ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 16, 2016
12:34 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Neal Foster
Representative Bob Lynn
Representative Charisse Millett
Representative Matt Claman
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 205
"An Act relating to conditions of release; relating to community work service; relating to credit toward a sentence of imprisonment for certain persons under electronic monitoring; relating to the restoration under certain circumstances of an administratively revoked driver's license, privilege to drive, or privilege to obtain a license; allowing a reduction of penalties for offenders successfully completing court- ordered treatment programs for persons convicted of driving under the influence; relating to termination of a revocation of a driver's license; relating to restoration of a driver's license; relating to credits toward a sentence of imprisonment, to good time deductions, and to providing for earned good time deductions for prisoners; relating to early termination of probation and reduction of probation for good conduct; relating to the rights of crime victims; relating to the disqualification of persons convicted of certain felony drug offenses from participation in the food stamp and temporary assistance programs; relating to probation; relating to mitigating factors; relating to treatment programs for prisoners; relating to the duties of the commissioner of corrections; amending Rule 32, Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 205
SHORT TITLE: CRIMINAL LAW/PROCEDURE; DRIV LIC; PUB AID
SPONSOR(s): REPRESENTATIVE(s) MILLETT

04/17/15	(H)	READ THE FIRST TIME - REFERRALS
04/17/15	(H)	JUD, FIN
03/11/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/11/16	(H)	-- MEETING CANCELED --
03/12/16	(H)	JUD AT 2:00 PM GRUENBERG 120
03/12/16	(H)	-- MEETING CANCELED --
03/14/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/14/16	(H)	Heard & Held
03/14/16	(H)	MINUTE (JUD)
03/16/16	(H)	JUD AT 12:30 AM GRUENBERG 120

WITNESS REGISTER

GRACE ABBOTT, Staff
Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 205 presented pretrial policies regarding Version H.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205 explained the effects of the proposed bill on the Alaska Court System.

QUINLAN STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205 offered testimony and answered questions.

DAVID HANSON, Lieutenant
Alaska State Troopers
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 205 discussed Sections 42-45 and answered questions.

KACI SCHROEDER, Assistant Attorney General
Criminal Division
Legal Services Section
Department of Law
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 205 discussed technical issues and answered questions.

SHERRIE DAIGLE, Legislative Liaison
Office of the Commissioner
Department of Corrections
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 205 advised that the Department of Corrections is available for questions.

TRACEY WOLLENBERG, Deputy Director
Appellate Division
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205 discussed Section 61

MARY GEDDES, Staff Attorney
Alaska Criminal Justice Commission
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205 offered testimony and answered questions.

BRENDA STANFILL, Commissioner
Alaska Criminal Justice Commission
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205 discussed victims' rights.

APRIL WILKERSON
Director
Administrative Services
Department of Corrections
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 205 discussed potential pretrial services.

ACTION NARRATIVE

12:34:09 PM

CHAIR MS. GABRIELLE LEDOUX called the House Judiciary Standing Committee meting to order at 12:34 p.m. Representatives Claman, Kreiss-Tomkins, Foster, Keller, Lynn, Millett, and LeDoux were present at the call to order.

HB 205-CRIMINAL LAW/PROCEDURE; DRIV LIC; PUB AID

12:35:10 PM

CHAIR LEDOUX announced that the only order of business would be HOUSE BILL NO. 205, "An Act relating to conditions of release; relating to community work service; relating to credit toward a sentence of imprisonment for certain persons under electronic monitoring; relating to the restoration under certain circumstances of an administratively revoked driver's license, privilege to drive, or privilege to obtain a license; allowing a reduction of penalties for offenders successfully completing court- ordered treatment programs for persons convicted of driving under the influence; relating to termination of a revocation of a driver's license; relating to restoration of a driver's license; relating to credits toward a sentence of imprisonment, to good time deductions, and to providing for earned good time deductions for prisoners; relating to early termination of probation and reduction of probation for good conduct; relating to the rights of crime victims; relating to the disqualification of persons convicted of certain felony drug offenses from participation in the food stamp and temporary assistance programs; relating to probation; relating to mitigating factors; relating to treatment programs for prisoners; relating to the duties of the commissioner of corrections; amending Rule 32, Alaska Rules of Criminal Procedure; and providing for an effective date."

[Before the House Judiciary Standing Committee was CSHB 205, labeled 29-LS0896\H, adopted 3/14/16.]

CHAIR LEDOUX advised the focus today is on pretrial policy, citation versus arrest, risk-based release, and pretrial supervision of higher-risk defendants.

12:35:52 PM

GRACE ABBOTT, Staff, Representative Charisse Millett, Alaska State Legislature, pointed to the Pretrial segment of the Alaska Criminal Justice Commission Recommendations with regard to Version H, and turned to a power point slide, "Citation vs. Arrest, Recommendation One," and noted that the intention is to reduce the number of people in pretrial status in jail, reduce costs, and incarcerate those individuals posing the largest public safety risk. The recommendation, she explained, is to encourage citations as much as possible with the obvious priority of protecting public safety. Sections 42-45 address the following issues: law enforcement's presumption to cite in cases where there is little to zero public safety risk as opposed to arresting an offender; civil protection for officers; and the notice to appear requirements. She reiterated that the commission recommended expanding the use of citations in lower level non-violent offense, such as class C non-violent felonies, non-domestic violence, sexual assault or related to a sexual offense, and misdemeanor offenses. Yet, continuing to allow a broad discretion for officers, the experts in the field, to arrest when a person presents a danger to themselves or others, presents a flight risk, or harm to property. She said, a specific carve-out is for arson when it doesn't present a harm directly to someone's safety but a harm to property, which is a serious offense. She advised that 76 percent of pretrial admissions to prison are misdemeanor charges, and 56 percent of those pretrial admissions to prison are for non-violent misdemeanor charges, but public safety is still the priority.

12:40:02 PM

MS. ABBOTT turned to "Risk-Based Release Decision-Making, Recommendation Two," and advised that some of the important parts of this recommendation include considering the person's ability to pay [Sec. 48]. She further advised that a significant amount of incarcerated pretrial people are incarcerated due to their inability to pay a small portion or any amount of bail. This section limits judicial discretion to detain low and moderate-risk pretrial defendants with non-violent, non-driving while intoxicated (DUI) misdemeanors, or class C felony [Sec. 51}. It allows pretrial services officers to arrest for violating a court order and violating conditions of their release pretrial such as, searching for alcohol, drugs, or performing drug tests in the event that is a condition of release [Sec. 54]. Other sections limit third-party custodians as they must be the most responsible and most likely to ensure pretrial success [Sec. 56-57], and refer to PFD garnishment in cases of pretrial failure [Secs. 63 and 141].

12:42:01 PM

MS. ABBOTT [page 4, top slide] advised there has been an 81 percent growth in pretrial inmate population, 56 percent of those admissions are due to non-violent misdemeanor charges and the pie chart offers a sense of the prison population by status. She said that 56 percent of those in the state's prisons have been sentenced, and 28 percent of those are pretrial, at a cost of approximately $142 per day, and the chart points out the length of time defendants are incarcerated for pretrial. She referred to [page 5, top slide] the fact that monetary bail leads to a significant amount of detention, as follows: $2,500 or more - 66 percent unable to post bond; $1,000-$2,499 - 62 percent; $500-$999 - 57 percent; under $500 - 36 percent. The commission recommended judges use a risk assessment tool in release decisions to assess someone's risk in order to provide better pretrial success and lower the amount of people incarcerated. Currently, the decision is a judge's own discretion, and the risk assessment tool information would be based upon the work of pretrial services officers, an actuarial tool previously discussed. Secured bond at this point is ordered in a majority of cases and, she said, release is often linked to a person's ability to pay rather than the person's actual risk of pretrial failure.

12:46:13 PM

MS. ABBOTT turned to [page 6, top slide] "Pretrial Supervision of Higher Risk Defendants Released Pending Trial, Recommendations Three and Four," said it creates the pretrial services division and pretrial services officers under the Department of Corrections (DOC), and described it as a new concept in Alaska, to [employ] people providing this level of supervision and risk assessment before people are sentenced. Currently, a certain amount of supervision is available during parole or probation, but this is a new and exciting opportunity. Sec. 152, touches the court system and its ability to provide hearing reminders for defendants and, she advised, the data shows that it is an effective and simple tool to assist people in attending their hearings.

MS. ABBOTT turned to [page 7, top slide] "Implement Pretrial Supervision," and explained that it could include a spectrum of minimal supervision that could include: a court date reminder; basic supervision for in-office appointments, phone calls, and field visits; and enhanced supervision for those most likely to

fail pretrial including, higher frequency contacts, drug and alcohol testing, and electronic monitoring.

12:48:43 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), clarified that she is not a commissioner on the Alaska Criminal Justice Commission and that she attended almost all of the meetings as a spectator. She said she would like to clearly state on the record that the court system is neutral on the actual provisions in this bill, and the court system is supportive of the process because as required by 2014 Senate Bill 64, the Chief Justice of the Alaska Supreme Court did appoint three of the commissioners. Ms. Meade remarked that currently the judges make bail decisions based upon public safety and the threat to victims and the community, which is balanced against the defendant's constitutional right to bail. The prosecutor and public defender each make a recommendation for a bail amount and the conditions are then determined and ordered by the judge. Sec. 51, she described as the main change for the Alaska Court System, and advised that judges would have differing levels of discretion with respect to releasing defendants dependent upon the defendant's risk assessment, and the risk assessment would be provided to the judge by the new pretrial services office within the DOC. That section carefully sets out what the judge can do, must do, and where the discretion lies. Under the new provisions in Title 33 when someone is arrested, the DOC pretrial services office will perform an assessment of that individual within 24 hours. She opined that the assessment will be performed without a personal interview, but rather based upon records and information available to the pretrial services office regarding the person's criminal history, background, and perhaps evidence of drugs or alcohol. There are different questions to be asked of the risk assessment, and the person's risk and assessment score report is then forwarded to the court. The score will be added to the tool on a grid, and she described, "You go down a certain number and across for the current charge, and you figure out where the judge's discretion lies."

12:51:52 PM

MS. MEADE explained that the entire chart idea is reflected to some extent in Sec. 51, and in subsection (a) the judge will not have discretion and must release a person on their own recognizance (OR). The statute continues to say what conditions

the judge has the discretion to put on the person who is released. In the event there is clear and convincing evidence of an increased risk to the public, the judge can consider releasing with more conditions put on the person and, she noted, there are certain things the judge has absolute discretion to do, perhaps with the more serious felonies. She opined that the court system will be able to do this, although, Sec. 51 does contains drafting issues that must be clarified so all of the parties and the courts know exactly what that statute requires. Also, she pointed out, there are changes in the bill as to what bail hearings a defendant is entitled to have. Currently, a defendant whose cannot make bail is entitled to ask for a bail review hearing if they have new information, and that new information can't be ... "Well, I just can't pay." Under this bill, the inability to pay allows the defendant one bail hearing to be reviewed by a judicial officer. Other than that, she said, all of the pretrial provisions are something the court can handle, and some of the details are still to be worked out regarding how the pretrial services office will perform the assessments. She added that these provisions will not be effective for another year and will allow the pretrial services office to get off the ground and provide those reports to the court system for the bail reviews.

12:54:15 PM

REPRESENTATIVE CLAMAN pointed out that currently there is an extensive form the court fills out for different findings before releasing on bail. He opined, with passage of this bill, the court system will prepare a new bail form to be certain the judge is following the different requirements.

MS. MEADE responded that when this bill passes, one of the big things the court administrative staff does is determine all of the changes necessary in response to any piece of legislation, and they will have a meeting with the court's forms attorney to determine changes there. Yes, she said, many forms will be updated, including updated training materials for judges, and the judges will be provided with "Bench Book" materials so they have exactly what the new laws say at their fingertips.

12:56:26 PM

CHAIR LEDOUX asked whether the state will have bail for people who can pay.

MS. MEADE responded yes, some people charged with a certain crime with a certain risk assessment score, according to the grid and to the statute, will be released on their own recognizance (OR), meaning no monetary bail. They can still have many other conditions, subsection (b) has 17 or 18 conditions that can be imposed on a person even if released OR. Also, she said, there can be unsecured performance and appearance bonds wherein they don't have to put the full amount of a bond upfront, but if they then do not appear or perform, they owe that money to the state.

CHAIR LEDOUX referred to a defendant who is able to pay the bail with a low risk assessment, and asked the reason for charging that defendant a monetary bail when they are a considered a low risk assessment. She pointed out that, "Simply because somebody can pay, would you make them pay if the payment isn't necessary to assure anything. I mean, what's the whole purpose of the bail?"

12:56:44 PM

MS. MEADE replied that the ability to pay is not initially weighed into the bail decisions. In the event someone on the risk assessment score is low-risk and a class A misdemeanor, under subsection (a) they would be released OR as there is not a further delving into the person's ability to pay. She explained that the ability to pay can best be explained as "an underpinning" for the recommendation that perhaps the bail decision should be set in some other way. Currently, those without the ability to pay are retained in jail even when their bail is low. She further explained that the judges are not really considering ability to pay, they are following what will become a statute should this become law, and releasing more people and, hopefully, that will assist those with an inability to pay. She extended that they are not saying, "You have money and; therefore, you will have a high bail amount."

12:57:50 PM

CHAIR LEDOUX advised that she agrees with the idea of not requiring a person, without the ability to pay, to pay when the court believes the person will return without paying bail. Although, she asked, would that person be required to pay if they have the financial ability to pay and, it is believed they will return to court.

MS. MEADE opined that the courts will not make them pay and further opined that she doesn't think the courts will be aware of a person's ability to pay. She explained that initially, the judge will look at "subsection (a) if you're within this risk assessment score, and this is your current charge, you will be released OR. It doesn't matter if you are Bill Gates or somebody with no money at all." She further explained that subsection (b) sets out the conditions that can be imposed on that person in order to protect the public and the victim, regardless of ability to pay. She pointed out that regardless of ability to pay, the risk assessment score, as recommended by the [potentially new] pretrial services office, coupled with the current charges will determine the release conditions.

12:59:15 PM

CHAIR LEDOUX agreed that make sense, and asked whether bail will be a thing of the past.

MS. MEADE responded not necessarily, as there are certain crimes that allow the judge the same discretion as they have now. Currently, for example, when there is an unclassified felony or a class A felony such as murder, the judge would be inclined to set a $20,000 or $50,000 bail amount. She explained, there are not specific recommendations to the judge that the person must be, must have certain conditions, or ought to have certain conditions, or certain conditions won't be recommended. Those are on the grid that the commission was always looking at, unshaded areas is what we've been thinking of. Those are areas where the court retains its discretion to set conditions and bail amounts as it deems appropriate for that individual, she explained.

CHAIR LEDOUX questioned, why set money as a condition knowing that some people can pay the money and others cannot pay the money. She further questioned, why money is a consideration at all, for anything.

MS. MEADE related that, traditionally, in all bail decisions money is a tool that causes people to comply knowing they will lose the money if they do not appear, and also to ensure the conditions under bail are performed. She remarked that money can still be used in certain conditions the judge deems appropriate.

1:01:07 PM

REPRESENTATIVE CLAMAN used the example of someone arrested for criminal mischief, a relatively low-level misdemeanor, with no prior record, and asked whether that person, under the bill, would be released on their own recognizance (OR) regardless of whether they were a multimillionaire or a pauper.

MS. MEADE agreed, and she pointed out that if the person falls within subsection (a) low-risk, low-level non-violent crime, it would be an OR release. Although, she said, the judge could have conditions but not monetary bail on that person.

1:01:45 PM

REPRESENTATIVE CLAMAN referred to a person with a similar crime but has more of a record and the grid determines that the person should have a $250 bail, but they are a pauper. He asked whether that person could come back into court and explain that their prior record was not great and that they cannot post bail, could the judge could then decide whether to let them out without posting the $250 bail recognizing their financial circumstances.

MS. MEADE agreed and said that the person can receive one additional hearing for inability to pay. She pointed out that this bill provides the judge additional tools, the unsecured performance and appearance bond, and the judge may require 10 percent of the $250 and only if they "no show" or violate their terms would they owe the remainder of the $250.

REPRESENTATIVE CLAMAN surmised that a person, whether pauper or a millionaire, charged with murder would likely have bail set at $50,000 or more, and their ability to pay would play little or no part because it is a violent crime against a person, and the person would have bail set before ever getting out of jail.

MS. MEADE replied that his statement was generally correct.

1:04:01 PM

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), said he is the Public Defender for the State of Alaska, and a member of the Alaska Criminal Justice Commission who participated in the meetings and in the subgroups that discussed each one of these policies. He related that a goal was to save money, and the entire time the commission paid attention to being certain the policies the commission supported also maintained and enhanced

public safety, and reducing recidivism was part of the deliberations. During those deliberations, the commission looked at and took in the perspectives and concerns of law enforcement, victims' advocates, and the prosecutor's office to ensure that what the commission was doing, based upon data, actually had its intended effect. Obviously, he remarked, reinvestment is an important part but many of the initiatives are positive in their own right and will help reduce recidivism, and in particular pretrial bail release. The data revealed that pretrial detention was in itself causing increased recidivism, and that it is in fact a criminogenic factor causing further crime in the future. Therefore, pretrial detention was a significant consideration that drove this. Also, he advised, monetary bail, itself, doesn't have a meaningful effect on what it is intended to do, which is bring someone back to court and cause them not to commit any crimes in the future. He described monetary bail as being no better than an unsecured bond in terms of those two factors which drove the grid previously discussed, and that ability to pay is not a factor in the section of the grid that will release with a bail bond. He pointed out that when a person is at a higher level of offense, high-risk, high-level, then the ability to pay does become a factor in setting that bond. Therefore, he offered, in those higher level cases it has the prospect of ensuring return and preventing future crime. Data revealed that for the low-level and mid-range offenses ability to pay had no effect and was actually counter-productive, and that was a primary concern, he related.

1:07:38 PM

MR. STEINER referred to Sec. 61, [AS 12.55.027(d), page 36, lines 2-4], which read:

> (d) A court may grant credit **of not more than 120 days** against **the total term** [A SENTENCE] of imprisonment **imposed following conviction for an offense** for time spent under electronic monitoring **that complies with AS 33.30.011(10),**

MR. STEINER stressed that limiting electronic monitoring credit to 120 days was not part of the commission's recommendations in this bill, and that it came in elsewhere. The commission reviewed data and found that long jail sentences are not more effective in changing behavior than short jail sentences and, in fact, in some cases even short jail sentences were counter-productive. The sections for electronic monitoring credit was not part of the commission's recommendation and, he pointed out

that it will limit the option for non-jail detention for individuals capped at 120 days. Currently, electronic monitoring credit would be available for a longer period of time.

1:09:01 PM

REPRESENTATIVE MILLETT asked the origin of the 120 day restriction, and to elaborate as to why 120 days is restrictive.

MR. STEINER responded that the concern as expressed to him was that if it was not limited it would create no incentive to resolve the case, and that someone in the defendant's position would have no incentive. Whereas, after the 120 days the case would be pushed forward because the defendant would no longer receive credit, he said.

MR. STEINER extended that he does not know where the decision to limit to 120 days came from. He reiterated that it was expressed to him that there would be no incentive, without a cap to resolve the case, and delay would occur. He noted that the judge sets the trial date, and continuances may be at the defendant's request but the defendant must have a reason for their request to delay the case, which is ruled on by the judge. There are benefits to having someone on electronic monitoring credit beyond just saving money because once a person is in jail they are separated from their job, support network, and any work they may be doing on rehabilitation.

1:10:59 PM

REPRESENTATIVE KREISS-TOMKINS asked whether he found any pushback from the commission's work relating to electronic monitoring credit.

MR. STEINER advised that he came after the commission's report was released and he wasn't part of the discussion where that was added to the bill. He noted that the commission has not met and discussed the bill in a session-sense, and that he was commenting both as a public defender and as a commissioner that the commission did not recommend the 120 days.

1:12:01 PM

REPRESENTATIVE CLAMAN opined that under existing law a person on pretrial electronic monitoring could get credit for more than 120 days.

MR. STEINER answered in the affirmative.

REPRESENTATIVE CLAMAN said that Criminal Rule 45 and the constitutional right to a speedy trial is interpreted as 120 days. There are substantial structures within the system that force cases to get to trial within 120 days, and the defendant has to waive their speedy trial rights to not have the case come to trial in 120 days. He asked the frequency of people waiving their speedy trial rights past 120 days, and when this has come into play.

MR. STEINER advised that most cases and trials go beyond 120 days except misdemeanors, and opined that not many felonies go to trial within 120 days. He said that waiving time under Criminal Rule 45 is common, it starts from the beginning and often results in a waiver pre-indictment during the negotiation process. Filing motions is tolled during that period and it will often be waived to investigate or prepare defense. He opined that some misdemeanors do get to trial within that period of time, but he wouldn't say that a lot go to trial because they are resolved earlier by plea, and noted it takes more time to go to trial. He opined that that is why the 120 day number was picked, but he was not part of that discussion so wasn't sure. He stressed his concern is that it will have an impact and undermine the broader underlying premise of the commission's report and recommendations because it simply runs counter to it.

1:14:39 PM

REPRESENTATIVE CLAMAN asked whether he has the sense that defense attorneys are using electronic monitoring as a mechanism to put the case off longer, and longer, and never go to trial. He said he understands waiving Criminal Rule 45 in preparation for trial and if a deal can be cut they usually want it to occur sooner rather than later. He asked whether incidents of someone pushing the trial back longer because they are carrying on their "merry way" on the electronic monitor is a real problem.

MR. STEINER answered that when a defense lawyer requests a continuance, they must explain the reason and the judge rules on it. It could be that defense wants more time because the defendant is working on classes, a program, or has something else going on that merits delay, he suggested. The judge, and everyone in the courtroom, would be aware the defendant was on electronic monitoring credit resulting in credit for defendant. He stressed that it would be unethical for a defense lawyer to

mislead a court about the reason for the delay and that it should be discussed and on the table. He cannot say how often things are delayed for the reason of working on a program, he said.

1:16:28 PM

REPRESENTATIVE CLAMAN pointed to the public defender world, and asked how many people statewide are released pretrial on electronic monitoring, and whether it is a real issue.

MR. STEINER, in response to Representative Claman, said that public defender clients are being released on electronic monitoring and it is not an insignificant number.

1:17:16 PM

MR. STEINER advised that the above-policy was a concern he wanted to raise to the committee as he believes it is worth the committee's deliberation as to whether or not to move forward. Broadly speaking, he said, normally he does not take positions on bills. As a commissioner he does support the bill and the initiatives and the recommendations of the [commission] because they are well thought out, well discussed, and are based upon sound data.

CHAIR LEDOUX offered that this bill has more people out of jail prior to trial, generally. She questioned whether this is a change in present law that would allow less people out of jail prior to trial.

MR. STEINER responded that it would provide less credit for the time a person is out on electronic monitoring such that, if a person was out on electronic monitoring for 150 days, they would only receive credit for 120 days. It may not necessarily result in someone going back to jail as it is a matter of credit. Although, he noted, it would result in someone going back to jail if they then received a 150 days sentence and were out on electronic monitoring for 150 days, they would then have to go back and do the extra time.

1:18:56 PM

CHAIR LEDOUX noted this is a change from present law in that present law would give credit for the entire time a person is out [on electronic monitoring].

MR. STEINER answered correct, if the person was under a court order and followed the conditions of bail, [this provision] scales back what a person can have credit for.

1:19:14 PM

REPRESENTATIVE CLAMAN said, "If it ain't broke don't fix it," and with regard to this particular [provision] asked Mr. Steiner to identify any instances in which a person has been out on electronic monitoring, and it appears has abused the system by getting two years of electronic monitoring by delaying their trial for two years, thereby, never serving a day in jail.

MR. STEINER replied he has heard of cases being lengthy, but the question is whether or not it is appropriate that it went on that long, and whether or not someone wants to have credit. The premise of the report and the recommendations were that jail itself was a negative thing in many instances for low- to moderate-risk individuals because the jail sentence itself had a criminogenic impact and increased recidivism. In the event the availability of electronic monitoring credit is reduced some people will spend time in jail when they otherwise would not. The appropriateness of it is something that should be balanced by the committee, it is something the judge should weigh in on when a continuance is requested and, he reiterated, the reasons should be on the table and discussed. He said he can't answer the question but he does know that it occurs and people receive a fair amount of credit.

REPRESENTATIVE CLAMAN observed that Mr. Steiner has no instances of when this situation has been abused.

1:21:18 PM

REPRESENTATIVE MILLETT requested Mr. Steiner to offer language the committee could consider as an option to the 120 days for the credit. She offered a scenario of, through no fault of the defendant, the court calendar is full and in lieu of going back to prison and becoming a life-long prisoner, and asked for suggestions that would cover that.

MR. STEINER extended that he has been mulling it over and he does not have an adequate response now, but he would continue to work on it. Currently, he opined, the primary safety valve is judicial discretion and going forward when the case is prepared and it is time to go forward. It is possible, he noted, that language could be generated to limit it in certain high level

cases where the implication of jail time increasing recidivism isn't as strong, would be one approach.

REPRESENTATIVE MILLETT asked Mr. Steiner to discuss putting pretrial people in prison, completing their jail time, and that when they come out they are more likely to commit a crime again due to the portion of time spent incarcerated prior to trial. She asked, within Mr. Steiner experience, the length of time in [jail] pretrial that begins creating worse criminals.

MR. STEINER stressed, "24 hours for low-risk individuals. Even a single day in jail can increase recidivism." One of the issues the state has been working on is the Probation Accountability and Certain Enforcement (PACE) model that is based upon the idea that short and swift sanctions for high-risk individuals is appropriate. He opined that Hawaii has found that someone being arrested in the morning on a probation violation, have their hearing that day, and released that evening, has as much of an impact as being booked-in and spending 24 hours. He offered that he cannot say what the length of jail time is for higher-risk individuals, "but for low-risk individuals it is even a single day."

1:24:24 PM

REPRESENTATIVE MILLETT asked Mr. Steiner to reiterate one more time in trying to keep people out of prison in pretrial. She stated that one of the stunning things she saw was that once an individual is in jail they become hardened or worse criminals than the offense that they originally committed. The influence within that time spent in jail makes people criminals and it is pretty scary, she expressed.

CHAIR LEDOUX agreed that it is not a good environment.

MR. STEINER followed up that that was in conjunction with the low amount of monetary bail that would result in someone's detention was surprising even to him. More than 50 percent of people with $1,000 or less bail were unable to bail out which, he described, was a low amount of money. He opined that no one would ever expect that that would have a real influence on behavior but that is what the data bore out, the state was holding low-risk individuals merely because they were poor.

1:25:51 PM

REPRESENTATIVE KREISS-TOMKINS referred to Mr. Steiner's comment regarding a low-risk individual, that the potential for criminality is enhanced whether they spend as little as 24- or even 8 hours in jail, and asked what the data shows for higher risk, and whether the higher-risk individual has the potential to become even more of a criminal and go up another rung on the ladder.

MR. STEINER recollected that for high-risk individuals and high-level offenses jail did not enhance recidivism, but he may be wrong. He stressed that the data was clear that for the low-risk it was criminogenic.

1:27:29 PM

MS. ABBOTT advised that the recommendation Mr. Steiner spoke to is outside of the commission's recommendations, and it was included in the bill through discussions of the House Judiciary Standing Committee's legislative intent behind a bill passed last year, regarding good time served on electronic monitoring. The thought being, she said, that this conformed to legislative intent, that an entire sentence was not served on electronic monitoring, but "it was simply good time that could be applied pretrial." She referred to the previous scenario of a person's sentence being 150 days, having served the 120 days, and said it was still within the purview of the court to determine whether that person had served their entire sentence. Obviously, she said, this is a policy call, and the data and argument of Mr. Steiner is compelling and within the committee's purview as to whether it remains in the bill.

1:28:59 PM

CHAIR LEDOUX, in response to Representative Claman, advised that last year's bill belonged to Tammie Wilson and it was debated extensively in this committee.

REPRESENTATIVE CLAMAN observed that the committee is in a good position to state its intention.

CHAIR LEDOUX commented that there is no committee better to interpret our intent.

1:29:40 PM

DAVID HANSON, Lieutenant, Alaska State Troopers, Department of Public Safety, advised that he has been with the Alaska State

Troopers for 22 years, and he is currently the Deputy Commander of the Alaska Bureau of Highway Patrol, as well as the Alaska State Trooper Division's legislative liaison. He paraphrased from written testimony, as follows:

> Over the past several weeks I have been reviewing both Senate Bill 91, and House Bill 205, and have become familiar with the changes in the subsequent versions. I would like to take this opportunity to thank the Alaska Criminal Justice Commission for the extensive research and work that's been done to arrive at the conclusions on the criminal justice reform and reinvestment. And, I'd also like to thank and recognize the diligent work of the law makers and sponsors of this bill without whom none of this would have been possible.
>
> Today I'd like to address, specifically Sections 42-45, and in particular Section 42 which essentially deals with the arrest versus cite issue for defendants. This version of AS 12.25.180, as reflected in Section 42, appears to contain a number of compromises that will still allow law enforcement to take control of a situation as needed. But also allows for citations to be issued when appropriate. I think we can all agree that the main concern is still public safety, which includes the safety of the officer, the defendant, and the community. And oftentimes when certain types of crimes have been committed issuing a citation to appear in court is, or can be, an appropriate solution to the problem. This is similar to how a trooper would issue a ticket or summons to a driver for operating a vehicle with a suspended license instead of physically arresting them provided another driver is available to take the vehicle, of course. So, in essence, Section 42 establishes a presumption to cite and summons to court for a non-violent misdemeanors and class C felonies with exceptions including significant danger to self or others, and certain specified crimes. For infractions or violations, it provides that a peace officer may bring the person before a judge if the violation is: 1. for a violation of conditions of release; or 2. for disorderly conduct.

1:32:03 PM

In urban areas where the local court system is easily accessible the burden that is created by citing a defendant into court is minimal, or non-existent in most cases. The defendant would simply need to make sure that they find a way to court during the normal course of their day, and at worst might need to secure a ride from a friend or via public transportation. But a more significant issue would arise when troopers and officers in rural communities issue a citation for a defendant to appear but the nearest court is in another community or a significant distance away. Troopers in Western Alaska frequently experience cases where defendants who are issued a summons or citation to appear in court, fail to show up. This is a result of a variety of factors, but regardless of the reason and however justifiable that reason might be, it requires that a warrant be issued and a second response to the rural community by law enforcement is required to serve the warrant. But according to Criminal Rule 38.1, defendants are allowed to appear telephonically for a variety of hearings. If this mechanism is in place and utilized by the defendant, I believe it would solve a number of the concerns law enforcement has regarding multiple trips to take care of a single issue.

1:33:15 PM

These concerns are best illustrated when considering law enforcement responses to communities that present logistical challenges in simply arriving, such as Gamble, and Savoonga, the Pribilof Islands, Little Diomede, and communities toward the end of the Aleutian Chain. Allowing for telephonic court appearances for all hearings where it is reasonable for that to occur would be one of the best solutions available. Regarding Criminal Rule 38.1, I believe Ms. Kaci Schroeder, with the Department of Law, is present in the courtroom -- in the room there as well and might be able to speak to that with more knowledge as necessary. With that being said, the current version of House Bill 205, Version H, appears to provide enough leeway for law enforcement to effectively provide a balance between public safety and the need for defendants to be held responsible for their actions.

1:34:02 PM

The other main concern that DPS had regarding these changes revolved around the ability of law enforcement to arrest an individual for violating conditions of release, particularly with cases involving domestic violence. While this might be drifting away a bit from Section 42, I believe the issue is closely enough related to the arrest versus cite conversation that it bears briefly mentioning again. But this appears to be covered in Section 25, the language in AS 11.56.757(a) regarding violating conditions of release is amended to conform to the reclassification of the crime to a violation. But it is answered in Section 42, on page 23, where the new law allows a peace officer to arrest a person if probable cause exists, that the person violated conditions of release.

DPS would also like to commend the sponsors of the bill for adding back in the provisions in AS 12.25.180(b)(4), the very next line, where arrest authority remains if a person is committing the crime of disorderly conduct. While this crime is relatively minor in comparison to all others, it allowed the officer the ability to solve an immediate problem which oftentimes means removing an unreasonably loud person who is causing a disturbance while others are trying to sleep.

So, with that said, I'm happy to answer any questions the committee might have.

1:36:09 PM

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, referred to Ms. Meade's excellent explanation of what the pretrial sections do, and said she has nothing to add. She then explained that the pretrial sections for the Department of Law (DOL) do not substantially change how DOL would do business and that the provisions basically give the department additional tools when making bail arguments due to a risk based analysis. She offered to point out technical issues and referred to Sec. 42, [AS 12.25.180(a)(5)(B)] page 23, lines 8-9, which read:

(B) "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470;

MS. SCHROEDER explained that is a limited definition of sexual offense, and within every other section of the bill the definition used is found in AS 12.63.100, which is a somewhat broader definition. Crimes covered in AS 12.63 would be crimes, such as child pornography that are not necessarily covered in what is there.

1:37:41 PM

MS. SCHROEDER, in response to Representatives Claman and Millett, responded that typically the definition DOL would use for sexual offense is AS 12.63.100.

CHAIR LEDOUX surmised that it is Section 11 here, and Ms. Schroeder is recommending that it is Section 12, and asked whether she knows how that happened.

MS. SCHROEDER replied that she does not know how it happened, it appears to be fluke because everywhere else the choice has been the definition in Title 12.

REPRESENTATIVE MILLETT noted it could be a drafting error and she will have Ms. Abbott check.

1:38:26 PM

MS. SCHROEDER then pointed to Sec. 48, [AS 12.30.006(d)(3)], page 25, lines 6-8, which read:

> (3) at least seven days have elapsed between the previous review and the time set for the requested review**; however, a person may only receive one bail review hearing for inability to pay**.

MS. SCHROEDER advised that, initially, DOL was concerned that defendants would be able to use that reason over and over and over; therefore, there would be bail review hearings about every seven days. She remarked that the bill language on page 25, appears to have addressed that concern but she wanted to be certain the committee was aware that it was a concern.

1:39:20 PM

MS. SCHROEDER referred to Secs. 51 and 52, beginning page 25 through the next several pages, and advised that the provisions are the readjustment of the bail sections to incorporate the

risk based assessment. She noted that a number of crimes are listed as exclusions, for example, if a person is charged with failure to appear or charged with failing conditions of release then the person does not receive the benefit of some of these presumptions for OR release. She offered that the committee may want to consider adding to that list as there are some crimes, for instance, terroristic threatening, possession of child pornography, escape, and unlawful evasion, crimes that may be indicative of a higher risk or not willing to appear or abide by court orders. She reiterated that the committee may want to consider adding other crimes there.

MS. SCHROEDER, in response to Representative Millett, advised she would provide the committee a list.

1:40:29 PM

MS. SCHROEDER referred to Mr. Steiner's testimony regarding Sec. 61. [AS 12.55.027(d), page 36, lines 2-4], which read:

> (d) A court may grant credit **of not more than 120 days** against **the total term** [A SENTENCE]of imprisonment **imposed following conviction for an offense** for time spent under electronic monitoring **that complies with AS 33.30.011(10),**

MS. SCHROEDER noted that the bill before the House Judiciary Standing Committee last year has only been effective as of this summer. She explained that the section only addresses credit for pretrial electronic monitoring; therefore, potentially a defendant would still be eligible for electronic monitoring after sentencing and once they are under DOC custody. To be clear, she explained, there is not a bar once a person is sentenced on receiving credit for electronic monitoring, it is only the pretrial portion.

1:41:17 PM

CHAIR LEDOUX referred to disorderly conduct, and said she understands why [law enforcement] would want to remove someone immediately from the place they were being disorderly. She asked whether there could be a place other than prison that the person could be placed, because disorderly conduct usually isn't more than just being a loud jerk in the wrong place.

REPRESENTATIVE MILLETT asked Chair LeDoux whether she was suggesting a sleep off center for jerks.

CHAIR LEDOUX related that she was asking for suggestions due to the vast testimony regarding the many problems of putting low-level people into jail, even for as much as 8 hours. She said, and now there is an exception for disorderly conduct which, on the scale of 1-10 with 10 being the highest, disorderly conduct appears to be a one rather than a ten. Unfortunately, the state will arrest these people and put them in jail where they may become hardened criminals and she asked for a suggested solution.

REPRESENTATIVE MILLETT suggested putting Lieutenant Hanson back on the line.

MS. SCHROEDER advised that DOL is not prepared to address that right now, although, she understands the concern. The new commissioner for the Department of Corrections (DOC) mentioned Title 47 holds, and it is definitely on their minds, she said.

1:43:28 PM

LIEUTENANT HANSON answered Chair LeDoux's question by stating that allowing law enforcement to retain the ability to arrest someone for the crime of disorderly conduct, basically allows law enforcement to solve an immediate concern for the night. He opined there is a misconception in that if a trooper responds to a disorderly conduct the first course of action taken would be arrest, and that is not the case. Often times, he advised, troopers ask whether the person has a place to sleep it off, a friend's house, and/or offers the person a ride somewhere. The instances of keeping law enforcement's ability to arrest the person, he explained, is where the level of belligerence is so high and the problem cannot otherwise be resolved. In this case, if law enforcement leaves without any other course of action and simply cites the person, the problem will continue and the law enforcement agency would keep returning again, and again, and again. Therefore, he advised, this would be viewed as a last resort option, but still an ultimate solution which would provide peace to the neighborhood for the night.

1:45:13 PM

REPRESENTATIVE MILLETT surmised that when law enforcement takes an inebriated person to a sleep off center they cannot be under arrest and they cannot cause physical harm to themselves or others. In the event the person is belligerent and causing a disturbance but is not willing go to a sleep off center whether

in that case law enforcement would be forced to make the arrest and take them to jail, she asked.

LIEUTENANT HANSON opined that that instance was assessed correctly, although he does not like to speak with such a broad brush or that it applies to all situations. It is not the intent of law enforcement's to simply charge someone for the sake of charging them, and the Anchorage Police Department Downtown has a sleep off center which would certainly be the option law enforcement would prefer over charging someone criminally.

1:46:54 PM

REPRESENTATIVE CLAMAN noted that he sees the disorderly conduct provision about the 24 hours, as one of many tools law enforcement has in the toolbox. Particularly, he pointed out, in rural Alaska with a disorderly conduct scenario not involving alcohol, and law enforcement tries to separate people and have a cooling off period. A tool the officer may have is to tell the person they are going to go home until they've cooled off, and the ability to tell the person if they don't want to go home the officer can take them to jail becomes a tool the officer can use. He said he sees this particular statute as a range of tools in the officer's tool chest.

LIEUTENANT HANSON agreed, as it is the desire of the Department of Public Safety (DPS) to retain the ability to arrest. He noted that over the course of time this isn't a charge that is anywhere near one of the most common charges that come up. He described this as a last resort wherein there is a problem in a community or neighborhood and if the officer doesn't take some sort of action, and the person is not impaired and doesn't have somewhere else to go, then what does DPS do with them. The Department of Public Safety (DPS) is not necessarily interested in the person spending that time in jail, he noted, and that DPS agrees with the fact that it was brought down from a 10 day to a 24 hour period in the recent rewrite.

1:49:22 PM

REPRESENTATIVE CLAMAN noted that in a reverse situation where the person is extremely intoxicated the officer would have a choice to take them to the sleep off center, under Title 47, or if they did not cooperate another option would be to arrest as a last resort.

LIEUTENANT HANSON agreed, although he could speak to all areas of the state whether they have a sleep off center. The troopers operate often in Western Alaska and when something is going on in the community where there is not a sleep off center, disorderly conduct might be the only resolution to that. However, he advised, many of the jails, if there's a high level of inebriation in someone or other impairment it would require them going to the hospital to be checked out to be certain they are healthy enough to be put in jail. He said there are a few forks in the road that would still apply depending upon the community and the situation.

REPRESENTATIVE MILLETT suggested having someone from the Anchorage Police Department available because there are specific rules regarding the sleep off center and not causing harm to themselves or to another.

1:51:20 PM

REPRESENTATIVE CLAMAN referred to Ms. Schroeder's comments regarding Sec. 61, with regard to pre-sentence electronic monitoring and asked whether last year the committee did not try to create a structure for good time credit for pretrial release because it opened a much bigger can of worms that was too complicated to try to fix. Therefore, electronic monitoring is for day-for-day credit whereas post-trial the person is on a good time credit and they get one-third off, he said.

MS. SCHROEDER responded that under current law even when someone is on DOC electronic monitoring they are not eligible for good time and this bill would change that. She said, the specific section would be later in the bill within the Title 33 provisions. She opined that, initially, the bill did have some good time language in it, and then within one of the early iterations the good time language was taken out.

1:53:45 PM

SHERRY DAIGLE, Legislative Liaison, Office of the Commissioner, Department of Corrections, advised the Department of Corrections is available for questions.

CHAIR LEDOUX listed the names of people available for general questions, and asked whether any of the witnesses available had any background or expertise on this section that hasn't been addressed, or would like to comment on any of the pretrial provisions.

1:56:04 PM

TRACEY WOLLENBERG, Deputy Director, Appellate Division, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), referred to Mr. Steiner's earlier testimony regarding Sec. 61, and said she would like to make one further point. There has been a lot of discussion that the purpose behind that provision may potentially allow abuse or delay by people on pretrial electronic monitoring. As supervisor of the Appeals Section, there are also people on electronic monitoring pending appeal and it appears that the provision, as written, would limit credit for the time people spend on bail pending appeal even when that rationale has evaporated. Also, she explained, the bill is structured to allow credit for people released on electronic monitoring pending a Petition to Revoke Probation and that rationale would fall away also. In the event the provision is not entirely removed, she suggested that there may be a way to put limits on it addressing those concerns.

1:57:49 PM

MARY GEDDES, Staff Attorney, Alaska Criminal Justice Commission, said that Commissioner Stanfill sent her a text advising that she would like to offer commentary except her line has been muted. She advised Representative Millett that a memorandum is available to her regarding the extent to which someone held pretrial in a community residential center (CRC) or private treatment program is eligible for a time served credit against a person sentenced later imposed.

CHAIR LEDOUX advised that the memorandum is on everyone's desk.

1:59:15 PM

REPRESENTATIVE CLAMAN referred to the memorandum, dated today, regarding credit for time served in a treatment program and asked whether that is what is commonly referred to as Nygren v. State of Alaska, 658 P.2d 141 (1983) credit.

MS. GEDDES agreed that Nygren was effectively superseded by a statute, and yes that is what she is referring to.

1:59:46 PM

REPRESENTATIVE KREISS-TOMKINS referred to the portion of the memorandum regarding risk factors, which he testified read in part, "We look at factors that are predictive, the weight of each risk factor varies by jurisdiction," and he said it further notes that variations based on differences in statutes, data quality, et cetra. He asked for the quality of data in Alaska.

MS. GEDDES related that the answer is long and she will follow-up with a written memorandum, if that would be helpful.

REPRESENTATIVE KREISS-TOMKINS asked whether there is a short answer or a sense of how Alaska's data stacks up relative to other states that have calculated risk-based data.

MS. GEDDES reiterated that there is certainly data the commission collected and analyzed, and is in the process of being analyzed for the purposes of a "results first project," and it will evaluate cost effective measures being employed here compared to elsewhere. In terms of answering the specific question about risk assessment, she explained that she would have to get into the details of each of those states' programs to compare it to Alaska, which is why it is a long-winded response and is better responded to in a written document.

2:01:37 PM

BRENDA STANFILL, Commissioner, Alaska Criminal Justice Commission, advised she is testifying as a commissioner on the Alaska Criminal Justice Commission in the area of victims' rights and how victims are represented in the pretrial piece. She expressed that there has been an ongoing dialogue to be certain that victims' rights are not lost and that they have an ability to speak at the hearings. She stressed that when someone is released pretrial on OR that does not mean that when a victim comes in and testifies regarding their safety, feelings, or different things, that it is not weighed in the judge's decision and the victim's voice is very much represented. For example, she said, a person is arrested for the low-level crime of destroying someone's mailbox and the victim testifies that, although this is the first time he called law enforcement, this has happened eight different times and they fear the intent is to steal their mail. The judge may decide to let the person out OR; however, conditions will be put in place to protect the victim. She stressed that there has been confusion regarding victims' rights being lost and expressed that throughout the process the commission's intent was, first and foremost, that victims' rights are not lost.

Throughout her years of working with victims, she said her biggest complaint is that victims are lost once they are turned over to the criminal justice system and become a "kind of by-product." She opined that the commission is trying to do things a little smarter in this area.

2:04:21 PM

MS. STANFILL referred to the question of whether third-party custodians were effective and stated that for the most part third-party custodians are not effective. Usually, she pointed out it is someone that cares about the defendant and is possibly making excuses for their behavior. Oftentimes, the third-party custodian does not call law enforcement when the defendant has done something wrong or left their presence. However, from her victims' services hat, she opined that within a few instances the third-party custodian can be helpful, such as, sexual abuse against a minor where the concern is about where the defendant is, and who is with the defendant. She further opined that that set of eyes is important and was unsure whether the supervision piece could do the whole thing, and from a victims' standpoint it is still being reviewed. The citation policy does have carve out for the domestic violence including those that are not assault but have a domestic violence mark. House Bill 205 offers avenues to put more things in place through pretrial supervision. Ms. Stanfill referred to the story, last week, wherein a woman was raped, got away, the man found her and abducted her, and luckily someone looked out the window and saw it happening. She offered that had the person been on electronic monitoring it most likely would not have occurred and that having more tools in the toolbox for pretrial will make people much safer with the assurance that a risk assessment is prior to release. Currently, she explained, a risk assessment is not performed and if a person has enough money to get out of jail, they get out of jail. It will take a bit of time to get all the bumps out, she acknowledged, but victims will fare better under what has been proposed.

CHAIR LEDOUX thanked Ms. Stanfill for all of her services on behalf of victims.

2:07:06 PM

REPRESENTATIVE CLAMAN surmised that with regard to third-party custodians Ms. Stanfill agrees with the broad recommendation of the commission that the criminal justice system is over-using third-party custodians. Although, it doesn't mean to do away

with it entirely in cases such as, sexual abuse of a minor where it is appropriate. He further surmised that she believes there are many other cases where the criminal justice system should stop using third-party custodians because it is not helping.

MS. STANFILL agreed, especially in domestic violence cases or cases where, for example, someone is on a third-party due to someone being injured in a traffic incident that has to do with drinking. The court puts a lot of responsibility on the third-party custodian who may love and care for the defendant requiring that they turn the defendant in which results in a re-arrest and continuing problems and, she pointed out, it is difficult to find a neutral party. Many mothers of men/women accused of battering behavior come into her agency to perform community service and work off the crime they committed as a third-party custodian by not turning their son/daughter in. Therefore, it results in what is believed to be safety and really no one is safe in those circumstances, she stated.

CHAIR LEDOUX asked Ms. Wilkerson to explain what pretrial supervision would look like.

2:09:21 PM

APRIL WILKERSON, Director, Administrative Services, Department of Corrections, advised that the Department of Corrections is currently in the development process to determine and identify how pretrial supervision will look and operate. They are reviewing other states that have implemented pretrial and plan, within the first year, to continue to work with the PEW Charitable Trust, the Department of Law, and the Alaska Court System to actually define the program.

CHAIR LEDOUX asked when DOC expects to have more definition.

MS. WILKERSON responded that DOC hopes, in coordinating with the DOC's new commissioner, to have a better picture and better handle within the next few weeks.

2:11:16 PM

CHAIR LEDOUX surmised that before the bill is passed the legislature will know what pretrial supervision will actually look like.

MS. WILKERSON replied yes, she is confident that prior to the legislation being passed DOC would be in a better place to define pretrial supervision.

MS. WILKERSON, in response to Chair LeDoux, answered that they can define the report or provide an outline of what the program or what DOC envisions the program looking like as it develops.

CHAIR LEDOUX noted that her office will be in touch to determine the best way to do it.

CHAIR LEDOUX asked whether DOC will be able to provide the risk assessments, which this bill refers to, in time for the first appearance before a judge.

MS. WILKERSON responded that DOC does anticipate being able to meet that, and the fiscal note is high on the staffing that would be needed to ensure that DOC is in compliance with the assessment requirement.

2:13:45 PM

REPRESENTATIVE CLAMAN stated that he has questions for Susanne DiPietro.

CHAIR LEDOUX noted that Ms. DiPietro was not on line.

REPRESENTATIVE CLAMAN asked whether third-party custodians are currently being used as a replacement for money bond.

2:14:00 PM

MS. GEDDES responded that the Alaska Judicial Council participated with the PEW Charitable Trust, Justice Reinvestment Initiative, in conducting a study last year of pretrial release information from five different courts in Alaska. The information, she advised, was drawn from offenders who had been released from Alaska's prisons in July and December, 2014, and said there is a hand review of these court cases for bail information. She opined that one of the most interesting results of that survey was that third-party custodians were originally thought of as an alternative to orders for cash bail being posted, and that the experience as reflected in these records is very different in these five court locations. Twenty-three percent of the sample defendants had a third-party custodian requirement, she explained, but they also had a corresponding money bail condition so it was an additional

condition beyond the money bail that was imposed in those cases. Perhaps, she commented, unsurprisingly three-fourths of the defendants with a third-party custodian requirement were not released before trial.

2:16:06 PM

REPRESENTATIVE CLAMAN surmised that having money bail and a third-party custodian actually made it even less likely that the defendant would get out of jail.

MS. GEDDES agreed, and said that it was a reasonable take away from the study.

REPRESENTATIVE CLAMAN referred to releasing someone on a secured versus an unsecured bond, and asked whether it has any impact on their likely return for court on the scheduled court date.

MS. GEDDES opined that the studies bear out in terms of the risk of failure to appear, non-compliance with orders, or new criminal offenses, and the relative value of release on secured bond versus unsecured bond. She related there have been a couple of studies addressing that specific question and she will summarize them, or send the studies themselves to the committee.

2:17:45 PM

REPRESENTATIVE CLAMAN asked Ms. Geddes to summarize the studies, and the committee would be interested in seeing the studies.

MS. GEDDES offered those studies reflect that the requirement of money bail is no greater guarantee of compliance with bail orders in that they are equally effective or ineffective.

[HB 205 was held over.]

2:18:45 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:18 p.m.