ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 18, 2016
12:36 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Wes Keller, Vice Chair
Representative Bob Lynn
Representative Charisse Millett
Representative Matt Claman

MEMBERS ABSENT

Representative Neal Foster
Representative Jonathan Kreiss-Tomkins
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
03/16/16	(H)	Heard & Held
03/16/16	(H)	MINUTE (JUD)
03/18/16	(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 sentencing policies.

JEFF EDWARDS, Executive Director
Parole Board
Department of Corrections
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205 answered questions.

GREG RAZO, Chairman
Alaska Criminal Justice Commission
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205 discussed the Alaska Criminal Justice Commission's recommendations.

SUSANNE DIPIETRO, Executive Director
Alaska Judicial Council
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205 answered questions.

JOHN SKIDMORE, Director
Legal Services Section
Criminal Division
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205 answered questions and offered testimony.

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.

DEAN WILLAMS, Commissioner Designee
Department of Corrections (DOC)
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 205 answered questions.

ACTION NARRATIVE

12:36:41 PM

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 12:36 p.m. Representatives Millett, Claman, Keller, Lynn, and LeDoux were present at the call to order.

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

12:37:16 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.]

12:37:47 PM

GRACE ABBOTT, Staff, Representative Charisse Millett, Alaska State Legislature, turned to the Power Point slide [page 1, bottom slide], "Limit the use of prison for lower-level misdemeanor offenders, Recommendation Five," advised that the commission recommended that the state limit the use of prison for lower-level misdemeanor offenders and that the use of prison and longer sentences does not necessarily reduce and correct recidivism. She advised that the sections addressed in this recommendation deal with misdemeanor offenses, and some that are being transitioned into violations. She advised that this is not the entirety of misdemeanor offenses, especially class B misdemeanors which were looked at specifically that exist within statute. She referred to the packet of class B misdemeanors in front of her, and noted that these misdemeanors were identified as those that could safely be reduced to the level of a violation.

12:39:53 PM

CHAIR LEDOUX commented she did not realize some of the misdemeanors were crimes. For example, if a person wants to go down a street and there is something blocking the way and removes it, she remarked she did not know the person would be guilty of a misdemeanor.

MS. ABBOTT offered that the recommendation also changes the presumptive range for class A misdemeanors to zero to 30 days, and it changes the way the state manages first time driving

under the influence (DUI) and first time refusal to submit to a chemical test, as the sentence would be served under electronic monitoring. The data shows that non-violent misdemeanants are the vast majority of admissions to prisons with a lower number of violent misdemeanants, although those are not touched upon quite as much within the recommendations. She offered that approximately 6,600 non-violent misdemeanants are serving time in jail currently, which is both costly and the state is not necessarily seeing the outcomes desired from these sentences. The commission recommended that the state limit the use of prison for lower-level misdemeanor offender by emphasizing alternatives to prison, including first and second time theft under $250, because the data does not show that their recidivism goes down with longer sentences. Therefore, she pointed out, the recommendation suggests diverting them from prison and requiring first time DUI offenders to spend their sentence on electronic monitoring, and also reclassifying certain lower level misdemeanors as violations. Also, lowering the penalty for misdemeanor class B offenses to 10 days in jail, and presumptively setting a zero to 30 day sentencing range for misdemeanor class A offenses, but allowing the court discretion to sentence above this range if an aggravating factor is proven.

12:42:45 PM

REPRESENTATIVE CLAMAN referred to lowering the penalty for a class B misdemeanor, and asked whether it is lowering it from 90 days to 10 days, and whether the maximum sentence a judge could impose would be 10 days in any class B misdemeanor.

MS. ABBOTT replied that is her understanding, with the caveat that she may be corrected.

12:43:09 PM

MS. ABBOTT turned to [page 3, bottom slide] "Revise drug penalties to focus severe punishments on higher-level drug offenders, Recommendation Six," and said this is an issue the nation has been attempting to address for years and the commission recommends that drug penalties be revised to focus severe punishments on higher-level drug offenders. The commission recommended that Alaska address the issue that adding longer sentences and putting drug offenders into jail is not resulting in the state's desired outcome. She offered that for some people the outcomes are worse as a result of connections and networking opportunities within prison, especially with drug offenses. The recommendation also addresses ways in which the

state can help drug offenders change their behavior through rehabilitation. It is known that many of the state's drug offenders are truly addicts and by utilizing options for rehabilitation over simply through corrections, the state is addressing behaviors and correcting them for the future. Sections 33-35 deal with misconduct involving a controlled substance in the third degree, and it would change manufacture or delivery of over 2.5 grams of 1A, 11A, or 111A drugs, or manufacture of methamphetamine or methamphetamine precursors, and those would now fall into the misconduct in the third degree, she explained. Sections 36-37 deal with manufacture and delivery of less than 2.5 grams of a 1A, 11A, or 111A controlled substance, or any amount of an IVA or VA controlled substance, and that would classify down as misconduct involving a controlled substance in the second degree. Sections 38-39 consolidate simple possession of 1A, 11A, 111A, IVA and VA controlled substance to misconduct involving a controlled substance in the fifth degree, she further explained.

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MS. ABBOTT turned to [page 4, bottom slide] "Over Last Decade, More Offenders Entering Prison for Drug Crime, Staying Longer," and advised there has been a 35 percent growth in admission to prison for drug offenses and their stay has increased by 16 percent. She expressed that long prison sentences are largely ineffective due to two factors: a low deterrent value in that people are not afraid of going to prison, especially for participating in a drug transaction because approximately 1 in 15,000 transactions are detected; and, it has little impact on recidivism. In the event the state is not correcting behaviors and dealing with the crux of the issue which many times is addiction, the state is not necessarily preventing them from getting out and committing another crime. It is known that longer prison stays have a criminogenic effect and it allows people to network, but also to be out of their homes, out of their communities, and really have no life to return to other than that of crime after prison. She pointed to the recommendation and noted that it recommends revising these penalties to focus on the higher-level offenders, those who pose the biggest public safety risk. The commission found that simple possession does not pose a large public safety risk and limiting the maximum penalty for first and second time possessions to one and six month suspended sentences, respectively, allows the people to focus on rehabilitation as opposed to simply prison time. The recommendation creates a tiered commercial drug statute which points to more than 2.5

grams, obviously being the more serious offense, than a sale of less than 2.5 grams, and aligning penalties for sale of heroin with sale of other serious drugs, such as methamphetamine and cocaine. She related that some of the statutes were put together in response to issues and; therefore, have turned out a bit piece-meal and this was one of the situations in which serious drugs could be classified similarly. Currently, Alaska does have a heroin epidemic, and in previous years it was a methamphetamine epidemic and the state should be targeting all of these drugs and their use and sale the same way.

12:48:22 PM

CHAIR LEDOUX asked whether previously heroin was treated differently than methamphetamine or cocaine.

MS. ABBOTT responded yes, it was dealt with more stringently and it was a more serious penalty than the sale of methamphetamine or cocaine.

MS. ABBOTT turned to [page 6, top slide] "Utilize inflation-adjusted property thresholds, Recommendation Seven," and she said Sections 14-19 increase the felony theft threshold for various crimes such as, criminal mischief, criminal simulation, misapplication of property, and defrauding creditors. Sections 20-21 set up the way in which inflation will be adjusted, and that is by the Alaska Judicial Council that would refer to various resources in calculating what an inflation adjustment should be, if necessary. She noted that the research behind this points to people entering prison for property crimes and staying longer in prison. Similar to drug crimes, admissions are growing for property offenses, and in the last 10 years have grown by 16 percent, and people are staying 13 percent longer in jail. The felony theft threshold has not kept pace with inflation, and she referred to 1978 when the felony theft threshold was set at about $500 and Alaska really didn't experience a change, it didn't adjust at all other than back a couple of years ago under Senate Bill 64 when it was adjusted up to $750.

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REPRESENTATIVE MILLETT pointed out that the threshold is a policy call and that she has been contacted by store owners and police departments that are uncomfortable with raising the theft threshold amount.

CHAIR LEDOUX remarked that the entire bill is a policy call.

REPRESENTATIVE CLAMAN surmised that the felony theft level is being raised but it doesn't mean that it is still not theft at the lower levels, he explained, it is just the difference between felony and misdemeanor.

MS. ABBOTT agreed that it is not decriminalizing all other forms of theft, it would just be shifting the felony threshold according to the commission.

12:51:51 PM

CHAIR LEDOUX asked whether one of the sentences for theft would involve an emphasis on restitution.

MS. ABBOTT deferred to Nancy Meade.

CHAIR LEDOUX commented that subsequent to this presentation there are a number of people available for questions.

12:52:25 PM

MS. ABBOTT turned to [page 8, top slide] Raising the Felony Theft Threshold Does Not Increase Crime Rate," and said the data has shown that raising the felony theft threshold has not increased crime rate. The data was based on approximately 23 other states that raised their felony theft thresholds, and the change in threshold had no impact in raising or lowering the state's overall property crime rate. She said that in some states, property and larceny crimes actually fell slightly at a higher rate than those states that did not change their threshold.

REPRESENTATIVE CLAMAN referred to the second arrow on the slide regarding larceny rates falling in the states that raised their threshold and asked whether someone is available to address that research finding.

MS. ABBOTT advised that Ms. Mary Geddes, Alaska Criminal Justice Commission staff attorney, is online and she has background in this research.

12:53:35 PM

MS. ABBOTT turned to [page 8, bottom slide] "Align non-sex felony presumptive ranges with prior presumptive terms,

Recommendation Eight," and noted that it is addressed in Sections 76-78, dealing with class A, B, and C felony presumptive ranges. She advised that the commission discussed prior presumptive terms and the difference between presumptive terms and ranges. Ms. Abbott said that in 2005, Alaska had presumptive terms which was a strict minimum sentence from 5-20 years, for example, with the first class A felony, and this was changed as a result of Blakely v. Washington, [542 US 296 (2004)] where it was determined that ranges were more appropriate when setting the low threshold. The legislative intent in 2005 was that these ranges should have no effect on raising the time spent incarcerated. However, it did have that effect and sentences became longer, from 2004-2014 class A felonies grew by 80 percent, class B felonies by 8 percent, and class C felonies by 17 percent. Clearly, she pointed out, despite legislative intent the sentences did grow as a result of those ranges being set. The recommendation was to align those ranges with prior terms such that the terms for first class A felony was set at about five and the recommendation from the Alaska Criminal Justice Commission was to use that as middle point, as opposed to the base for a range. She turned to [page 10, bottom slide] and said as opposed to having it be from five to eight years, looking at the top line, it would change from three to six. She stated that having the presumptive term serve as the middle point would bring the state back to its intent to not have sentences grow and align more reasonably with the presumptive terms the state had in the pre-2005, pre-Blakely time period.

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MS. ABBOTT turned to [page 11, top slide] "Expand and streamline the use of discretionary parole, Recommendation Nine," and noted that numerous sections are addressed: Section 59 deals with administrative parole; Section 62 deals with probation revocation; and it continues on to Section 124, which reduces the period of time before a parolee becomes eligible for unconditional discharge from parole. The commission found that parole eligibility was applied inconsistently [page 123, bottom slide] and, as seen on the slide there are clear eligibility requirements; however, for those who are eligible parole is vastly underutilized. On any given month in 2014, an average of 463 inmates were eligible for discretionary parole and an average of 15 inmates applied and received hearings. She noted that reasons an inmate chose not to apply for parole includes: long waits for parole hearings, fairly confusing application procedures, and not receiving the assistance inmates needed to

apply. The commission recommended that discretionary parole be expanded so more people apply for parole, and that the process be streamlined to assist people in understanding their sentences and rights. She explained that discretionary parole under this bill would be extended to all felony offenders, except class A and unclassified felony offenders with prior felony convictions. Parole hearings would be streamlined for lower-level felonies and include a requirement that any parole eligible inmate's sentence would trigger a hearing at least 90 days before the eligibility date. Therefore, inmates would not have to go through a confusing application process and a parole hearing would be triggered, she explained.

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MS. ABBOTT turned to [page 14, top slide], "Implement a specialty parole option for long-term geriatric inmates. Recommendation 10," and noted that it received significant discussions with the goal of reducing costs and understanding the low rate of recidivism with inmates 55 years and older after having served 10 years of their sentence, located in Section 105 of the bill.

CHAIR LEDOUX offered concern regarding Section 105, and said that for the people 55 years of age having served 10 years is one thing, but in the guise of cost-savings and being nice to people - throw an 80 year old out into the street because he qualified for geriatric parole after he's been in jail for 50 years, possibly he doesn't necessarily want to be released at that age.

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REPRESENTATIVE KELLER offered that this doesn't set the policy on that and it reads that a geriatric inmate must have a hearing in order to set the policy.

REPRESENTATIVE MILLETT said that it would not require them to have a parole hearing, they would still have to go through the parole process.

REPRESENTATIVE CLAMAN referred to Representative Lynn's prior question about people who are serving sentences, are they really behind bars, in a half-way house, or where are they. He said he often has a vision of an 80 year old geriatric in terrible health receiving 15 different medications paid by the state, whereas, if that person was in custody and not eligible for

discretionary parole they would probably be in the half-way house and be less costly to house. The idea of discretionary parole, given the medical issues, would probably be much more focused on where the person can actually go, would it save money, or would the state be able to monitor him effectively. With any discretionary parole decision the committee is leaving a lot of discretion to the Department of Corrections about how they manage that, but this is recognizing that it is expensive to house people on high medical needs that no longer present a meaningful danger to the community, and how to most effectively manage that population, he said.

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MS. ABBOTT agreed and said that it is discretionary parole and the Parole Board has the opportunity to determine the public's safety risk and weighs the costs and benefits of that person rejoining the community. Clearly, many people ages 55 and older are fit and potentially not accruing medical costs. She offered that this recommendation looks at that age group broadly and understands that as a broad category, people ages 55 and older do tend to have more medical costs, and noted that the recidivating numbers are substantially lower for geriatric inmates. This would be an automatic trigger for offenders 55 and older that have served 10 years of their sentence, she said.

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MS. ABBOTT turned to [page 16, bottom slide], "Incentivize completion of treatment for sex offenders with an earned time policy, Recommendation Eleven," and noted that it is found in Section 136, and acknowledged that the science is difficult to accept. The length of stay for Alaska's felony sex offenders has increased by 86 percent, and the sex offender population has grown by 38 percent. She stated that this is in no way saying that it is a bad thing because it could be that those are important sentences levied for good reasons.

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CHAIR LEDOUX expressed that she is still waiting for an answer to her question with respect to whether there are categories of sex offenders, and stressed that she is having a hard time accepting that any sort of treatment program can change someone that has raped two year old.

MS. ABBOTT offered that members of the Department of Corrections (DOC) can speak to the actual treatments offered, but she has been told the treatment is not so much a cure for their impulses, but rather a behavioral cure and how people act upon heinous thoughts. This is one of the recommendations for which reinvestment is important because currently there is a deficit of treatment beds within the Alaska Department of Corrections (DOC) and outside of DOC, such that when someone receives a condition of release ordering sex offender treatment there is a lack of available options outside of prison, she said. The data showed that in-prison sex offender treatment had a cost benefit ration in that for every $1 spent on treatment, there is a $1.87 benefit returned to the state and state residents. She opined that it is nearly impossible to quantify the feeling of safety people have, but if treatment is completed and successful there is that cost benefit. The need for treatment far outweighs Alaska's current supply and the wait list for in-prison sex offender treatment is nearly four years long. She said that to implement this recommendation in any real way, the number of beds in prison would need to go up which is part of reinvestment

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CHAIR LEDOUX listed the people available to answer questions.

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REPRESENTATIVE LYNN requested examples of treatment for sex offenders outside of prison.

MS. ABBOTT opined that out of prison sex offender treatment is only located in Anchorage, and it is an intensive residential treatment often taking 18-30 months to complete.

REPRESENTATIVE LYNN asked whether the people are confined within the residential treatment center, or as in-house patients.

MS. ABBOTT opined that it is residential and the people are confined. Although, she pointed out, a person may have been released and is waiting to receive treatment based on a wait list, and at that point she does not believe them to be confined.

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JEFF EDWARDS, Executive Director, Parole Board, Department of Corrections, advised that on behalf of the Parole Board, and as

head of the paroling authority, they support the bill. He pointed out that the Parole Board has been trying to move in this direction on many items mentioned in the bill for a few years. The bill locks down the Parole Board's process, incentivizes people to come before the board, streamlines the application process, increases the amount of people that come before the Parole Board, and allows the board to have a greater impact in the justice system. The Parole Board recognizes that there are only a few legal ways to be released early from prison and parole is one, and the Parole Board takes it very seriously. Public safety risk is considered to the highest level as the board's first priority, and this bill allows the board to do that. Also, he said, it allows the Parole Board to target a certain group, and with geriatric parole there is not an automatic release for the aging inmate as there will be a review process.

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REPRESENTATIVE CLAMAN referred to his statement that the Parole Board has been trying to move in this direction in terms of more discretionary parole. He offered that 15 years ago he was last in front of the Parole Board and related that he had the following two impressions: An inmate would apply for discretionary parole and almost every time the board turned inmates down the first time because it wanted inmates to try twice in order to appreciate it more; and also the Parole Board didn't have many hearings so there was a long wait to ever even get considered for discretionary parole. He asked whether things have changed, and how so.

MR. EDWARDS responded that the first question is somewhat of a myth because the first time an inmate appears before the board, and especially for long-term inmates that have been in prison for decades, the board attempts to guide inmates in their release and ensure that they have the correct programming, the board wants to see that their risk has been reduced in the public safety aspect, and sometimes those applicants haven't fully addressed their risk and need. The board, in an attempt to minimize those risks, grants a continuance after the first time to do some programming, really knock down the reentry, and have them a solid resident. In the event they need transition the board moves them to a CRC or EM. The plan often takes time to be certain the inmate has fully addressed the risk, has the support they need in the community, and works closely with their institutional parole officer. The board will see them again to

be certain the plan is in place and oftentimes grant release. He asked for a repeat of the second question.

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REPRESENTATIVE CLAMAN asked how things have changed in the frequency the Parole Board meets to hear cases because his impression is that the board moves fairly slow to hear cases and slow to decide discretionary parole matters.

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MR. EDWARDS replied that the Parole Board sets an annual schedule in advance, the schedule for 2016 has been set, and the Parole Board attempts to travel to each sentenced prison with all eligible inmates at least twice a year. He advised that the schedule is set far in advance in order to offer the parole officers an opportunity to work with the victims and the surviving families, and to process packets of information and, he noted, the process starts well in advance of the inmate's eligibility date. He asked that the committee to keep in mind that the Parole Board hearings are open to the victims and surviving families and many must plan for travel; therefore, and a lot of advanced planning goes into it. He restated that the Parole Board does go to each institution for the large sentence facilities at least twice a year.

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REPRESENTATIVE CLAMAN offered that he understands the Parole Board is only going twice a year to the regional facilities, such as Anvil Mountain in Nome, but does that also mean the Parole Board is meeting twice a year at places such as the Mat-Su and Anchorage with more prisoners and families. He commented that it seems a little light for the more populous areas.

MR. EDWARDS explained that he was specifically speaking to the Parole Board's discretionary hearings, and with Anchorage being mostly a pretrial facility the board does not conduct a lot of discretionary hearings.

1:19:27 PM

REPRESENTATIVE CLAMAN rephrased his question, and noted that where there is a lot of discretionary population, it appears that twice a year is not very often if the Parole Board is trying to pick up the pace in taking up these matters. He said

he was referring to the population as opposed to the geography and asked whether the Parole Board is able to hear them more often.

MR. EDWARDS responded that the board will have to take a serious look at that, especially with the potential of HB 205. He asked the committee to keep in mind that the Parole Board is part-time which is dissimilar to a superior court judge with their own courtroom. This legislation will move their job duties and responsibilities more to three-fourths to full time and the appears eager and excited to expand the calendar in order to target eligible inmates with more frequent hearings and increased visits to facilities.

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CHAIR LEDOUX asked the type of paperwork involved for the inmate attempting to get discretionary parole.

MR. EDWARDS replied that inmates are asked to fill out a packet of information with specific targeted questions such as, the inmate's reentry plan, where they plan to live, who they will associate with, employment opportunities, and the programming they've completed while incarcerated.

CHAIR LEDOUX requested a copy of the application forms so the committee could determine whether it would be helpful to modify the forms.

MR. EDWARDS said he would provide the information, and offered that within the last year the Parole Board has basically cut the number of questions in half to make the process easier for the inmates and the parole officers.

1:22:29 PM

CHAIR LEDOUX asked at what point, in an inmate's sentence, they are eligible for parole, currently.

MR. EDWARDS replied that it is a difficult question to answer because it depends upon the number of crimes a person has committed and the level of crime. He explained that parole eligibility is a complex calculation at times so it is difficult to specifically answer. Generally speaking, he offered, it will either be one-third or one-fourths of the sentence when an inmate becomes eligible for parole.

1:23:21 PM

CHAIR LEDOUX surmised that determining an inmate's eligibility for discretionary parole is somewhat complex, and asked how an inmate would determine their eligibility, and who they would ask.

MR. EDWARDS responded that subsequent to sentencing, the time accountant, within the inmate's facility, prepares the mathematical calculation, a time sheet, wherein the eligibility for parole date is listed and the inmate receives a copy. In the event the inmate disagrees with the calculation or has a question they can ask for clarification from the time accountant, and if they still disagree the inmate can appeal to the chief time accountant for DOC, he explained.

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CHAIR LEDOUX asked whether the inmate is allowed to keep the time sheet in their cell and tape it up so they know the date, and what happens if they lose the document.

MR. EDWARDS advised that DOC is required to give the individual a copy of the document and they can tape it up in their cell if they wish. As a failsafe measure prior to the eligibility of each inmate and prior to the Parole Board going to the institution, in most cases DOC will post a list of eligible inmates and contact each inmate eligible to appear before the Parole Board well in advance of the Parole Board's arrival. He said that with specific notification requirements the eligible inmate will be notified that they are eligible to apply for parole. They are then given a form that says check the box whether you want to apply, no apply, or apply in the future at some point but not at this particular time the board is coming.

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REPRESENTATIVE LYNN pointed out some inmates may have a limited reading and comprehension ability, and asked whether inmates receive assistance with someone to guide them in filling out the forms correctly. He advised that he previously taught special education students and they would definitely need assistance filling out the complicated form, and he also requested a copy of the forms the inmates are expected to fill out.

MR. EDWARDS answered that the form is simplified to a 4th or 5th grade level of reading and comprehension. Specifically, he

said, the institutional parole officer is tasked with guiding inmates through any confusing language and to make time for one-on-one sessions, but he is not certain there is a counselor to walk them through the process.

CHAIR LEDOUX pointed out that research shows that many people within the prison system are not capable of reading at the 3rd grade level so while she applauds his efforts to simplify the forms to the 4th and 5th grade level, it may need to be simplified beneath those levels.

1:28:38 PM

REPRESENTATIVE KELLER requested more information as to why it is complex to keep track of the parole date because it is calculated in court at sentencing, and asked whether DOC has the authority to unilaterally change the eligibility date.

MR. EDWARDS replied that the Department of Corrections (DOC) does not have the authority to change the eligibility requirement as stated within the Alaska Statutes. He related that based upon the defendant's sentence and the sentencing guidelines the defendant falls into, the court makes or does not make the defendant eligible. He explained that the complication he spoke to earlier pertains to offenders that have been convicted of multiple crimes, such as felony after felony after felony. The complex calculation arrives in determining which of those cases are eligible for parole, and not eligible for parole, and there are presumptive consecutive cases with two or three cases stacked together the inmate is serving time on. He agreed that the simple one case that goes to court and gets sentenced by the judge should be a fairly easy calculation. Although, he reiterated, when it is the 3rd, 4th, 5th, or 6th felony and DOC is tasked with making those calculations and some of those cases are not eligible for parole, some are, is where it gets complicated. He described the time accounting class as probably the most difficult training class within DOC, it is a 40 hour class and specifically targets the ability to make these calculations.

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CHAIR LEDOUX noted that his description of the process as complicated for the typical prisoner to calculate, and she assumed that under this bill it would be radically simplified.

MR. EDWARDS responded that the calculations will not be simplified. He opined that the intent of the bill is that the process be simplified but the actual number crunching of eligible inmates may not be as simplified. He further opined that the bill is more targeted to ensure that eligible inmates will appear before the Parole Board, and that the Parole Board's process for release will be simplified. He extended that the Parole Board's hope and direction is to make and streamline the process and once the committee reviews the application, it can work on simplifying that process and make it easier to apply. Although, it is not necessarily referring to the calculations for when an inmate is, or is not, eligible for application to parole.

1:32:34 PM

REPRESENTATIVE CLAMAN referred to AS 33.16.090 regarding eligibility for discretionary parole and minimum terms to be served, and opined that within the early days of the state there was "statutory good time," which is different than discretionary parole. The initial automatic good time credit was changed from 25 percent to 33 1/3 percent and within the older statutes the discretionary parole was generally available after serving one-third of the sentence, he advised. Currently, there are many different variations regarding the calculation depending upon the crime, the presumptive sentence, where 180 days fits in, how many prior offenses, and it is a more complicated calculation. In broad terms, he said, there was a time when a defendant entered prison with a three year sentence, they knew they would be released after two years if they followed the rules. In the event the inmate did not follow the rules a portion of their good time could be lost and the inmate would be required to serve part of the third year.

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REPRESENTATIVE CLAMAN continued that the average prisoner would be released upon the completion of two years and this prisoner would be up for discretionary parole after one year and, he offered, that the calculation has changed in terms of how to calculate when eligible. He said that unless something has changed, once a defendant was sentenced and entered prison, within the first day or first week, their in-house probation officer sat down with them and calculated [time] based upon when they were sentenced and whether it was the 25 percent good time or 33 1/3 percent good time. The probation officer "did all these calculations like you would do now under the existing

statute," and the inmate received a document depicting their sentence, good time credit, and the date the inmate was eligible for parole. In the event the inmate was unhappy with the calculations they could ask someone to take another look ask their fellow inmates whether the calculations were correct. He assured the committee there is a tremendous amount of knowledge amongst those incarcerated regarding these calculations. He offered, that the notion that once the calculation is done and there is confusion is actually not that big of a risk. He remarked that the prisoners know exactly the day they will be released and if the calculation was incorrect there are three inmates advising them how the calculation was performed incorrectly. It is certainly is more complicated, he added, because as he read through the statutes it made his eyes cross, and asked Mr. Edwards whether his description was accurate.

MR. EDWARDS agreed with his description and clarified that the institutional parole officer no longer calculates the dates. He advised that the inmate's complete file and history is forwarded to a certified time accountant, usually a sergeant or criminal justice technician, designated by DOC to make the calculations and that time accountant has attended the class he previously described.

REPRESENTATIVE CLAMAN surmised that currently there are specialists performing the calculations.

1:37:33 PM

CHAIR LEDOUX requested information regarding the inmates that are never eligible for parole, and whether HB 205 will change that.

MR. EDWARDS opined that HB 205 will expand the number of eligible inmates, and there are specific groups that now will become eligible to apply.

CHAIR LEDOUX asked the type of group that is not eligible to apply currently.

MR. EDWARDS further opined that there are groups of sex offenders and repeat sex offenders not eligible to apply, those who have committed a second felony and it becomes a consecutive sentence, and a class of unclassified inmates such as murderers. He advised he will provide a specific crime list.

CHAIR LEDOUX advised that she would like the list.

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GREG RAZO, Chairman, Alaska Criminal Justice Commission, referred to the parole eligibility section and the chart depicting inconsistencies within current Alaska Statutes for inmates eligible for parole. The chart shows the statute inconsistencies such that while unclassified felony offenders, on their first felony, or even with two prior felonies have eligibility for parole, whereas, class A felony offenders across the board do not, nor do class B felony offenders. He suggested that the legislature consider correcting that situation. He referred to the next slide, and agreed that parole is a complex system when 463 inmates are eligible and only 15 receive a hearing. The simple deduction is that something must be interfering with that eligibility and the actual getting to the hearing and, he related that it is probably the complexity. He said if the state incentivizes corrections officers in the institution to assist in getting parole hearings it may be more productive.

1:42:07 PM

MR. RAZO turned to the policies developed by the Alaska Criminal Justice Commission, and advised that the commission took the job seriously. The commission insisted on unanimous consensus in order to bring recommendations to the legislature. He related that the commission was stunned by the large number of misdemeanor offenders, even low-level misdemeanants sentenced to prison every year and that 67 percent of all admissions to prison in 2014 were for non-violent misdemeanors. He referred to another chart that depicted the state prison system clogged with the least serious offenders and pointed out that the state is spending money on the least serious sorts of crimes and not on the most dangerous people. He said that when adding in all of the misdemeanors combined, 82 percent of admissions to prison are for misdemeanor offenses and, he said, this cycling in and out of misdemeanors translates to millions and millions of dollars and DOC dollars, court dollars, and public safety dollars, it affects local communities and local jails, and it clogs the corrections system in that it does not produce dividends. Compared to defendants sentenced to probation, numerous studies have found that jail terms make offenders no less likely to commit crime upon release. The point being, he advised, is that there are prison alternatives to jail for misdemeanants that are more effective such as, probation, treatment, community supervision, and there are simply more

effective things to do with state correctional dollars than imprison people. To address this issue, he explained, originally the commission's recommendation was to reclassify all of the class B misdemeanors to violations - the non-criminal offenses, and set a threshold of $250 fine for those offenders and get them out of the system, but the recommendation was met with skepticism. He offered that when he was a young zealous prosecutor he was referred a case by the police for taunting a police dog that he actually took to trial and after being laughed out of court by the judge and jury, realized that the state has class B misdemeanors on the books that are simply ridiculous. He opined that taking a hard look at class B misdemeanors is important and that is why the recommendation was to make those violations.

1:45:34 PM

MR. RAZO referred to the notion that the first-time DUI be served on electronic monitoring and explained that currently electronic monitoring is very sophisticated, as it can track the location of a person, whether they've left their zone, their consumption of alcohol, and a number of things can be monitored. These days, the commission's recommendation to allow people to serve time on electronic monitoring is happening for the most part across the state when electronic monitoring is available and the utilization of a prison alternative "saves the state money by not having to spend that $154 a day for imprisonment," he explained. The commission also recommended a 30 day cap on class A misdemeanors ensuring that the majority of defendants would see their sentences reduced to under one month. He stated that there was still the opportunity for argument for those most serious misdemeanors, the serious aggravated misdemeanors to have a sentence longer than the 30 day recommendation. Mr. Razo then referred to the drug penalties and offered that the commission reviewed many documents depicting the benefits of prison versus the benefits of alternatives to prison. He said that the consensus within the commission was that Alaska has an epidemic of addiction and prisons are filled with addicted people. He repeated the story he previously testified to regarding Anvil Mountain Correctional Center and Alaska Native people. Addiction fills Alaska's prisons but it is not a criminal justice problem, it is a health problem affecting the entire state and the reinvestment money should be spent on the treatment of addiction, he stressed. Frankly, he said, this serious heroin epidemic fits squarely into those categories, and it is not the first time a popular drug has been a scourge and pariah in this state. Thirty years ago the drug scourge was

cocaine, then crack cocaine, then methamphetamines, and as those drugs became more popular the state ratcheted up the sentences on each of them and now the state has a prison system filled with drug offenders without treatment in prison for the most part. The commission recommended treatment in prison, more treatment available upon reentry, and reclassification of drug penalties. He pointed to the fact that the state is not treating this situation as the health problem it actually is.

1:50:07 PM

MR. RAZO offered that one drug recommendation relates to the differentiation between high-level commercial dealers and low-level dealers. He related that the intention was to simplify the statutes so a law enforcement officer did not have to carry a scale to determine whether it is one gram or 16 ounces, or a pound. Originally, he advised, a majority of commissioners thought that 5 grams of a serious controlled substance would be the correct amount, but consensus was the 2.5 grams reflected in the bill. He offered that it created a simpler system that focused the state's dollars and the state's resources on the most serious offenders, the commercial dealers. He advised that the felony theft threshold recommendations arrived through research, and said that the evidence shows it actually makes no difference as to the level of theft threshold in terms of reducing crime. There is no correlation between the two and, statistically, he pointed out, it cannot be said that raising the theft dollar threshold will result in more crime and that 23 other states have raised the theft threshold and have not seen an increase in felony theft. He offered that this is a prime opportunity to determine whether the state's statutes correlate with the intended result of less criminal behavior, and in this case the statutes don't and now is the opportunity. He related that he understands the business community is up in arms about this and that he has been a businessman, but in business it is important to understand the numbers and the numbers in this case do not support the state's current laws.

1:52:44 PM

CHAIR LEDOUX surmised that research shows that the states that have passed laws regarding the number for the felony have not seen an increase in felony theft, and asked whether these states have seen an increase in misdemeanor theft.

MR. RAZO clarified that they have not seen an increase in crime.

1:53:17 PM

REPRESENTATIVE CLAMAN recalled the slide regarding states that had increased the theft thresholds in comparison to those that had not, and that the states that had increased the theft thresholds actually saw a reduction in overall larcenies. He asked him to speak to that research finding.

MR. RAZO deferred to Susanne DiPietro of the Alaska Judicial Council, and advised the Alaska Judicial Council provided technical advice, as well as representatives from The PEW Charitable Trust.

1:54:11 PM

SUSANNE DIPIETRO, Executive Director, Alaska Judicial Council, Alaska Court System, advised that nationwide and in Alaska as well until the last few months, there has been a general overall decrease in property and larceny crime. She pointed out that 19 of the 23 states that have raised their felony threshold have continued to experience property crime decreases that had been the trend over the last 10 years or so.

REPRESENTATIVE CLAMAN asked whether there were different trends in the states that did not their felony threshold.

MS. DIPIETRO offered that the PEW study compared the 23 states that had raised their felony theft thresholds to states that had not, and there was no difference between the two in the rates of property and larceny crimes.

1:55:35 PM

REPRESENTATIVE CLAMAN referred to some of the responses Mr. Razo had heard from the business community regarding concerns in raising the felony theft threshold which sounds like store owners and others. He offered that the most common complaint he has heard from business owners in Anchorage with regard to low-level thefts of up to $1,000 or more, is that when they receive a shop lift and call the police department, it is rare the police have the time and resources to respond. He asked within Mr. Razo's experience as a prosecutor in terms of businesses, were they satisfied with the prosecution of relatively low dollar thefts at that time, or has this been a long time pattern wherein businesses would like a more aggressive prosecution of shoplifting but the state does not have the resources.

1:56:09 PM

MR. RAZO responded that the prevalence of shoplifting, low-level theft in retail stores is fairly significant and it is something that businesses abhor because they don't make any money when someone steals from them. He advised that Representative Claman is correct in that those cases are very rarely prosecuted or even investigated by police officers, and the cases are disposed of through plea negotiations well before anyone goes to jail. He concluded that, based upon his experiences, repetitive thieves generally have some reason for the fact that they are stealing and generally it involves their addiction problem. The people are using the money gained from stealing to support a drug or alcohol habit and, he opined, if the state starts dealing with the underlying cause for the criminal behavior, the state's money is better spent. Thereby, simply throwing someone in prison and not dealing with what brought them to prison in the first place doesn't make as much sense as spending less money for more effective treatment, he expressed.

REPRESENTATIVE CLAMAN referred back to the issue of raising the felony theft threshold and opined that the frustration of the business community is the shortage of resources to prosecute those crimes and, he indicated, that will not change whether the felony theft threshold is raised or left the same.

MR. RAZO responded that much of frustration is the repetitive nature of the criminal conduct. He said he did not have an answer to whether the frustration is due to lack of resources.

1:59:42 PM

REPRESENTATIVE KELLER asked whether the business community responded to the data that the commission's recommendations were based upon, and whether there is dueling data out there. He further asked whether it is Mr. Razo's opinion that the business community is ignoring the fact that it won't do any good anyway to keep the threshold low, is it viewed as a disincentive for crime or is there more to it than that.

MR. RAZO responded that the Alaska Statutes aim to achieve a number of goals in sentencing, such as community condemnation, and the business community believes that community condemnation is more significant than the potential for rehabilitation of someone that steals from them over and over again, so that becomes the focus. He opined that it is not consciously or intentionally disregarding evidence suggesting there is no

correlation. He further opined that the business community in general believes community condemnation is such an important goal that regardless of the evidence, it is worthwhile to spend money on these low-level offenses that are not dangerous to anyone. With regard to raising the felony theft threshold, he said that while the commission was in Kotzebue an attorney within the court system testified that if a young person in Kotzebue steals a Rock Star and a candy bar from a grocery store it is a felony theft, yet in Anchorage it is not. He pointed out that it simply speaks to the vast difference in value across the State of Alaska for the same crimes.

2:02:24 PM

CHAIR LEDOUX related a concern voiced by the business community having to do with misdemeanors and the balance of what will be prosecuted, such that if it is a misdemeanor it may not be prosecuted at all, whereas if it is a felony it will be prosecuted. She asked whether that would affect the statistics on the thefts because if they are not being prosecuted then possibly the crimes are still being committed and possibly even more thefts are committed, but if they're not being prosecuted they will not show up in the statistics.

MR. RAZO replied that he does not have personal knowledge of the level of prosecution of felony theft or misdemeanor theft. He opined that Chair LeDoux is accurate in her reporting of the concerns of the business community, but in reviewing the statute the focus from the very beginning was to achieve greater public safety by targeting the most dangerous offenders. At the end of the day, he remarked, the property offenses are contained in separate part from the statutes than the offenses against people for a reason. He opined that when there is no correlation between the intended effects of reducing crime with the dollar level of theft, that it makes more sense to at least consider that that is an alternative for the committee's judgement.

2:04:45 PM

MR. RAZO referred to the recommendation to align non-sex felony presumptive ranges with Alaska's prior presumptive ranges, and remarked that this issue is important to understand. In 2005, he pointed out, the laws were completely different because presumptive sentencing existed and he could tell a client that if they were convicted for this offense the presumptive sentence for their class C felony was five years. Shortly after Blakely v Washington, 542 US 296 (2004), it all changed and the

legislature changed the statutes to conform with the requirements of the findings in Blakely. As a result, the presumptive sentence in 2005 became the floor of a sentencing range that was developed into the new statutes. The legislature was clear at the time that they were not intending to increase the length of sentence, but the fact is that that's exactly what happened by this change in the felony sentencing statutes. He advised that the consequence has been a substantial change in the length of time people spend in prison. The proof is in the data, average felony sentence lengths are up 31 percent since presumptive ranges went into effect, and even though it was not the legislature's intent to have this happen, it happened and the commission felt this is the time to correct that. The commission recommended putting the state's sentencing back to what it was 10 years ago, and to allow for the range of sentences that includes the prior presumptive term. The commission believes the recommendation will substantially achieve the desire to increase public safety and hold people accountable, and the evidence shows that lengthy prison sentences simply do not reduce recidivism, he advised.

2:07:18 PM

MR. RAZO referred to discretionary parole and advised the commission's intent was to expand and streamline the use of discretionary parole in Alaska. He advised that when the commission reviewed discretionary parole in Alaska they were surprised by how few offenders were eligible for parole, and of those few eligible how few even applied for it. Many of the commission members reported the fact that the parole application process was so confusing that many offenders simply chose to opt out and serve their sentence out in full. The commission recommended addressing it in two ways: dumping Alaska's current confusing parole eligibility statutes, whereby, the most serious unclassified offenses are eligible for parole but offenders convicted of the sale of heroin, for example, are not; and, expanding eligibility to all but the most serious class A or unclassified felony offenders with prior convictions, otherwise, the inmate would be eligible for parole. The commission sought to create an administrative parole process that would allow first time felony class B, and class C, offenders to be presumptively paroled at their eligibility date, only if they had complied with their case plan, a victim had not requested a hearing, and they were a model prisoner, he said. Administrative parole was built into the commission's recommendations and, he said, the commission would argue that

having that automatic administrative parole for someone that is compliant just makes sense.

2:09:06 PM

MR. RAZO referred to the recommendation regarding specialty parole release for long-term geriatric inmates wherein the data revealed that the population of old inmates has increased by times two over the last 10 years. He described it as a population statistic in that baby boomers are aging and that older people are not the healthiest people in the world in general. The idea, he explained, was to not summarily let the geriatric population out of jail, but to at least offer the possibility of parole at an earlier date if they had served a substantial term of sentence. This is the consensus of the commission that made sense to all members, including the attorney general, public defender, court system, and judges, he advised.

2:10:19 PM

MR. RAZO referred to the final sentencing recommendation and advised the recommendation is to incentivize completion of treatment for sex offenders with an earned time credit. In 2006, the state got "Tough on Crime" with regard to the very serious problem of sexual abuse of a minor and sexual assault and the legislature doubled and in some instances tripled or quadrupled sex offender sentence lengths. Due to the increased sentence lengths, the sexual offender population in prison has grown by 38 percent over the last decade and is currently nearly one-quarter of the sentenced inmate population. He pointed out that without changes to safely reduce sex offender lengths of stay this prison population will continue to grow and is growing the fastest. The commission debated whether to recommend reducing sex offender sentences and decided "No," instead the commission recommended making some sex offenders eligible for discretionary parole. He stressed that the recommendation is simply parole eligibility and that parole eligibility was not extended to the most serious class A and unclassified sex offenders. Discretionary parole is not an automatic release but rather creates an opportunity for the inmate to put before the Parole Board their behavior and whether the programming they received in prison is sufficient. Thereby, the Parole Board can review each inmate on a case-by-case basis and determine what is appropriate for that inmate in terms of release.

2:12:22 PM

MR. RAZO pointed out that rehabilitation for sex offenders is not about curing them or about making sure they no longer have deviant thoughts, but rather it is [changing their] behavior and ensuring that they make better choices regardless of what they think. Yes, sex offenders can be rehabilitated, he said, through programming based upon appropriate boundaries and cognitive behavioral programming that identifies thinking errors such as, justifications that place blame for anti-social behavior on someone else or something else. He explained that behavioral group therapy holds offenders accountable for their thinking errors and builds the offender's ability to make better choices. He expressed that evidence has proven that with therapy together with strict community supervision by the community probation officers, restrictions on residency, restrictions on travel, restrictions on internet use, and public condemnation associated with sex offender registration, that sexual offenders in general are seeing the lowest level of recidivism of the entire prison population.

2:14:08 PM

REPRESENTATIVE LYNN asked Mr. Razo to restate the percentage of the prison populations that are sex offenders, and further asked whether the discussion had been about extreme sexual offenses as compared to the 18 year old with a 12 year old.

MR. RAZO said he would have to look through his notes.

CHAIR LEDOUX opined that it was 38 percent of the prison population.

MR. RAZO offered that due to the increase in sentence lengths, the sex offender population in prison has increased 38 percent over the last 10 years.

REPRESENTATIVE LYNN verified that Mr. Razo said it increased 38 percent and not that 38 percent of the prison population are sex offenders.

MR. RAZO clarified that almost 25 percent of the prison population are sex offenders.

MR. RAZO, in response to Chair LeDoux, responded 25 percent, one-quarter.

2:16:08 PM

JOHN SKIDMORE, Director, Legal Services Section, Criminal Division, Department of Law (DOL), said he was available for questions.

CHAIR LEDOUX asked Mr. Skidmore to speak directly to the question of felony theft limits and the prosecutions for theft, and further asked that if the committee changes the felony levels will people be less likely to be prosecuted.

MR. SKIDMORE stated that there is not an easy straightforward answer, but answered that within the last three years the criminal division's budget has been cut by greater than six percent and those reductions meant they had to reduce their personnel by six percent. He advised that while preparing information for the budget realized that six percent is, interestingly enough, the exact same percentage of cases they declined. In reviewing those numbers, advised that the prosecutors have tried to focus on what they deem to be the most important cases and crimes by evaluating everything based on the evidence and whether they can prove it. Although, when their resources are limited they also have to determine where it is best they devote those resources. He offered that his office did see a greater increase in the declining of misdemeanors than of felonies due to the fact that if they have to choose between prosecuting a felony versus prosecuting a misdemeanor, they will usually choose the prosecution of the felony because it is a more serious crime. He stressed that it does not mean his office would automatically decline misdemeanor thefts, although, if they have a difficult choice between a felony and a misdemeanor there may be an impact on the decision that they have to make with limited resources and he left it to the committee to determine where the threshold should be set. Anecdotally, he remarked, during his 18 years of prosecuting he supervised the Anchorage Property Unit and the felony crime threshold was $500. He noted that there was an internal policy that unless a person stole more than $2,000, they were offered a misdemeanor resolution and that did not mean no jail. There are provisions in this bill that would actually reduce the sentences, even for misdemeanor property offenses, which is a policy call and recommended by the commission. He continued that many places within the Department of Law having been following that general guideline and that is where inflation has been. It would not materially change what happens in the way in which they handle cases, he opined but he doesn't know what happens with Alaska's budget or the criminal division's budget,

overall. He acknowledged that his answer is not clear cut as he does not think there is a clear cut answer to the question.

2:20:02 PM

CHAIR LEDOUX pointed out that it appears the business community might have a reason to be concerned.

MR. SKIDMORE noted that in Anchorage, most of the misdemeanors are now prosecuted by the municipal prosecutor's office and they do not engage in that same analysis from the standpoint that they don't prosecute felonies, and only misdemeanors. People in the business community could be upset if his office declined a case and, he offered that earlier this year he had conversations with folks in the Kenai office regarding the fact that they were prosecuting $5 shoplifts. Mr. Skidmore advised them that it is very difficult for the department to expend resources on $5 shoplifts when there are serious sexual assaults that need their time and attention, and he was concerned about whether or not they were receiving that attention. He expressed that they would not automatically decline those cases, but that their resources are something they take into consideration.

2:21:12 PM

REPRESENTATIVE CLAMAN surmised that when Mr. Skidmore was the director of the property unit there was a $2,000 cutoff that even though it was technically a felony, they never charged them as felonies and charged them as misdemeanors. He asked whether that is still the policy in the criminal division.

MR. SKIDMORE stressed that was not his testimony, and clarified that when cases came to his office and were charged as felonies they would resolve them by engaging in plea negotiations and resolve them as a misdemeanor if it was under $2,000. He could not say whether that is still the way in which that unit is operating, and pointed out that at the time of those policies he was one of two people in the unit and it was supposed to be staffed by four people, and explained that they engaged in those practices to try to focus their resources where they most needed to be focused. Currently, he explained, the Anchorage office no longer has a theft unit because the Anchorage office has been reorganized to be focused on individual judges for a whole host of reasons that he did not want to take up the committee's time to analyze now. He related that he does not know whether felony theft cases under $2,000 are being resolved as misdemeanors and he would have to talk with folks about that. He expressed that

the Department of Law as a whole supports the increase of the felony theft threshold because it is consistent with what inflation has done, and it is consistent with the division's view of how resources should be handled. That does not mean that no one should be prosecuting misdemeanors, and they do still prosecute misdemeanor thefts. Although, in terms of resources put into misdemeanor thefts, this is a resource analysis they've already been engaged in and for that reason support this change in the law.

2:23:28 PM

REPRESENTATIVE CLAMAN referred to an Anchorage Fred Meyer store with a shoplift charge of $1,500, and asked whether it will be referred to the municipal prosecutor's office to go forward, and not be prosecuted by the state.

MR. SKIDMORE answered that if the changes in HB 205 are enacted and placed into law, the answer to his question would be yes, because it would be a misdemeanor case and prosecuted by the municipality as opposed to the Anchorage D.A.'s office.

REPRESENTATIVE CLAMAN noted that his question was specifically today under existing law.

MR. SKIDMORE responded that that was the second part he was about to answer, and said it would be referred to the Anchorage District Attorney's Office because it would be a felony level crime above the current threshold of $750. It would be charged as a felony, referred to the Anchorage office and they would evaluate the case in terms of what was stolen, the criminal history of the person with a greater emphasis placed on repeat offenders, and if the office deemed it appropriate to prosecute as a felony they would continue to do so, he explained. In the event it was deemed appropriate to resolve as a misdemeanor they would make that offer and continue to handle the case and not simply just dismiss it. He said he doesn't know that they would refer to the municipality because it came in as a felony and the division sees those cases through to the end resolution.

2:25:39 PM

REPRESENTATIVE CLAMAN said in broad terms on a policy level in terms of discussions with the business community being unhappy that the prosecutor's office, based on resource realities, is electing to prosecute some felonies by today's standards as misdemeanors. He noted, "At some level that unhappiness, the

response is 'Well, I guess they're telling us that we need to fund more prosecutors to be able to prosecute more cases.' And our response to the business community might very well say, 'Well, we've kind of got this financial problem and if you, business community, want to fund a bunch of prosecutors to prosecute these thefts, we're certainly happy to come up with ways to tax the business community." His prediction, he said, is that they probably won't be that interested in that proposal. So at some level the question becomes more resources that we're willing to dedicate to prosecution as the big budget question and not really the question of raising the theft threshold." He asked whether that would be a fair description of reality the state is looking at, knowing that Mr. Skidmore is not asked to make decisions about allocations of money.

MR. SKIDMORE opined that Representative Claman is accurate to say that that is not something that is appropriate for him to comment on, because those are larger policy matters that he leaves to the legislature and its wisdom.

2:27:15 PM

CHAIR LEDOUX asked whether Mr. Skidmore had anything further he would like to comment on.

MR. SKIDMORE advised that he is the director of the criminal division and he has served the people of Alaska for 18 years as a prosecutor. He has worked in Kenai, Bethel, Dillingham, and Anchorage in supervising the Property and Violent Crimes Unit, as well as the supervisor of Special Prosecution before becoming the director of the criminal division. He related that he was not a member of the Alaska Justice Criminal Commission, but the attorney general was, and he attended a number of the meetings and tried to follow much of what they did. He thanked a number of individuals. He said that HB 205 adopts many of the recommendations if not all of the recommendations made by the commission and he will broadly describe a couple of concepts. The commission found that the current rate of incarceration would result in having to build a new prison and that the policies currently found in many aspects of the criminal justice system have not resulted in the rate of recidivism that many would like to see. The PEW Charitable Trust, early on in his conversations with them, also acknowledged that the work of the commission and that PEW could help focus on reducing recidivism rates and lowering the prison population. They do not have metrics for analyzing public safety, per se, or community condemnation and those were not focused on, but the commission

kept those things in mind. This was supported by the fact that both the governor and legislative leaders asked the commission to make recommendations that could reduce the prison population by as much as 25 percent. In sentencing, the commission looked at low-level offenses and lowering class B misdemeanors from 90 days to 10 days as the maximum sentence; and creating a presumptive maximum of 30-day sentences, with some exceptions, for class A misdemeanors. He noted that the exceptions in the bill attempt to be consistent with current case law, such as Blakely, and that refinements need to be made to those sections. The refinements are not due to any recommendations from the commission but just understanding how that law works. He extended that the Department of Law (DOL) is committed to working with the sponsor's office to ensure that the bill is drafted in a manner that is consistent with current case law.

2:30:27 PM

MR. SKIDMORE offered that the commission also worked on reducing theft crimes, both in terms of the threshold for felonies as well as how they were sentenced. With regard to misdemeanors, the commission created the presumptive range of 30 days for class B misdemeanors, a maximum of 10 days. He referred to other theft crimes and said the commission would not send these people to jail and would put them on probation because that was just as effective at reducing recidivism and perhaps more effective than putting people in jail. He pointed out that it runs counter to what many people think of in the criminal justice system but those are the recommendations of the commission, and if the issue is spending less money, focusing on theft crimes is an appropriate way to do that. The commission looked at narcotics and made recommendations for changes there and also lowered sentences, and beyond that the commission turned to presumptive sentencing on all felonies, other than sex felonies, and reduced those ranges. He said he agrees that the legislature originally intended to create ranges and the evidence suggests that the amount of sentences imposed did in fact increase. Previous testimony related 13 percent for the property offenses and 16 percent for drug offenses. Therefore, the commission recommended reducing those presumptive ranges and, he expressed, that he sees nothing wrong with that, and advised it is strictly a policy call and given the amount of money having been spent that seems to appropriate overall. From that point, the commission asked how else could they reduce the number of people in prison and they then turned to probation and parole. He noted that, although, he is not the expert on parole he agrees that having greater eligibility for discretionary

parole makes sense. There was one area in which it is not discretionary and he wanted to be certain folks understood that. He said this is consistent with the recommendation from the commission and that is administrative parole. He explained that administrative parole is a "shall release," and the Parole Board does not get discretion if someone is eligible "they shall release them." That's the recommendation of the commission and that's the way HB 205 addresses it.

2:32:52 PM

MR. SKIDMORE advised that the commission then turned to the idea of using "stick and carrot," and from a logical standpoint that certainly makes sense. If there are misbehaving folks and the goal is to change that behavior it must be approached both from offering rewards when they do positive things as well as penalties for negative actions. He said those are the overall concepts that they attempted to adopt, and he cannot say that every prosecutor will be thrilled with all of those changes but when reviewing the overall problem presented, many of these solutions certainly make sense logically and the evidence appears to support many of them.

2:34:32 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 the commission asked him to attend the committee meeting to discuss and answer questions regarding the drug recommendations and the changes in HB 205.

MR. STEINER noted an issue that had not been discussed with regard to the felony theft reductions and said there does remain a recidivist provision for misdemeanors such that a person's third class A misdemeanor prosecution remains a felony so there is a recidivist statute. He said he cannot speak for DOL but he knows that each community is different across the state, and in Anchorage many of the misdemeanors are prosecuted by the municipality. Within small communities, the prosecutors often know the individuals involved and he opined that those things are factored in when cases are screened in if someone is repeatedly getting into trouble, it may be something that factors into their decision to screen something in.

2:35:51 PM

REPRESENTATIVE KELLER asked for clarification, "It's a third misdemeanor but it would be, if this were to pass, it would be at the higher threshold."

MR. STEINER answered correct, the thresholds would be raised. He turned to the recommendations involving the drugs, and was struck by the data on the impact of incarceration, that jail in fact increases recidivism in many cases and it has a negative effect on what the state is trying to achieve in terms of rehabilitation. He said he was also struck by the fact that jurisdictions handling possession as a misdemeanor had slightly lower rates of crime in terms of property crime, violent crime, and drug use. He explained that, based upon those data points and other supporting data, the recommendation was made to reduce possession to a misdemeanor across the board for all drugs with a graduated scheme for first, second and third possession to increase the penalty and the incentive to complete treatment or participate in treatment. The goal being not just to save money, but to promote rehabilitation, promote opportunities for drug and alcohol treatment, and for individuals to address whatever the underlying issues are that are driving their drug use. The scheme has been changed, and in a sense treats all drugs the same, possession is a misdemeanor, low-level sales is a low-level felony, and sales of larger quantities merits a much larger response. The data across the board suggested that the longer jail sentences didn't do anything to reduce recidivism. He reminded the committee that primarily the focus of the commission was to ensure a reduction in recidivism and that public safety was paramount through all of these discussions. The commission was trying to save money, and in fact wanted to be certain the public was safe and the crime went down, he related.

2:39:29 PM

DEAN WILLAMS, Commissioner Designee, Department of Corrections (DOC), advised he was available to answer questions.

CHAIR LEDOUX asked whether he would like to discuss the sex offender treatment program, and opined that committee members may have concerns.

COMMISSIONER WILLIAMS deferred to Laura Brooks, DOC Health Care Administrator.

CHAIR LEDOUX noted that her office would be in touch to schedule Ms. Brooks' testimony.

2:41:01 PM

REPRESENTATIVE CLAMAN referred to Section 61, the 120 day restriction on electronic monitoring for pretrial release, and noted that he had previously asked the actual percentage of cases that go to trial versus cases that are dismissed or pled out. He said he would like to get the statistic and asked whether Chair LeDoux would like the information distributed to the entire committee.

CHAIR LEDOUX responded in the affirmative.

[HB 205 was held over.]

2:42:30 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:42 p.m.