals living in a community with no therapeutic court; it required a person to prove they had successfully completed a rehabilitative treatment program appropriate for their [alcohol or substance abuse] condition and had been sober for at least 18 months.

Co-Chair Thompson referred to the requirement that a person would have to prove they had been sober for 18 months. He asked about the burden of proof.

Representative Gara replied that to protect the public the burden of proof was clear and convincing evidence, which was slightly higher than the normal burden of proof. It would include providing witnesses to demonstrate whether or not a person had been sober. Additionally, the state could bring in witnesses to contradict the testimony provided by the individual's witnesses, in which case the person would likely not receive the limited license. He stated that if the evidence was clear that a person had been sober they would probably receive their limited license; however, if there was contradictory evidence they would probably not receive the license.

Co-Chair Neuman clarified that Representative Gara's statements about whether a person would get their license constituted his personal opinion only.

[6:36:01 PM](#)

Representative Gara remarked that his comments had been based on his experience as an attorney. He stated that the amendment would require clear and convincing evidence that a person had successfully completed an appropriate treatment program and had been sober for a period of 18 months.

Representative Wilson thanked Representative Gara for bringing the amendment back before the committee. She understood that promises could not be made about what the programs would look like, but she hoped they could potentially be modelled after the therapeutic courts. She stated that it would not be easy for individuals to complete, but she did not want it to be easy. She stressed that it would be up to the individual to prove they had received the appropriate therapy and had stayed clean. She stated that perhaps a person would have to do more testing (e.g. weekly, monthly, or working with a therapist). She opined that it should be difficult. She noted that the committee had heard from the court system that the therapeutic court program was tough. She wanted people to be "all in." She added that if it was easy for a person to complete the requirements, they could relapse easily. She hoped the amendment would help fill the gap until the therapeutic court reached other areas or until another more affordable model came along. She believed it was incumbent upon the committee to determine how the other areas worked

as time went on. She stated there were many ideas and much had been done in other states with success. She stated the amendment would provide the opportunity to potentially find something that worked better as communities tailored the program to their own needs. She reiterated that she had no problem making it difficult for a person to receive their limited license because it was a privilege.

Co-Chair Neuman believed the intent of the amendment was to offer people who had rehabilitated themselves an opportunity to get back into society. He had cosponsored the amendment because after further conversations with the bill sponsor they had determined the amendment was a good idea. He noted that rural Alaskans in particular did not have the opportunities available in urban areas. He opined that the individuals should have an opportunity to demonstrate that they had figured it out and had done all they could to prove they would try to be a productive member of society. He supported the amendment on behalf of the sponsor's support.

Mr. Shilling confirmed that Senator Coghill supported the amendment.

[6:39:47 PM](#)

Vice-Chair Saddler asked for the definition of a rehabilitative treatment program.

Mr. Shilling deferred to Ms. Mead.

Ms. Mead replied that the amendment did not include a definition for a rehabilitative treatment program. She explained that the amendment would require a judge to consider the type of program that was appropriate to the person's condition. The common definition of rehabilitative program would be a program that tended to rehabilitate someone. She added that it would take common sense and judicial discretion to look at what an individual came forth with and proved they had completed. She clarified that the programs would not be ordered by a judge. She explained that after a person received a felony DUI conviction and some period later came back to the court demonstrating what they had done to meet the requirements. She furthered that the judge would decide whether the program met the requirements and the individual would have to prove their sobriety by clear and convincing evidence.

She noted the district attorney's office would be present if they elected to challenge the evidence. She stated that while the terms were not defined in the amendment, they would be up to the court and judge to apply.

Vice-Chair Saddler surmised that it would be left to the courts to determine what met the definition of a rehabilitative treatment program. Ms. Mead answered that it would be left to the court to decide. She believed the district attorney's office would be present arguing against granting a person the limited license if they believed there was a reason not to.

Vice-Chair Saddler remarked that the amendment was designed to address a situation in which an offender did not have access to a therapeutic court in a rural community. He asked whether it was possible to presume that a smaller community would have a rehabilitative treatment program suitable for a court's discretion.

Ms. Mead answered that she did not know. She detailed that it would be incumbent upon the applicant to describe a program they had completed. She believed that in some towns without a therapeutic court the treatment programs may be more likely to be available. She pointed to Kenai as an example given by the amendment sponsor. She reiterated that it would be incumbent on the applicant to specify that the program met the requirements. She stated that perhaps programs would develop in order to help people comply with the requirements.

Vice-Chair Saddler stated there were five specific requirements for a treatment program including planning, emphasis on personal accountability, payment of restitution, and monitoring a program. He believed it was a fair to ask what resources were available in the state that would meet the standards.

Ms. Mead answered that the A through E components of the treatment program were there because they were components included in a therapeutic court program. She stated that therapeutic courts was one objective program with some proof that it worked - the amendment was an attempt to create something parallel available to people without access to therapeutic courts. In order to keep the alternative option as parallel as possible, the components

had been pulled from the definition of the therapeutic court program.

[6:44:26 PM](#)

Vice-Chair Saddler argued that a therapeutic court had not been proven to work but had been clearly defined. He did not know if a church group, twelve step program or a self-designed system would be sufficient to a court. He asked how a court decided if someone had provided restitution or had access to a physician or proved treatment of a physical addiction.

Ms. Mead answered that they were questions that would have to be worked out in court. She agreed that the option was not objective. The amendment was an effort to find other means to provide the opportunity for people without access to the therapeutic court. She explained that there were no other objective means available; therefore, it had to be prescriptive of a program that imitated or paralleled a therapeutic court program. She furthered that the amendment contained the same components of a therapeutic court program. She explained that a court would make a decision based on proof required by an individual. She stated that an individual would have to require proof of the restitution. For example, perhaps there would be certifications from the treatment providers and there may need to be witnesses brought in to verify a person's claim in order to satisfy the judge.

Vice-Chair Saddler was trying to imagine a village of 200 people where the range of services could be documented and verified. He stated "I don't know if a sweat lodge would be sufficient." He remarked that a therapeutic court existed in communities with enough resources in order to get people through and justify getting license back. He did not know if the infrastructure existed in other areas and he did not know if they were trying to too hard to stretch the amenities of a larger urban center into smaller rural areas. He concluded that there were standards that he was not confident could be met in the proposed "somewhat nebulous and subjective" program. He noted that he could be persuaded, but he had not been as of yet.

Ms. Mead answered that she would not try to persuade Vice-Chair Saddler. She explained that the amendment was an attempt to keep the alternative parallel to therapeutic

courts and provided discretion to the judge. She added that many of the details would need to be worked out, including how much proof would be required and how close a person could get to treatment within small communities. She added that people would have the option to travel to another community to get treatment. She stated that the option would be brand new and would have to be worked out.

Vice-Chair Saddler asked about the cost.

Representative Wilson added that Office of Children's Services parents were already required to do many of the things including therapy and making sure they were clean from drugs and alcohol. She stressed that the onus would be on the individual to pay for treatment in order to get their limited license back. She did not believe there would be a fiscal note for the state because the cost would be fall to the person.

[6:48:30 PM](#)

Vice-Chair Saddler remarked on the testimony that court proceedings would be required. He believed there would be a cost.

Ms. Mead stated that the court system did not anticipate a lot of hearings under the provision. She explained that the provision would not kick in for communities with therapeutic courts. She noted that the bulk of the state's communities had therapeutic courts including Anchorage, Fairbanks, Juneau, Ketchikan, Palmer, and Bethel. She elaborated the new provision would apply to smaller communities (Kenai was probably the largest) where there were a low number of felony DUIs; most felony DUIs ended up in Anchorage, Fairbanks, Palmer, and larger towns. She added that there were about 300 to 400 felony DUI convictions per year. She detailed that it could be about 3,000 people in ten years; if 10 percent of the individuals wanted a limited license, the bulk of the 300 individuals would be in larger cities with therapeutic courts. She anticipated a low number of applicants coming in under the option provided by Amendment 9. There would be court hearings, but there would be zero fiscal impact unless the court hired someone. She stated that the court system would be able to absorb the work in its normal operations.

Representative Kawasaki spoke in support of the amendment. He believed they were all interested in some sort of program that tried to mirror therapeutic courts in places that lack therapeutic courts. He was comfortable with the sections A through E describing the program, which were very similar to the therapeutic courts. He recognized that nothing could match the therapeutic court system exactly. He believed individuals in communities such as Kenai, Homer, Soldotna, Valdez, or Delta needed some ability to receive a limited license. The clear and convincing evidence requirement gave him comfort that whatever came before the judge would be an accurate analog to the therapeutic courts. He did not know that the option would be used often, but it would afford people living in rural Alaska and other areas without therapeutic courts the same opportunity. He believed the limited license issue was important for the committee to address; he had heard many people stated that they basically had a life sentence. He thought it was one way that would get people back to work and that the 18-month sobriety requirement may even be a higher level than requirements under the therapeutic courts. He asked to be added as a cosponsor to the amendment.

Representative Guttenberg supported the amendment. He stated that the amendment created a higher level of compliance in order to get a license back. He believed it was completely appropriate to provide an alternative option for communities without therapeutic courts. He stressed that there were people who would rather go to jail than go through therapeutic courts or some of the other treatment programs. He emphasized that the onus and burden was all on the individual to complete the requirements provided under the amendment - they would not be provided with a court appointed attorney under the option. He underscored that the amendment created a very high standard and it was discretionary for the judge as to what they decided. He believed it was appropriate and not frivolous; the individual had to prove to a judge with clear and convincing evidence [that they had completed the requirements]. He discussed that the individuals were vulnerable. He pointed to the therapeutic courts and explained that the individuals had their lives exposed, had done much self-examination, and had concluded they wanted to change. He stressed that the amendment would ask people to do the work themselves with assistance from a treatment program. He continued that the individual would also have

to face the community where the problem had occurred. He stated that was a very high burden and he believed the option was needed. He remarked that it would not be simple for anyone; individuals would spend their own money and personal sweat to get to the end of the 18-month period of sobriety. He reiterated his support for the amendment. He stated the amendment would require more than just jail time and therapeutic courts. He opined that it would require a much larger personal fulfillment because it was on the individual person. He restated that the individuals would not have a court appointed attorney or someone to guide them and they would have to pay their own money.

[6:55:53 PM](#)

Representative Gattis spoke in support of Amendment 9. She shared that she had family members participate in the program. She believed it was a good program and supported that the amendment would provide an alternative to places without therapeutic courts. She requested to add her name as a cosponsor.

Ms. Mead clarified that the new subsection H was an alternative to the therapeutic court requirement for obtaining a limited license only. The person still had to do all of the other things including an ignition interlock device, provide proof of insurance to DMV, no prior revocation of a limited license, and other.

Representative Gara spoke to a question about communities that did not have a treatment program. He answered that the person would have to leave their community to get treatment. The amendment did not require a person to get treatment in their community; it only specified that an individual need to complete an appropriate treatment program. He stated that an individual had to prove to the court that they had completed an appropriate treatment program and that they had become sober.

Co-Chair Thompson WITHDREW his OBJECTION. There being NO further OBJECTION, Amendment 9 was ADOPTED.

[6:57:42 PM](#)

AT EASE

[7:13:37 PM](#)

RECONVENED

Representative Wilson MOVED conceptual Amendment 26 (copy on file).

Co-Chair Thompson OBJECTED for discussion.

Representative Wilson pointed page 38, line 11 and explained that the amendment would change the cap a court could grant a person credit against a sentence of imprisonment from 120 to 360 days if they were found guilty. She noted that the amendment applied to a pretrial scenario. She asked Mr. Steiner to elaborate.

Mr. Steiner noted that he had testified earlier about the concern that for individuals at low to moderate risk for being charged with another crime would ultimately end up going back to jail when they were working effectively on a program or at home. The amendment would raise the cap to one year, which was more in line with the time it took to resolve most cases. He furthered that it would ameliorate any impact of a credit on the individuals who the state would really want to see get the credit (i.e. individuals working well on a program and doing the work they were supposed to be doing).

Representative Gara asked for verification that the amendment did not lower the level of a crime, but allowed electronic monitoring to extend to 360 days instead of 120 days if someone was complying with their program.

Mr. Steiner answered in the affirmative. He explained that many cases went beyond the 120 days through no fault of the defendant. Cases were continued for many reasons, often at the attorney's request. He elaborated on a concern that open ended electronic monitoring credit would drag cases out, but that 120 days was too short. He reiterated that most felony cases took longer to resolve.

Representative Gara asked if the amendment related to pretrial. Mr. Steiner replied in the affirmative.

Representative Gara surmised that as long as a person in pretrial was adhering to their requirements, the amendment would enable the person to do electronic monitoring up to 360 days instead of 120.

Mr. Steiner answered in the affirmative. He detailed that currently there was no limit to the amount of pretrial credit a person could get. The current bill limited the number at 120 days and the amendment would raise the number to one year.

Representative Kawasaki stated that his concern was even if a person was in pretrial status and they were found guilty later on it meant they would have gotten credit for their entire sentence if the courts designated a jail sentence of one year. He believed 120 days represented a balance. He elaborated that some people and victims' rights groups would say they wanted a person to spend at least some time in jail. He stated that although the person had been in pretrial, on electronic monitoring, and sustaining the conditions of their probation and parole, they were able to sleep in their own bed. He believed that the situation would be very tough for a victim.

[7:18:13 PM](#)

Representative Wilson stressed that the amendment related only to pretrial and not parole and probation. She stated that if found guilty, most of the individuals would end up with sentences much longer than 360 days.

Vice-Chair Saddler pointed to language in AS 12.55.027(d) "a court may not grant credit against the sentence of imprisonment for time spent in a prior residence or under electronic monitoring." He asked if the provision had been repealed since 2014.

Representative Wilson replied that HB 15 [legislation passed in 2015 related to treatment and the incentive to receive treatment while on EM] had changed the provision. She explained there were currently specific circumstances that allowed a person on electronic monitoring to leave their home (i.e. appointments, work, and treatment). She explained that the amendment was aiming to find the "sweet spot" between what it would take to allow people to keep their jobs and get treatment, which was not available in jail for pretrial individuals. Additionally, attorneys could prolong a case for years, which would enable a person to serve all of their time on electronic monitoring. The amendment aimed to let individuals start treatment immediately, versus sitting in jail waiting for trial.

Vice-Chair Saddler referred to six conditions under subsection (g) [page 38 of the CS] and asked whether sentences for the items listed were likely to be longer or shorter than 360 days.

Mr. Steiner answered that it depended on the circumstances; some of six items were higher level offences and others were lower level, which could include misdemeanors. The list included felony AS 11.41 crimes, which could potentially result in jail sentences that were around 120 days or up to six or eight months. He explained that one of the concerns was that those individuals would be doing well and may go back to jail just for 30 days, which would disrupt the person's entire rehabilitation plan (i.e. they may end up losing their job, home, and family). He furthered that crimes involving domestic violence could involve misdemeanor cases; the cases could take time to resolve for reasons that did not relate to the defendant including delayed discovery, witness availability, and lack of ability for attorneys to be prepared in a timely manner. The concern had been that an individual could be doing well and in the low to mid-level cases they would end up going back to jail.

Vice-Chair Saddler asked if the presumption was that a person the amendment would apply to would have to be compliant with all conditions and behaving in order to be out on electronic monitoring.

Mr. Steiner answered in the affirmative. He detailed that the individual would have to be out on a court order on electronic monitoring and under home arrest with very specific limited passes (i.e. a rehabilitation program, appointments with their attorney, and court appearances).

[7:22:00 PM](#)

Representative Gara asked for verification that a person could remain on electronic monitoring for more than 120 days, but would not receive jail credit for any time over 120 days [under the CS].

Mr. Steiner answered in the affirmative.

Representative Gara relayed that he was leaning towards wanting some jail sentence for someone who was engaged in domestic violence or a sexual offence under AS 12.63.100.

He asked for detail on the crimes of domestic violence under AS 18.66.990 or a sex offence under AS 12.63.100 and whether the offenders would still face jail time under the amendment.

Mr. Steiner responded that the statutory references provided by Representative Gara were definitions and any crime of domestic violence or sex offence from the lowest level misdemeanor to the highest level would be covered. He furthered that individuals in on much higher level offences may get much longer sentences - they would get credit, but would go back to jail if they received a sentence of many years.

Co-Chair Thompson WITHDREW his OBJECTION to conceptual Amendment 26.

Representative Pruitt OBJECTED. He stated that victims' rights groups (specifically the Office of Victims' Rights) had real concern with the amendment. He detailed that the goal of the Office of Victims' Rights was to see the language under subsection (g) of the CS [120 days] without the six specified crimes listed; however, they could accept the listed crimes. Their concern that swift and certain justice would have the potential to be dragged out over time. He explained that the desire was to have a judgement made as soon as possible. He believed there was concern that going to 360 days would mean there may not be the incentive on the terms of the offender and their attorney to get "that completed." Additionally, it may not put the pressure on the judicial system to move forward on achieving a swift judgement. He asked for detail on the Alaska Criminal Justice Commission's recommendation.

Mr. Steiner answered that the original cap on electronic monitoring credit included in the CS had not been a part of the commission's recommendation.

Representative Pruitt pointed out that the item had not been brought forward by the commission as something to take action on. He was amenable to the 120 days and the six listed items, but he did not support increasing the number to 360 days.

Representative Kawasaki spoke in opposition to the amendment. He relayed that the sexual offenses included sexual abuse of a minor in the first degree, sexual assault

in the first degree, and more. He stated that the list was pretty inclusive. He felt that expanding the number to 360 days may do a disservice to victims. Additionally, later sections in the bill dealt with things like first-time offenders for the administrative parole - knocking it down to a quarter of the time served. He reasoned that the situation could arise where the offender lived at home under electronic monitoring in pretrial and was then handed a low sentence, which meant very little time would be served.

Representative Gara spoke against the amendment. He explained that bail time did not normally count towards a person's jail time. He stated the amendment addressed a situation where a person was out on bail with an electronic monitor because the court had decided the person was more of a concern. He stated that current law gave a person up to 120 days of possible jail credit for electronic monitoring time served. He stated that some of the crimes were very serious. He was not convinced the individuals should receive jail time credit especially for sexual and domestic violence offences.

Co-Chair Thompson asked if Legislative Legal Services would like to comment on the amendment.

DOUG GARDNER, ATTORNEY, LEGISLATIVE LEGAL SERVICES (via teleconference), answered that he was available for questions.

[7:29:04 PM](#)

Representative Wilson clarified that the offenders were not a higher risk. She explained that HB 15 had worked to give [pretrial] individuals an opportunity to keep their job, receive treatment, and do other things as directed by the courts. She wished the court process was swift, but she stated that it was not. She noted she had been on a jury for a case that occurred 18 months earlier. She stated that a person on electronic monitoring would be put back in jail if they made one mistake and would receive no credit. She stressed that individuals pretrial were innocent until proven guilty. She expounded that some of the individuals would have the expense of electronic monitoring and be found not guilty. She relayed that there had previously not been a cap on the credit; if a person was on electronic monitoring for years they would get credit as long as they

met the conditions. She had heard back that it was probably prudent to impose a cap. She had started out with a cap of 120 days because someone else had put it in to start with. As she had spoken to additional people and determined that justice was not as swift as she had hoped; a 360-day cap meant attorneys would not drag the case out for years. She emphasized that the entire bill was about treatment and the reality that treatment was not available in prisons until a person was sentenced (even after sentencing treatment was subject to where a person was sent and what their issue was). She explained that the amendment would enable a person to have an incentive to get treatment, go to a job every day, potentially do volunteer work, and comply with any other conditions. She agreed that a person was able to sleep in their own bed. She wondered if people only wanted to give credit to individuals in jail instead of providing credit to individuals who had chosen to try to make a difference.

Representative Wilson furthered that individuals would be responsible for locating treatment and appearing before the judge to specify what they would do. She stated that it was similar to the therapeutic court issue they had discussed - it was not done lightly. She noted that the state did not always have all of the therapy needed for some of the big issues including drugs and alcohol. She stated that the bill focused on providing opportunities to individuals who make mistakes. She would prefer to reward individuals doing work rather than those sitting in jail. She stated that the change became more restrictive than HB 15. She concluded that it was another example that the legislature was looking at bills it passed and ensuring the right decisions were being made. The electronic monitoring businesses were keeping track of the issue and would speak to the legislature the following year to report on how the 360-day cap worked. She stressed that "we've got to make sure once they start, we want them to finish" in order to prevent offenders from recidivating.

[7:33:46 PM](#)

Representative Pruitt MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gattis, Munoz, Wilson, Edgmon, Thompson, Neuman
OPPOSED: Gara, Guttenberg, Kawasaki, Pruitt, Saddler

The MOTION PASSED (6/5). There being NO further OBJECTION, conceptual Amendment 26 was ADOPTED.

[7:34:45 PM](#)

Representative Kawasaki MOVED to RECIND the adoption of Amendment 22.

Co-Chair Thompson noted the amendment pertained to the controlled substance GHB.

Vice-Chair Saddler OBJECTED. He WITHDREW his OBJECTION.

There being NO further OBJECTION, the adoption of Amendment 22 was RECINDED.

Representative Kawasaki MOVED to ADOPT Amendment 22.

Co-Chair Thompson OBJECTED for discussion.

Representative Kawasaki relayed that Amendment 22 contained a drafting error and the amendment did not do what was intended. He asked members to vote against the amendment.

Co-Chair Thompson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR:

OPPOSED: Gattis, Guttenberg, Kawasaki, Munoz, Pruitt, Saddler, Wilson, Edgmon, Gara, Neuman, Thompson

The MOTION to adopt Amendment 22 FAILED (0/11).

[7:37:55 PM](#)

Co-Chair Thompson asked if the bill sponsor had any closing comments.

Senator Coghill observed that the House Finance Committee's process related to the bill demonstrated the difficulty of changing of the way the state did business in Alaska on pretrial, the way people were arrested, holding people accountable for crime including drug and theft, and other. He thanked the committee for its participation and for digging deeply into the issue. He appreciated the

interaction of the victims' advocacy groups and discussed that the commission had made recommendations that when it came down to the details the legislature was not able to follow; however, he believed the legislature was finding a way to move forward on justice reform. He stated that justice reform had to take victims into consideration and also had to take into account that people should not be returning to jail at the current level; it meant crime had to be reduced. He believed the bill continued to contain accountability measures and that through hotly debated issues, the legislature had tried to familiarize itself with how the state's justice system worked. He agreed that the decisions were difficult. He furthered that there had been significant personal input and stories and substantial concern that the state may be letting people out of jail inappropriately. He stressed that the reform would hold offenders accountable differently. He reasoned that merely putting people in jail did not necessarily hold people accountable. He pointed to pretrial, incarceration, trying to get good time for individuals willing to better their lot in life, and working towards probation and parole issues. He spoke to the goal of reinvesting into things that would help to make changes to the current system. He was grateful for the committee's work. He noted that the committee had rolled back many of the commission's recommendations; therefore, he believed the savings would not be as high as formerly thought. He believed "that's balancing it against public safety and I think this is what the legislature's supposed to do." He added that he believed the debate was not over.

Representative Kawasaki thanked the bill sponsor for working closely with Senator Johnny Ellis who shared the idea that the justice system needed reforming. He additionally thanked the sponsor's staff, Legislative Legal Services, and others for their work. He spoke to the bill's large size and the 20 or more associated fiscal notes. He spoke to the bill's complexity and commented that it was larger than a Medicaid reform bill the committee had worked on. He outlined some concerns he had about the bill. He pointed to page 12 where an offence was reduced for watching animals fighting to a fine of \$1,000. He did not know it was part of the bill, which he believed had probably not been highlighted often. He continued that in many ways the bill would decriminalize some controlled substances, while increasing the punishment in other cases, which he believed would be problematic for the current

system. He highlighted that the bill contained comments about the minimum wage (Section 67). He elaborated that defendants convicted of offences could perform community work service, which the bill would tie to the state minimum wage. He detailed the individuals used to be paid \$3.00 per hour; he believed minimum wage was a much fairer level, but the committee did not have the policy discussion on the issue. He pointed to issues like probation and presumptives on probation revocations. He had a problem with the limitations and was worried about 3, 5 and 10-day limits placed on probation technical violations in relation to criminals who should be in jail.

Representative Kawasaki continued to address his concerns about the legislation. He referred to a section related to absconding and explained that under the definition it meant a person would fail to report within five days after release from custody and would fail to make contact with a probation officer within 30 days. He stressed it was a 30-day window in which a person could have absconded, which he found particularly troubling. He furthered that the bill changed the sentencing for a definite term of imprisonment for Class B misdemeanors from not more than 90 days to not more than 10 days. He stated that for people who believed Class B misdemeanants should be in jail longer, it was a worthy debate to have. There were issues on administrative parole - he appreciated support from the sponsor to add crimes against a person as one that would be ineligible - but a Class B or Class C felon could be out and released from parole and the new administrative parole section specified that if a person had served at least 181 days they shall be released barring a couple of conditions. He thanked the sponsor and his staff for working closely with him on the bill. Overall he believed the bill was good.

[7:46:03 PM](#)

Representative Gattis stated that she fundamentally believed that individuals who made mistakes should be given a ladder and an opportunity to work themselves out. She thought the bill provided many of those options for individuals. She pointed out that it was necessary to remember that when the individuals were released from jail they were people in the community. She spoke to the importance of recognizing that what the state had been doing, was not working in a large way. She remarked that she struggled with some things in the bill and liked other

components. She really liked the risk assessment and the swift return to "if you're not doing what you're supposed to be doing we catch it right away." She believed some of the things would make a big difference in how the state dealt with its prisons.

Representative Gara thanked the sponsor, his staff, and the Alaska Criminal Justice Commission. He stated that it was not an easy bill, but he believed it attempted to draw the line between drug dealers and users who tried to rehabilitate themselves. He also believed the bill drew a line between individuals who engage in significant violence and nonviolent or minimally violent offenders. He observed that there was no perfect way to write a criminal law bill. He believed the bill sponsors had done a good job at carrying the bill over the past two to six years.

[7:48:52 PM](#)

Representative Pruitt thanked the bill sponsor and his staff. He believed it was well known that he had some concerns with the bill. He spoke to the large size of the bill and the work on many different moving pieces. He furthered that there were components that committee members found cohesion around and other components where there were challenges and concerns. He thanked the sponsor and staff for their work with his office on his goal of making better public policy. He noted there were some phenomenal provisions in the bill that he believed were very good. There were other things he wished could have had more focus that he thought the commission had been working on in terms of barrier crimes and collateral consequences. He stated there were a lot more that could be addressed, which he believed was a huge barrier for people coming out of the system. He reasoned that there was more work to be done and he expected the commission would continue to work on the issues. He explained that his committee recommendation would probably be to amend the bill because there were still some concerns that the bill did not really address the victims' rights concerns. He communicated he and the sponsor had been working with the Office of Victims' Rights, which had considerable concern. He detailed that because the bill was no longer just the sponsor's, they had not been able to come to an agreement on some concerning issues in terms of how the state dealt with victims.

Representative Pruitt stated that as the bill went forward he would be looking to see if the bill contained what he deemed to be successful. He hoped that in future years the legislature would allow for a larger voice from victim advocates. He did not know that the Office of Victims' Rights was an active participant in committee settings. He thought a larger role for victims groups should be included. He had heard concerns from law enforcement personnel in his community about changes to the schedules; some of the drug enforcement individuals within the Anchorage Police Department were concerned that district attorneys or parts of the police department that felt or were actually under a gag order. He requested including more victims' rights advocates and to make sure that district attorneys and prosecutors played a more active role in continuing to balance victims' rights with the overpopulation in the state's prisons. He wanted to get down to imprisoning and dealing with people that had been violators through an appropriate process that was not currently working in the way it should.

[7:54:58 PM](#)

Co-Chair Neuman had concerns about the bill and it would take him more time to analyze where he would end up. One thing he wished the bill could have done was address an issue with the Alaska State Troopers. He wished the bill could do something for the families of troopers who were killed in the line of duty. He committed to making the issue a very high priority in the future. He stated that the topic had not fit in the bill and needed further refinement. He stressed that the issue was a high priority.

Representative Munoz thanked the sponsor, staff, and departments for their work.

Co-Chair Thompson stated that no bill was perfect, but the bill did a significant amount of incredibly good things. He thanked his staff and others for their hard work.

Co-Chair Neuman MOVED to REPORT HCS CSSSSB 91(FIN) as amended out of committee with individual recommendations and the forthcoming fiscal notes.

HCS CSSSSB 91(FIN) was REPORTED out of committee with a "do pass" recommendation and with forthcoming new fiscal notes as follows: two zero fiscal notes from the Department of

Administration; one zero fiscal note from the Department of Corrections; three fiscal impact notes from the Department of Health and Social Services; one zero fiscal note from the Department of Health and Social Services; one zero fiscal note from the Department of Public Safety; one fiscal impact note from the Department of Public Safety; one zero fiscal note from the Alaska Judicial System; one fiscal impact note from the Alaska Judicial System; one zero fiscal note from the House Finance Committee for the Department of Administration; four fiscal impact notes from the Department of Corrections; two fiscal impact notes from the House Finance Committee for the Department of Corrections; and one zero fiscal note from the Department of Law.

Co-Chair Thompson addressed the meeting for the following day.

[7:58:28 PM](#)

RECESSED

[8:00:08 PM](#)

RECONVENED

Co-Chair Neuman restated his motion to report the bill from committee. He MOVED to REPORT HCS CSSSSB 91(FIN) as amended out of committee with individual recommendations and the forthcoming fiscal notes and the authorization to be given to Legislative Legal Services to make any necessary technical and/or conforming amendments. There being NO OBJECTION, it was so ordered.

Co-Chair Thompson recessed the meeting to a call of the chair [Note: the meeting never reconvened].

[8:01:09 PM](#)

RECESSED

#

ADJOURNMENT

[8:01:09 PM](#)

The meeting was adjourned at 8:01 p.m.