

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 18, 2015

1:06 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Neal Foster
Representative Bob Lynn
Representative Matt Claman
Representative Max Gruenberg
Representative Charisse Millett

MEMBERS ABSENT

Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 15

"An Act relating to credits toward a sentence of imprisonment and to good time deductions."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 15

SHORT TITLE: CREDITS FOR TIME SERVED/GOOD TIME

SPONSOR(S): REPRESENTATIVE(S) WILSON

01/21/15	(H)	PREFILE RELEASED 1/9/15
01/21/15	(H)	READ THE FIRST TIME - REFERRALS
01/21/15	(H)	STA, FIN
01/23/15	(H)	STA REFERRAL REMOVED
01/23/15	(H)	JUD REFERRAL ADDED BEFORE FIN
02/18/15	(H)	BILL REPRINTED 2/16/15
02/20/15	(H)	JUD AT 1:00 PM CAPITOL 120
02/20/15	(H)	Heard & Held
02/20/15	(H)	MINUTE(JUD)
03/18/15	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE TAMMIE WILSON

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented changes in CSHB 15, as prime sponsor.

NANCY MEADE, General Counsel
Alaska Court System
Central Office
Office of the Administrative Director
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 15, offered testimony and answered questions.

CARRIE BELDEN, Director
Division of Probation and Parole
Department of Corrections (DOC)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 15, offered testimony and answered questions.

QUINLIAN STEINER, Director
Central Office
Public Defender Agency
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 15, offered testimony and answered questions.

SHERRIE DAGEL, Criminal Justice Planner
Office of the Commissioner
Department of Corrections
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 15, offered testimony.

ACTION NARRATIVE

[1:06:32 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Keller, Foster, Lynn, Claman, Gruenberg, and LeDoux were present at the call to order. Representative Millett arrived as the meeting was in progress.

HB 15-CREDITS FOR TIME SERVED/GOOD TIME

1:06:55 PM

CHAIR LEDOUX announced that the only order of business would be HOUSE BILL NO. 15, "An Act relating to credits toward a sentence of imprisonment and to good time deductions."

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REPRESENTATIVE KELLER moved to adopt CSHB 15, Version 29-LS0102\P, Gardner/Martin, 3/2/15, as the working document. There being no objection, the committee substitute was before the committee.

1:08:07 PM

REPRESENTATIVE TAMMIE WILSON, Alaska State Legislature, stated that the last version related to electronic monitoring and good time, but that current version refers solely to electronic monitoring. She noted that if a defendant commits another criminal offense, the offender cannot count the days they are on electronic monitoring as currently, when a person is waiting in pre-trial the days count. She stated the goal with electronic monitoring is for defendants to keep their jobs, and receive treatment while awaiting trial to help them get back on track. This would be, she remarked, opposed to incentivizing a pretrial defendant where treatment is not available until the defendant has been convicted. She pointed to the discussion during the last hearing regarding specific parameters in that the offender [on electronic monitoring] cannot just sit home [playing] video games. She advised that she subsequently worked with Richard Svobodny, Deputy Attorney General, Department of Law (DOL) and referred to [Sec. 2, AS 12.55.027(d)] page 3, lines 1-6, which read:

- (1) court appearances;
- (2) meeting with counsel;
- (3) period during which the person is at a location by the court for purposes of employment, attending an educational or vocational training, performing community volunteer work, or attending a counseling or medical appointment.

REPRESENTATIVE WILSON continued that not everyone is not necessarily eligible for electronic monitoring and bail conditions are decided by the judge. She related that the Department of Corrections (DOC) contacted her with regard to ascertaining that the electronic monitoring would be [solely] in

the State of Alaska, and whether the bill should list any type of monitoring vendor. She reiterated that the courts determine the type of electronic monitoring a defendant must have depending upon why the defendant is awaiting trial in the first place. The bill is one concept in that it refers solely to pretrial. She offered that DOC has authority in statute that they may do it but does not want to compete, however, there are areas in the state where private electronic monitoring vendors do not exist.

[1:11:46 PM](#)

CHAIR LEDOUX asked for confirmation that electronic monitoring is just for pre-trial, and not subsequent to conviction and sentencing.

REPRESENTATIVE WILSON responded "Correct."

[1:12:01 PM](#)

REPRESENTATIVE GRUENBERG referred to page 2, line 3, "... at a location ordered by the court ..." and wondered if every time the person goes to the doctor and a different medical entity whether he must go back to the court each time.

REPRESENTATIVE WILSON answered there is a process and the person does need permission when in the electronic monitoring program.

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NANCY MEADE, General Counsel, Alaska Court System, Central Office, Office of the Administrative Director, said from the court's point of view, electronic monitoring pretrial, is that the court sets bail conditions. She explained that the defendant both meets bail conditions and gets out of jail, or they can't meet the bail condition and can't find a third party custodian. In the event the person does not meet the bail conditions they stay in jail and the court has no authority over the person in jail pretrial.

She noted that DOC has the discretion to put people on electronic monitoring. Sometimes, she remarked, people cannot make bail and they hire a private vendor to be there which is similar to a professional third party custodian. The offender brings the vendor to court and if ordered by the court the vendor puts an electronic monitor around the offender's ankle in order to ascertain that the offender follows her/her bail

conditions. This bill attempts to cover private vendors, she explained who are hired at the time of sentencing. The offender says to the court that, as an example, he/she was sentenced to two years, but spent six months on electronic monitoring through the vendor and would like six months credit. Under this bill, the court would presumably give the offender six months credit. She stated that the court does not order anyone to electronic monitoring, but may allow it if the offender proposes it as an option. Unfortunately, she opined, there are private vendors in certain communities and not in other communities. She further opined that the vendor charges in the range of approximately \$500 per month. In the event the judge agrees to the proposed condition, the offender is then restrained, and the judge fills out a bail order and lists the conditions the offender must do or not do. She pointed out that the standard bail order does not allow people to leave the state.

[1:17:48 PM](#)

CHAIR LEDOUX questioned whether the only difference between this bill and now, is that currently there is no reduction from the sentence when the court allows electronic monitoring for an offender.

MS. MEADE answered in the affirmative and stated that the offender may have paid six months to the vendor [pre-trial], but when sentenced to two years the offender still has to serve two years. She opined that the intent of the sponsor was that due to the offender being somewhat restrained pre-trial, the offender should receive credit day-by-day for the time their freedom was restrained.

CHAIR LEDOUX asked if there is an equal protection argument that it is not fair that the people who can afford to pay for the electronic monitoring don't have to go to jail, but those that can't afford it do have to go to jail.

MS. MEADE responded that she couldn't say whether there was or wasn't an equal protection problem, and that it does apply differently when an offender can afford to hire the vendor as opposed to an offender who cannot afford to pay bail.

[1:19:39 PM](#)

REPRESENTATIVE CLAMAN noted that this bill represents a substantial departure from the pattern in terms of credit for

pre-trial. Currently, the only place a person can receive pre-trial credit for time served is by going into a treatment program under Nygren v. State of Alaska, 658 P.2d 141 (Alaska App. 1983), and the statute that later tried to pattern after Nygren. He pointed out that the offender must go to treatment related to reform and rehabilitation. Under this bill, he surmised, the offender on electronic monitoring pretrial receives credit for time spent on electronic monitoring. He reiterated that it represents a fairly substantial policy change in terms of what the courts have been doing about pretrial credit for time served.

MS. MEADE agreed that this is a policy change, but there have been discussions about "smart justice" reforms, and changing the way the state does business. The statute read that the court may not grant credit for time spent on electronic monitoring, and this bill would change that.

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REPRESENTATIVE CLAMAN noted that one of the differences is that it "shall" grant credit for electronic monitoring which actually takes discretion away from the judge. Under this statute, he further noted, it is iron clad that if a person is on electronic monitoring they are getting day-for-day credit before sentencing.

MS. MEADE agreed that "shall" sounds like there is no discretion on the part of the judicial officer to determine whether or not to give the credit. She referred to [Sec. 2, AS 12.55.027(d)], page 1, line 10-13, which read:

(d) ... if the person has not committed a criminal offense while under electronic monitoring and the court finds that the restrictions imposed on the person's liberty while under the electronic monitoring program are equivalent to incarceration, ...

MS. MEADE continued that if the court has to make a finding before it grants it. The judge would determine whether electronic monitoring is equivalent to incarceration and if it is, the court must grant the credit.

[1:23:41 PM](#)

REPRESENTATIVE GRUENBERG said there were several cases in the State of Washington regarding the inability to pay a fine and the courts have found that to be a denial of equal protection and discriminating against the poor.

He opined that it directly has an analogy here because the only offenders getting out are the offenders who can pay the vendors. He questioned whether the poor ever get credit because they cannot pay the vendor. He noted that if electronic monitoring is only available in one or two places in the state, and the offender does not live in those places and cannot take advantage of this program, they cannot get out for employment, and cannot receive credit.

MS. MEADE answered that she could not swear to the \$500 a month figure as perhaps some vendors might slide the price. She pointed out that the bill is for private or DOC electronic monitoring, so if DOC performs electronic monitoring in Barrow, or Sitka, then the person could get credit for time spent, but it is up to DOC what to do with anyone in its jurisdiction. She remarked that DOC can put people on electronic monitoring pretrial and those offenders would receive credit under this bill.

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REPRESENTATIVE GRUENBERG quiered as to whether the sponsor would accept an amendment to require the state to pay the cost for people who cannot afford to pay. He then reiterated a prior question on page 2, lines 3-4, "at a location ordered by the court," and assumed it could be read as requiring the court to entertain an application each time the person needed to see a different medical entity, or changed employment. He asked whether that phrase would take too much time at the court, and if so, would there likely be a fiscal note.

MS. MEADE opined that the judge could release a person on bail with standard conditions and presumably say the person is released into the custody of the electronic monitoring vendor. The judge may allow certain places the offender may go, such as everything listed in the bill, and the vendor ensures that those are the only places the person may go in complying with the court order.

[1:28:55 PM](#)

REPRESENTATIVE KELLER said the comparison between a person who can pay bail, and a person who cannot, brings to mind the person who can provide a third party custodian versus the person that cannot. He stated he assumed that in the event this bill passes, the court will make a determination based on whether or not a private or commercial vendor is trustworthy, valid, and appropriate for conditions of bail. He questioned the difference between a third party custodian and the person with the electronic monitor and surmised they are treated the same and possibly the bill should be expanded. He further questioned whether there are statutory guidelines for conditions of bail, or is it purely at the discretion of the judge.

MS. MEADE advised that there are a number of statutes that set out bail conditions a judge may order. AS 12.55.011 has 18 possible conditions that is followed by a specific statute about bail conditions in domestic violence cases in addition to the 18. She also noted additional conditions can be ordered in alcohol related cases. The judge can only order a condition listed in the statutes, and one of the conditions is a catch all or anything else the judge deems to be necessary to protect public safety. She pointed out that judges do have standard conditions and other conditions they can order. She explained that a third party custodian versus giving credit for time served with a third party custodian versus giving credit for time spent on electronic monitoring would be a policy call of the legislature.

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REPRESENTATIVE KELLER surmised that the bill before the committee is a trigger for whether or not an offender receives [credit] is purely the electronic monitor and not any criteria the court may use.

MS. MEADE answered "that is how I read the bill," and that offenders receive credit for time served in treatment programs if the treatment programs are residential and have certain constraints that resemble the functional equivalent of jail.

REPRESENTATIVE KELLER asked for clarification in that the bill proposes day-for-day, hour-for-hour as it is the same as time in jail.

MS. MEADE replied that as she reads the bill it would be time-for-time, equal-equal.

[1:33:02 PM](#)

CHAIR LEDOUX questioned whether currently the court can release an offender to a third party custodian.

MS. MEADE agreed, but stipulated that only when a third party custodian is a bail condition as sometimes the judge does not allow third party custodians.

CHAIR LEDOUX further questioned whether electronic monitoring is sometimes used instead of a third party custodian.

MS. MEADE agreed, and offered that most people would appreciate the judge ruling that the offender must have a third party custodian. Unfortunately, she said, the offender cannot find anyone in their lives with the appropriate background or lack of background that the judge will approve.

[1:34:07 PM](#)

CHAIR LEDOUX asked why the sponsor would not want to give credit to an offender with a third party custodian.

REPRESENTATIVE WILSON responded that a person cannot know where another person is all of the time unless they are literally hooked up to the offender. She noted there is a large issue with drinking while intoxicated (DUI), and with electronic monitoring when a defendant takes a drink the monitor records the drink. She remarked that the ankle monitor will record exactly where the offender has been, whether or not the offender has taken drugs or drinks, and will show the court that the offender performed exactly as the court ruled. She advised Representative Gruenberg that there is funding through the Department of Health & Social Services for electronic monitoring for those that cannot pay.

[1:36:33 PM](#)⁷

CHAIR LEDOUX queried where the bill stipulates that the electronic monitor can record when a person takes a drink.

REPRESENTATIVE WILSON relayed that it is at the discretion of the court to determine the type of electronic monitor an offender would be on and whether the defender should utilize the electronic monitor.

She said she did not list the different kinds of monitors as with the computer age things are changing fast. She noted in that manner, the courts will have more choices and hopefully there will be more vendors with more high tech to utilize offenders getting back on track versus going to jail. She explained that every night the monitor downloads the information of the day. She opined that the 24/7 program is not a way to monitor as the offender can tell the courts they have met the conditions even though they may have taken a drink after the second blow.

[1:38:38 PM](#)

CHAIR LEDOUX surmised that often when a defendant does not present a flight risk and is not viewed as dangerous, judges will let people off on their own recognizance (OR).

MS. MEADE responded "Yes."

CHAIR LEDOUX asked where it would come into play that the judge might require electronic monitoring or a professional third party custodian.

MS. MEADE advised the bail statute sets as a default that people should get out on their own OR without conditions. She referred to subsection (b) that reads if the judge finds that the interests of public safety cannot be adequately protected without restrictions, then the judge can impose any of the 18 listed bail conditions. She said that electronic monitoring would come in because the person doesn't make the bail conditions, doesn't have bail money, or is left at DOC. Currently, DOC can put people out on electronic monitoring and she opined that this bill might encourage them to do it more as the people out of jail with DOC electronic monitoring pretrial get credit for that time. She further opined that it would be at low cost or a sliding scale amount of cost to the person.

[1:41:30 PM](#)

REPRESENTATIVE CLAMAN asked how many people post-sentence are currently on electronic monitoring with DOC.

MS. MEADE advised that she does not have that information.

REPRESENTATIVE WILSON offered that she heard it was approximately 2,000 people, which is down quite a bit from 5 years ago. She advised that she talked with DOC as to why

offenders do not understand that electronic monitoring exists and one of the issues is where the offenders will live. Once a person has been in jail for a few months they may lose the rent on their home, and their job is probably gone, as opposed to [electronic monitoring].

1:43:05 PM

REPRESENTATIVE CLAMAN referred to prior testimony that an offender can be released on OR, and when judges look at bail conditions they are looking at the offender, the crime involved, the offender's criminal history, and a whole range of factors in determining the appropriate bail. He noted that the less serious crimes tend to have less bail amounts and restrictive bail conditions. He pointed out that in more violent crimes, with longer criminal histories, it raises concerns for the court in terms of protecting the public while awaiting trial regarding electronic monitoring or a third party custodian.

MS. MEADE said "I would agree with that."

REPRESENTATIVE CLAMAN noted that in terms of the distinction between third party custodians and electronic monitoring, historically, it has not been "either or" as there have been many occasions when an offender is released to a third party custodian and an electronic monitor due to concerns the offender may represent certain dangers to the community.

MS. MEADE answered that she does not know that judges have the authority to order an offender onto electronic monitoring and in fact, her information is that offenders are put on electronic monitoring only when they propose it as an alternative for something the judge has ordered them to do. She noted that most typically, it is a third party custodian.

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REPRESENTATIVE CLAMAN related that when an offender would like access to electronic monitoring to do their time out of jail, an easy solution is that they can plead guilty to the charge, get sentenced, and if DOC thinks they are appropriate for electronic monitoring they could be out in the community the day after they are sentenced. He noted that it is a small circle of people who can afford to pay for electronic monitoring that have been charged with more serious crimes and are figuring out a way to get out of jail while moving forward.

MS. MEADE replied that she does not know whether it is a small group of people as there are a good number of offenders in jail pretrial who are not making their bail conditions. She has heard that 40 percent of those in custody right now are in custody before they have been sentenced and that population could possibly ask the judge for electronic monitoring. This bill encourages offenders to use it because they receive credit for time served.

[1:46:22 PM](#)

CHAIR LEDOUX referred to [Sec. 2, AS 12.55.027(d)], page 1, lines 10-14, and page 2, lines 1-6, and asked whether there are situations where the court might find that electronic monitoring in a home, is not equivalent to incarceration.

REPRESENTATIVE WILSON reiterated that the judge makes the determination regarding electronic monitoring and bail conditions. Prior to electronic monitoring being utilized, everyone must be in agreement as to how the offender must perform. She opined that when the offender performs all of the conditions of bail, she could not think of a reason the offender would not receive electronic monitoring as it was set before the defendant left the court.

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CHAIR LEDOUX pointed out that it looks like the court has discretion, yet the bill also says there is no discretion. She questioned that just because the offender is meeting their conditions of bail, court appearances, et cetra, does not necessarily mean that where they are living is equivalent to incarceration. She asked "where is the discretion."

[1:49:40 PM](#)

REPRESENTATIVE WILSON expressed that there is discretion in that the judge does not have to put a defendant on electronic monitoring.

CHAIR LEDOUX asked in what situation [electronic monitoring] would be denied.

REPRESENTATIVE WILSON answered that on pretrial it is completely up to the judge, based on what is in statute as to whether or not the defendant qualifies, and she pointed out that none of those rules are being changed. The same rules that put a

defendant on electronic monitoring now, through the private portions of it, will still be allowed. The discretion for the judge is at the beginning when the judge sets out restrictions.

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CHAIR LEDOUX asked, for example, why the bill read "a court shall grant credit against the sentence of imprisonment for time spent under electronic monitoring if the person has not committed a criminal offense while under electronic monitoring." She stated there is a section in the bill which seems to allow the court a certain amount of discretion and she was trying to figure out under what circumstances the court could use that discretion.

REPRESENTATIVE WILSON responded that page 2, lines 1-6, are the portions the judges are talking about in the first place, before the offender leaves the courtroom [moving forward]. The discretion for the judge is determining where the offender lives as it must be worked out with DOC or the private vendor, whether they have a job, whether they are going through treatment, as the defendant must show the three portions of the provision. For example, in the event an offender [with electronic monitoring] does not meet a court appearance they will be back in jail because the agreement is broken.

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REPRESENTATIVE CLAMAN pointed out that the questions of the chair relate to the idea that an offender is basically confined to quarters except when performing under 1-3. He said he did not see how the court had a lot of discretion to make decisions about whether the offender did or did not comply with 1-3. The court could very well say the offender missed a court appearance and will lose whatever credit they may or may not have accrued for the electronic monitoring. He noted that there is a list of things the offender can routinely leave the home for so could a court say the offender is going to so many things that it found this was not equivalent to incarceration.

REPRESENTATIVE WILSON reiterated that conditions would be determined while [in court] as the judge determines where the offender can and cannot go. She advised it is up to the monitoring vendor to immediately report whether the offender broke the agreement to the court, and offered that the vendor attends court hearings with the defendant.

1:55:38 PM

REPRESENTATIVE CLAMAN asked whether under this bill the electronic monitor vendor that runs the monitor has a requirement to report someone that is not where they are supposed to be right away.

REPRESENTATIVE WILSON advised that she had checked with the [vendor] in Fairbanks and they immediately report a violation.

REPRESENTATIVE CLAMAN said his office checked with DOC last week and the number of post sentence defendants on electronic monitoring was 4,730, and the number of pretrial on electronic monitoring through DOC was 447. He pointed out that the number of people on electronic monitoring is actually quite high.

REPRESENTATIVE WILSON argued that the number is post sentence and not pretrial, and assumed that those post trial are actually getting credit while being on electronic monitoring where the others are not. The intent of the bill is that the numbers of pretrial would increase, the offenders keep their jobs, receive treatment, and Alaskans have a better society because of it.

REPRESENTATIVE CLAMAN reiterated that 447 are pretrial and this number is not all post trial and that 4,730 is post sentence. He pointed out that electronic monitoring does not do anything to address the treatment issue which historically is the focus of the courts.

REPRESENTATIVE WILSON argued that with electronic monitoring the offender may choose a treatment program that may not necessarily be residential. She reiterated that DOC advised that approximately 40 percent of those currently sitting in jail are waiting to have their cases heard. She said she hopes that DOC will become a part of that for areas that do not have [vendors].

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MS. MEADE advised that the court system is neutral on the bill.

1:58:20 PM

REPRESENTATIVE GRUENBERG recalled that in most situations a person has a constitutional right to bail that can only be circumscribed if the offender is a flight risk or danger to the community. He noted that the bill reads it is presumptive the offender would not be a flight risk due to being monitored. He

used the example of employment and asked why it would make a difference if the offender is going to employment because the offender's right to be out on bail is not dependent upon their employment. He referred to page 2, line 4, "for the purposes of" and said it appears to be a language of limitation rather than exemplary of certain things that could cause the court to give the offender credit. He offered that the core question is whether the offender has a right to be out [on bail]. He questioned that should the offender be denied that right and is subsequently found guilty, isn't it irrelevant why the offender is out as long as he/she is neither a flight risk or danger to the community. He reiterated that the offender is giving up their constitutional right so shouldn't they receive credit if subsequently found guilty.

[2:01:43 PM](#)

REPRESENTATIVE WILSON pointed out that the issue is not whether an offender can make bail or not. She offered that while shadowing the "head of corrections in Fairbanks" she saw people sitting in jail day-after-day watching cable television, which she opined should be changed to public television. She noted that inmates have their food brought to them and basically the only thing they are forced to do is change clothes once a week. She opined that the offender could be thinking that their friends are in jail, they are being fed, and clothed, and it might be better than the outside world. She remarked that the state wants people to get back on their feet as everyone makes a mistake and this bill is not about the fact that 101 percent of Alaska jails are filled, it is a bill about stopping the cycle. During the last hearing the discussion was that offenders could be out just playing video games, or hanging out at the local park and, she stated that she prefers certain conditions so that the offender realizes they have to step up to the plate. She reiterated that the conditions are up to the judge to determine how stringent the conditions will be.

[2:05:43 PM](#)

CHAIR LEDOUX advised that during the last hearing public testimony was left open.

[2:06:12 PM](#)

CARRIE BELDEN, Director, Division of Probation and Parole, Department of Corrections (DOC), said a topic not yet mentioned is the Interstate Compact which is an agreement with all of the

states and territories to allow for the transfer of inmates, probationers, and parolees. She explained that the Interstate Compact requires the receiving state to authorize and approve any placements or transfers. As written, she opined this bill could possibly put the state in violation of that compact, and she would like to continue working with the sponsor to adjust the language.

[2:07:29 PM](#)

CHAIR LEDOUX asked how the bill violates the Interstate Compact.

MS. BELDEN offered an example of an offender being on electronic monitoring in another state wherein the judge sentences that offender to time served. She said the offender would no longer be in inmate status and would be placed on probation. According to the compact, she explained, the offender must go through the compact and allow the receiving state to grant Alaska permission to let the probationer reside in that state. She further explained that the ability of the judge to grant time served would violate the compact because Alaska did not allow the receiving state the opportunity to review the case and accept or deny the transfer.

CHAIR LEDOUX asked Ms. Belden to put her comments in writing and to offer legal citations with examples.

[2:08:46 PM](#)

REPRESENTATIVE GRUENBERG observed that regardless of what form this bill takes, the committee could accomplish conformity with the compact by referencing the compact to states "except in certain circumstances governed by the compact where permission must be sought from the initiating state ..." He advised there could be an amendment conforming to the compact and suggested Legislative Legal and Research Services, Ms. Belen, and the sponsor, determine appropriate language.

MS. BELDEN agreed that it is an excellent idea.

[2:10:31 PM](#)

REPRESENTATIVE CLAMAN asked whether Ms. Belden is familiar with trends and statistics for people on electronic monitoring within the Department of Corrections.

MS. BELDEN replied that she is not a specialist but does have some knowledge.

REPRESENTATIVE CLAMAN questioned what percentage of people are on electronic monitoring, both presentence and post sentence, and asked for a description of recent trends.

MS. BELDEN answered that there are approximately 451 post sentenced inmates right now. She described it as an increase and that DOC has worked hard to support the electronic monitoring program, and further the re-entry portion of DOC.

[2:11:43 PM](#)

REPRESENTATIVE CLAMAN asked for clarification that DOC has been working hard to identify eligible inmate that are post sentenced to attempt to get them onto electronic monitoring and out of the prisons.

MS. BELDEN stated that DOC has been making an effort at attempting to identify those people in determining whether they would like the opportunity for electronic monitoring.

[2:12:24 PM](#)

QUINLIAN STEINER, Director, Central Office, Public Defender Agency, Department of Administration, said that presently there are opportunities for people to receive credit for time served when entering a residential treatment program, but nothing for participation in out-patient programs. He offered that this bill provides an incentive and opportunity promoting rehabilitative treatments and other rehabilitative activities. Ultimately, he stated, it would help reduce recidivism in Alaska. He noted that he had offered the sponsor a couple of tweaks to the language and was advised the sponsor will work to facilitate those concerns. He opined that the bill, as structured, generally has a positive promotion on reduction of recidivism.

[2:13:37 PM](#)

MR. STEINER responded to Representative Gruenberg that he has reviewed the bill currently before the committee.

REPRESENTATIVE GRUENBERG asked if this committee substitute meets the concerns he had expressed [to the sponsor].

MR. STEINER replied "No," as there is a concern regarding judicial findings and how it is worded that conflicts with a case, and he recommended changes. He described it as an easy fix that would not compromise the intent of the bill.

MR. STEINER answered Representative Gruenberg that he would draft language that would cure his concern and provide it to the bill sponsor.

MR. STEINER advised Representative Gruenberg that he would be happy to keep the committee apprised of his progress.

2:14:45 PM

REPRESENTATIVE GRUENBERG asked if he had a chance to perform research on Representative Gruenberg's comments regarding equal protection.

MR. STEINER replied that he has not performed research on that issue as with bail it is tricky. He explained there is a certain reality that people with money can get out [of jail] more easily than people who do not have money. There are many times the cash corporate requirement prevents people from getting out and, he noted, it occurs on all levels of offenses. He pointed out that conditions can be layered on and people with money or a broader support networks can find third party custodians who meet the requirements of a judge. He related there is an inherent disadvantage for people who do not have resources, and this bill opens up the possibility of expansion by DOC into pretrial electronic monitoring to a greater degree, and DOC is more likely to be able to do a sliding scale. He extended that under this bill, when pretrial release opportunities actually promotes work and treatment, there could be a reduction of the desperate impact that bail can have on a community.

2:17:42 PM

REPRESENTATIVE GRUENBERG said the committee is interested in drafting language that follows the constitution and drafting language that will require the people who apply this new law in a manner that follows the constitution. He described it as a drafting issue up front rather than as an application issue after the bill is signed into law.

MR. STEINER stated that an equal protection problem is not being written in.

2:19:28 PM

CHAIR LEDOUX cautioned Representative Gruenberg that this is the appropriate time to ask questions. She asked that he please not couch a policy statement in his questions by reciting a long policy statement and then simply asking "do you agree."

REPRESENTATIVE GRUENBERG responded that his intent is to determine the person's thought on the issue as Representative Gruenberg sees it. He opined it is a legitimate question and is not pontificating.

REPRESENTATIVE CLAMAN remarked that currently DOC can decide, based upon its security evaluation, to send a person out on electronic monitoring and back into the community without a court order.

MR. STEINER stated "That is correct," but he does not believe in a pretrial situation that they are receiving jail credit for that.

REPRESENTATIVE CLAMAN offered a scenario of a "Mr. Smith" not able to make bail and is returned to DOC for holding pretrial. At that time, DOC determines Mr. Smith is in its custody, not a flight risk, and that DOC can keep track of him on electronic monitoring. Mr. Smith is then put on electronic monitoring and sent home. Representative Claman asked why Mr. Smith doesn't get credit for that time, as he has not posted bail.

MR. STEINER answered that he does not know the answer to that question. He opined it is new to him in this hearing that there are that many people on pretrial electronic monitoring. He said that has not been his understanding and he would have to look into it. Electronic monitoring is done at the defendant's request but doesn't result in jail credit. He said he does not know what it means to say that 400 people are on electronic monitoring pretrial ... were those people on bail or in DOC custody on electronic monitoring. His belief, prior to the hearing, was that all were on bail electronic monitoring, not in DOC custody and released at DOC's request.

2:22:35 PM

REPRESENTATIVE CLAMAN agreed it was an important distinction and asked him to assume these people were like Mr. Smith, the Public Defenders Office wouldn't necessarily know about it because the

court didn't grant them a pretrial release on electronic monitoring, as DOC is making that decision.

MR. STEINER replied that his office would know about it as the offenders would be their clients and would know whether they were released. He said he would find out if this is occurring to any real degree. He pointed to the earlier discussion regarding DOC expanding into this area and remarked there is nothing that prevents DOC from participating in a bail release program with electronic monitoring even though it is done at the court's order. He noted that there have been discussions regarding expanding into the area of electronic monitoring especially in rural Alaska to promote pretrial release. This bill, if it grants jail credit, is to promote everyone getting involved because it has the capacity for promoting treatment and reducing recidivism, he related. It may provide incentive for DOC to enter that arena and for clients to push for it instead of treatment programs, he posited.

[2:24:05 PM](#)

REPRESENTATIVE CLAMAN questioned whether there is anything today that prevents DOC from getting engaged in a robust electronic monitoring program of which allows any number of people in the community onto electronic monitoring and, consequently, would never have to go to the courts to do so.

MR. STEINER offered that he will specifically look in order to ascertain there isn't something that prevents that.

REPRESENTATIVE CLAMAN confirmed that bail conditions are when the court actually makes its own evaluation of the offender, the crime, and the circumstances, in whether to release the person. He surmised that Mr. Steiner was raising the topic that DOC might get in the bail business in working with defense attorneys to attempt to have defendants released to DOC custody as a bail release. He suggested this as opposed to people already in its custody and giving them electronic monitoring based on its discretion as an executive branch agency.

MR. STEINER answered that he is not aware of anything to prevent that. He noted the topic has been discussed and DOC's interest in treatment and reducing recidivism might add to the incentive, if this bill can provide that. He remarked it would be a less expensive way to provide monitoring and treatment.

[2:25:53 PM](#)

CHAIR LEDOUX offered a scenario of an offender not making bail and are remanded to DOC and prior to sentencing, DOC decides the defendant will be released on electronic monitoring. She questioned whether in that case the defendant would receive credit.

MR. STEINER relayed that he does not know the answer because it had never happened to any client he ever had ... that DOC released them pretrial on electronic monitoring. He pointed out that he heard in the discussion that there are approximately 400 people on pretrial electronic monitoring. He said he does not understand whether that is a [court ordered] bail release, or someone in DOC custody who was released on electronic monitoring.

[2:27:15 PM](#)

MS. MEADE offered that Ms. Belden previously testified that DOC has approximately 450 people on electronic monitoring in post sentence. She suspected that DOC has not been putting people into electronic monitoring in more than a handful of situation pretrial. She offered that from the sponsor's point of view, it would incentivize the beginning of a robust program for DOC to put people on electronic monitoring pretrial. She offered that she agrees with Mr. Steiner in that she is not sure there is any statute that prevents that, and doesn't believe DOC is doing that in any large number of cases.

[2:28:36 PM](#)

MS. BELDEN responded that DOC currently has 450 sentenced on electronic monitoring, and approximately 2,200 not sentenced on pretrial. She advised that currently DOC does not put pretrial people on electronic monitoring.

[2:29:22 PM](#)

REPRESENTATIVE CLAMAN questioned Ms. Belden in that he was confused as he had recently spoken with [Ronald Taylor], DOC's commissioner and asked him how many offenders were on active post sentence electronic monitoring. The commissioner offered a number in the 4,000 range which was interesting because, he reiterated, his office followed up and in terms of post sentence, the numbers are 4,730, and 447 pre-trial.

MS. BELDEN said she would double check the numbers and get back to the committee.

[2:30:34 PM](#)

REPRESENTATIVE CLAMAN asked Mr. Steiner if his agency has had experiences where people are in DOC pretrial custody because they cannot post bail and then DOC transfers them to a half-way house in a DOC bed.

MR. STEINER offered that he would check but most of the time the folks are in custody or the court releases them to a community residential center (CRC). He advised he does not know whether DOC has now shifted toward putting pretrial folks in CRC's.

REPRESENTATIVE CLAMAN referred to a person released to a DOC half-way house, and questioned whether the defendant would receive jail credit for their time in the half-way house.

MR. STEINER said he would expect that to be the case.

[2:32:26 PM](#)

SHERRIE DAGEL, Criminal Justice Planner, Office of the Commissioner, said the daily count for DOC as of today is 451 offenders on electronic monitoring post sentence. She was not certain of the 4,000 number and offered to have information for the committee shortly.

[2:33:20 PM](#)

CHAIR LEDOUX closed public testimony after ascertaining no one further wished to testify.

[HB 15 was held over.]

[2:34:01 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:34 p.m.