

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

March 30, 2016

1:03 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

HOUSE BILL NO. 317, "An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 236
"An Act relating to marriage solemnization."

- SCHEDULED BUT NOT HEARD

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
03/18/16	(H)	Heard & Held
03/18/16	(H)	MINUTE (JUD)
03/21/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/21/16	(H)	Heard & Held
03/21/16	(H)	MINUTE (JUD)
03/21/16	(H)	JUD AT 5:00 PM GRUENBERG 120
03/21/16	(H)	Heard & Held
03/21/16	(H)	MINUTE (JUD)
03/22/16	(H)	JUD AT 5:00 PM GRUENBERG 120
03/22/16	(H)	Heard & Held
03/22/16	(H)	MINUTE (JUD)
03/23/16	(H)	JUD AT 12:30 AM GRUENBERG 120
03/23/16	(H)	-- MEETING CANCELED --

03/23/16 (H) JUD AT 1:00 PM GRUENBERG 120
03/23/16 (H) -- Continued from 3/22/16 --
03/28/16 (H) JUD AT 1:00 PM GRUENBERG 120
03/28/16 (H) Heard & Held
03/28/16 (H) MINUTE (JUD)
03/30/16 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 317

SHORT TITLE: FORFEITURE: NO CIVIL IN REM; ONLY CRIMINAL
SPONSOR(S): REPRESENTATIVE(S) WILSON

02/17/16 (H) READ THE FIRST TIME - REFERRALS
02/17/16 (H) JUD, FIN
03/30/16 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

CATHLEEN MCLAUGHLIN, Director
Partners Reentry Partners Reentry Center
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 205, discussed reentry.

BRENDA STANFILL, Commissioner
Alaska Justice Commission
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 205, discussed victims.

SYLVAN ROBB, Policy Analyst
Office of Management & Budget (OMB)
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 205, 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, answered questions regarding restitution.

TAMMIE WILSON, Representative
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 317 as prime sponsor.

KEVIN FITZGERALD
Attorney
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 317, testified in favor of the bill.

JOHN SKIDMORE, Director
Legal Services Section
Criminal Division
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 317, testified and answered questions.

ACTION NARRATIVE

[1:03:27 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Keller, Lynn, Millett, Claman, Foster, and LeDoux were present at the call to order. Representative Kreiss-Tomkins arrived as the meeting was in progress.

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

[1:04:08 PM](#)

CHAIR LEDOUX announced that the first 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 in the 3/14/16 meeting.]

CHAIR LEDOUX advised that the committee will continue testimony regarding reinvestment policies.

1:04:36 PM

CATHLEEN MCLAUGHLIN, Director, Partners Reentry Center, offered to answer questions regarding justice reinvestment from the standpoint of the Partners Reentry Center and holding people accountable. She explained that the center opened in August 2013, and since that time it has served 2,992 individuals, and since July 1, 2015 through March 30, 2016 there are 943 new individuals in the program with another 222 in the program previous to the beginning of this fiscal year, and its budget was to serve 500 but due to the need it will exceed that amount by a long shot. She further explained the Partners Reentry Center takes people who would otherwise be homeless. It provides, on a partnership basis - not through entitlement, the ability to obtain short-term housing for 45-60 days, the opportunity to get into permanent placement housing, and the opportunity to obtain employment or get back on Supplemental Security Income (SSI) or other benefits that will allow them to become self-sufficient within 60 days upon release.

1:06:57 PM

MS. MCLAUGHLIN explained that as of this morning, data shows that its daily attendance is between 62-94 people each day and operates as an immediate provider of services because people are served the day they walk in. The Partners Reentry Center asks for the person's commitment to work with them because statistically it has found that if it can hold onto people, who would otherwise be homeless, to be in the program one-to-two-to-three times per week they have a higher likelihood of success. She said it is focused on issues from the "Boots on the Ground," and opined that several of the House Judiciary Standing Committee members may have come to the Partners Reentry Center. She related that the Partners Reentry Center does have enough

housing with 12 sites in Anchorage and enough beds available, but it does shepherd its resources carefully so it can serve as many people as necessary while it refers them out to other more long-term reentry programs. Of the individuals who were in the Partners Reentry Center's program during the month of February, she noted, it had 62 hires for employment, and it started a Native reentry group which is up to 25-30 Native reentrants who are goal driven to advocate for themselves to go back to their villages.

1:08:35 PM

MS. MCLAUGHLIN explained that the Partners Reentry Center has been using that with a restorative justice model and its goal is to try to get people back to more culturally relevant areas if their villages invite them back and there is not a public safety risk. The reality with justice reinvestment is that 90-95 percent of all people incarcerated will be released and rather than deny that fact, the Partners Reentry Center embraces it and asks how to be certain these people have the healthiest transition if they don't have a support system in place. She pointed out that the Partners Reentry Center aggressively performs in-reach and pre-release planning at all of the institutions, and its highest volume comes out of the Goose Creek, Palmer, and Hiland Mountain Correctional Centers. She said the "inside and out program" was recently transferred to the Partners Reentry Center at retiring Justice Dana Fabe's request, and it will aggressively follow through at the Hiland Mountain Correctional Center.

1:09:58 PM

MS. MCLAUGHLIN offered that the Partners Reentry Center is involved in the Vivitrol program because there were too many overdoses of heroin and the misuse of alcohol. She explained that it is a no cost event for the state as the Partners Reentry Center is doing it without grant monies. Vivitrol is a shot version of the oral Naltrexone and the goal is to get opioid, heroin, or alcohol addicted people the shot as soon as release is possible because it has been found that people with high addiction rates, with those three substances, usually recidivate within the first thirty days, she explained. Currently, it is a pilot program and the Partners Reentry Center receives the first shot free of charge, and they then sign people up for Medicaid in order that the second through fourth shots are paid under Medicaid. As of today, she advised, the Partners Reentry Center has 49 people in that program, 28 of which accepted Vivitrol, of

those 28, 4 have recidivated. She continued that of the 21 people declining Vivitrol, 19 have been re-incarcerated within the first 30 days of release, and of the two individuals still out there is a warrant for one for failure to report. The Partners Reentry Center is using that as an opportunity to try to deal with the heroin, opioid, and alcohol addiction issues, and is working with the Matanuska-Susitna Valley to determine whether the Vivitrol program can be expanded into that area. She noted there are many peer groups and the Partners Reentry Center's goal is simple "if you touch people who are coming back into society after whatever length of stay that they have incarcerated, you give them a sense of hope, a positive attitude, and a path, they have a higher likelihood of success." The Partners Reentry Center would like to see other communities around the state have an opportunity to offer this type of program in their local areas, thereby, allowing people to go home, to have some restorative justice and healing within the communities, she said.

1:12:51 PM

REPRESENTATIVE MILLETT asked the total of the Partners Reentry Center's budget, including the staff levels. She further asked if this bill were to pass with the reinvestment how she anticipates the Partners Reentry Center's build up time to increase care for the influx of people.

MS. MCLAUGHLIN answered that she is committed to being available to anyone who would otherwise be homeless, coming out of jail with a felony or misdemeanor with an Alaska Alcohol Safety Action Program (ASAP) or treatment component. The Partners Reentry Center has been able to give these services to everyone qualifying under those two requirements. Their budget for FY16 was \$550,000 and it was enhanced by an AHFCB half of \$146,000. There are six staff working full time and she commented that it is understaffed and needs to be better staffed to perform real time data entry and real time services because it cannot have people wait. She pointed out that if people are homeless the people who fail are the people the Partners Reentry Center can't pass off on a quick referral to substance abuse treatment or mental health treatment and; therefore, it is committed to serving people the day they walk through the door. Together with the six staff, she explained, there are five practicum UAA students that the Partners Reentry Center hosts, and one (indisc.) trainee through the Department of Labor & Workforce Development (DLWD) who was a successful reentrant and is now paid through the DLWD and staffed at the Partners Reentry

Center. She explained that it also collaborates with the Cook Inlet Tribal Council (CITC) to have substance abuse assessments completed the week people release, "so they come over and do that," and the Partners Reentry Center borrows from CITC for that purpose.

[1:15:52 PM](#)

MS. MCLAUGHLIN related that the model Partners Reentry Center is using is that it is the hub in that a person comes in and is referred out as quickly as possible or gets people signed up for Medicaid and PFDs. She stated that Commissioner Dean Williams, Department of Corrections (DOC) wanted to be certain that was being done. The Partners Reentry Center also collaborates with all other entities and performs quick referrals within the first thirty days of release. In response to how long it would take to ramp up for additional people she answered that due to the model, which is participant centered, the Partners Reentry Center does need more staff without question, but it will not turn someone away because it is understaffed. She remarked that the Partners Reentry Center's ask has been \$685,000 for FY17, which would include one additional staff member.

[1:16:59 PM](#)

REPRESENTATIVE MILLETT asked where clients go to receive their shots when volunteering to go through the long-term shot program, and who is administering the shots.

MS. MCLAUGHLIN responded that it is done two ways: through myHealth Clinic with a health practitioner working on her Ph.D. for medically assisted treatment and she provides the majority of the shots; and the Alaska Native Medical Partners Reentry Center. She reiterated that the shots begin the day people are released from jail.

MS. MCLAUGHLIN, in response to Representative Lynn, advised that myHealth Clinic is on Abbott in South Anchorage.

[1:18:05 PM](#)

CHAIR LEDOUX asked Ms. McLaughlin to explain the shots.

MS. MCLAUGHLIN responded that the Vivitrol shot is a sensory limiter wherein if someone attempted to use alcohol, heroin, or an opioid they would not have any kind of enhanced effect. It doesn't make a person sick, it just stops the sensory benefits a

person would think they would receive from those drugs. The shot is given in the buttock every 28 days, and the recommended expectation for the use of the shot is six to twelve months, although it depends upon the individuals. For example, when she travels to Hiland Mountain Correctional Center she will tell individuals who have found themselves rearrested several times because of opioid, heroin, or alcohol use, if they want to partner with the Partner Reentry Center when released they will have a shot ready the day of release, and it will make certain the person gets to myHealth Clinic and receives the shot. She explained that in tandem with the shot, it also mandates that people have behavioral treatment component, such as substance abuse counseling, or Moral Reconciliation Therapy (MRT), or attend peer-to-peer groups because the shot will only get the person so far in stopping physical cravings for these drugs. She pointed out that unless the underlying reason for the use of the drugs or alcohol is determined, the program will not be sustaining. She opined that the actual compound within Vivitrol is the same as Naltrexone and Norcan, which is the drug used to try to reverse an overdose.

[1:20:18 PM](#)

CHAIR LEDOUX asked about Antabuse.

MS. MCLAUGHLIN explained that this is not like Antabuse because it does not make a person sick, it just causes the person to stop craving the desire for those drugs themselves. For example, she related they have an individual who was very addicted to Suboxone and heroin, and is on his third shot of Vivitrol. He advised her that previously when he saw a Suboxone pill he would sweat and anxiously hope he could get that pill into his body, and a Suboxone pill on the street is usually \$80. She said he related that due to the shot he is fully employed, paying rent, and when triggered in that manner it has had no effect on him because he is not craving it. Vivitrol is not a drug that causes addiction; therefore, if a person stops the shots there is no withdrawal although the cravings will return unless the person has learned how to address them.

CHAIR LEDOUX asked whether she meant the psychological cravings will return.

MS. MCLAUGHLIN agreed and said the psychological cravings will return and basically the shot tries to give the brain a rest from the drugs so it can start retooling itself.

[1:21:51 PM](#)

CHAIR LEDOUX asked whether it eliminates physical cravings.

MS. MCLAUGHLIN said correct, in that it is a sensory blocker and if a person tried to drink on Vivitrol the person would not become intoxicated because it blocks those senses.

CHAIR LEDOUX asked whether it would work to ease the pain of withdrawal.

MS. MCLAUGHLIN answered no, it will put the person immediately into withdrawal. With alcohol, she said, the shot can be given within two to three days of someone using alcohol. While with heroin, the person must be free of heroin in their system so it requires an approximate seven day to ten day wait in order to take the shot. That is why, within their program, it is imperative that the shot is given the day upon release because there would not be an opportunity to go out and use, she explained.

[1:23:15 PM](#)

REPRESENTATIVE KELLER surmised that the shots without the backup treatments offer disappointing results. He asked her to explain MRT and peer groups because he would like to know whether there are plenty of services working with individuals to retool their life patterns and replace the vacancy left there by the addiction.

MS. MCLAUGHLIN replied that Representative Keller is absolutely correct, unless a person gets into the underlying reasons, the point of failure for Vivitrol is after a person stops taking Vivitrol and the cravings return, and if the person has not determined the source of the cravings they will go back to using. She stressed it is key that the behavior management component is included. The Partners Reentry Center has an individual, Robert Champion, MRT Facilitator at the McLaughlin Youth Center, who offers groups at the Partners Reentry Center filled with individuals on Vivitrol so they have the capacity to do it, she said. She related that she likes MRT as a model because it is 12 weeks to 16 weeks that gets into cognitive behavioral changes, and for some people that works. She noted individuals with jobs, who have a life, and are doing okay but cannot dedicate a tremendous amount of time to a substance abuse intensive treatment program. She said they offer peer-to-peer group three times a week, they also partner with the Cook Inlet

Tribal Council, and the Anchorage Native Justice Centers for their men's and women's groups. She explained that if individuals are over-programmed and are required to do too many things, they are being set up to fail. Therefore, the Partners Reentry Center is trying to give people tools to move forward in a healthy manner but not over-programming them to the point they have to decide whether to live homeless or without food in order to pay for their substance abuse treatment. She said she does not want to be disrespectful to any substance abuse programs but the wait lists and the delay in getting assessments is causing people to fail before getting into the programs.

[1:27:06 PM](#)

REPRESENTATIVE KELLER asked whether the Partners Reentry Center has been around long enough to accumulate data as to its success rate.

MS. MCLAUGHLIN advised that Partners for Reentry started the program during second week of September, and she reiterated the information regarding the 49 individuals she previously explained. They have looked at other programs to compare themselves to and they have not found any programs being conducted in this manner. Although, Arizona asked the Partners Reentry Center to assist with a pilot program that would be modeled after what is being done in Alaska because it is showing some promising results at this point. She stated she is hopeful that with the benefit of Jill Green, health practitioner, performing the injections and working on her thesis that they will acquire more data. The Partners Reentry Center has a real time data base and every time something happens it is put into their system immediately, track it, and perform more analysis, such as who were these people, what was their intensity of drug usage, how many times did they violate or have new charges, and she related that they will be able to do that but not yet.

[1:29:46 PM](#)

REPRESENTATIVE LYNN commented that her patrons live all over town and ask how they typically get to the facility.

MS. MCLAUGHLIN answered that Partners for Reentry facility is at 419 Barrow Street, and myHealth Clinic for the shot injections is located off of Abbott.

[1:30:23 PM](#)

REPRESENTATIVE LYNN reiterated his question and asked how the patrons typically get to the facility.

MS. MCLAUGHLIN explained that the bus goes right there and they ask them to take the bus but if there is any hesitancy or if they are not from Anchorage, the Partners Reentry Center has taxi vouchers that will allow them to get to the facility to get their shot and have them take a bus back to their housing.

REPRESENTATIVE LYNN asked who pays for the shot.

MS. MCLAUGHLIN related that their patients are homeless with no money and it paid by asking the drug manufacturer to give them the first shot free and they have been willing to do that. She reiterated that the first shot is free and they then sign people up immediately for Medicaid if Medicaid eligible, and the remaining shots are paid through Medicaid.

[1:31:53 PM](#)

REPRESENTATIVE MILLETT referred to her statement that another place for shots was the Alaska Native Medical Center and assumed it pays for the shots for their clients and back-bill Medicaid.

MS. MCLAUGHLIN answered in the affirmative.

CHAIR LEDOUX thanked her for testifying and noted that she had been to the Partners Reentry Center and expressed it is a phenomenal program.

[1:33:25 PM](#)

REPRESENTATIVE CLAMAN referred a question to Brenda Stanfill and asked how this bill will improve the lot for victims. Obviously, he said, a target is that there will be a reduction in the crime rate and the best thing victims will see is not being a victim.

[1:34:12 PM](#)

BRENDA STANFILL, Commissioner, Alaska Justice Commission, said she has put a lot of thought into that question in terms of looking at this as each victim of crime versus looking at a bigger picture of Alaska in that "we're all in this together." She related that this is only the first building block and in moving forward and reviewing these specific bills, this is the first year of the commission working fully through to set what

she considers to be a foundation. It is known that changes have to be made in the state's criminal justice system and initially the commission, in attempting to determine who the current system worked for, went around the table and realized that victims, offenders, judges, and defense and prosecution are not happy. The commission then tried to create something that is actually working by looking at the victims as being part of the process. She noted some push back on pretrial and said that, to her, pretrial means the state will do the upfront work to determine how to hear victims' voices and complete the risk assessments. If a judge is expected to release someone on their own recognizance, she opined that the judge will listen closer to a victim's voice and be certain restraints are in place to keep the victim and public safe rather than just ordering \$500 bail and no contact with the victim. She related that in having a Pretrial Services Office the state can speak with the victim to uncover more information for the risk assessment, and begin to consider whether this defendant could have a suspended entry of judgment, which is a totally different concept than the current process. She offered a scenario of a 19 year old making a dumb mistake by vandalizing someone's property or something within a group of peers, and now there is a high dollar crime, and said that pretrial services can take the time to possibly determine that this is a youthful offender and the state could order one year to pay the victim back for their damages, including community work service, and if they do it in one year they do not have a record. Consequently, she pointed out that a huge hole has not been dug for the 19 year old to have to dig out of to make the victim whole.

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MS. STANFILL said the bill may be taking away some prison time but it is known that prison is not changing people, and while it may make the public feel better because their punishment is jail. She commented that when speaking with most people living a portion of their lives in jail they will say it's not a bad place to be, because Alaska does not have uncomfortable jails. She stated that the state would like to get the people before jail is a part of their system and that there may be other options besides jail to use as a punishment. She then commented that the state could look at holistic ways in terms of restorative justice because victims are not being put back intact, and sometimes the crime is so horrendous there is no way the victim can be put back intact, and what can be done to provide more support services in that situation. Currently, \$360 million is put into the Department of Corrections (DOC)

verses approximately \$15 million for victims' services. The state needs to get to the point that it is spending as much time focusing on victims and their health and making them whole as it is on the DOC, she related.

[1:39:21 PM](#)

REPRESENTATIVE CLAMAN noted that he has been in jail many times professionally and commented that each time he goes in he does not have the thought that he wants to be there. Although, some people may feel it is better than life on the streets, it is a miserable place to be and the public doesn't want to be there either, he remarked.

CHAIR LEDOUX referred to Ms. Stanfill's statement that jail is not an uncomfortable place in relationship to punishment, and she expressed that some crimes society needs to punish. Possibly this is not the politically correct comment, she remarked, but maybe it should be an uncomfortable place.

MS. STANFILL noted that she shares in those thoughts and jail does limit freedom and certain things. Meanwhile, victims are doing everything they can to have a place to live after the person paying child support is now incarcerated, including how to pay the bills. At the same time, the person in jail has three square meals, a place to sleep, and it's nice and warm, and they are not sharing a bed with their children. She explained that when she says jail is not bad, she means that in the way of Alcatraz and the movies and opined that is not what Alaskan jails are. Interestingly, the Fairbanks Correctional Center's statistics are flat until October through March because people are cold. The hope is to get that person warm without committing a crime, she said. Currently, the state can't get ahead of it enough to focus on it because all of the state's resources are sucked into paying those hard bed dollars.

[1:42:01 PM](#)

CHAIR LEDOUX surmised that when she comments the jails are not that uncomfortable, she is comparing it to the movie, "Midnight Express."

[1:42:19 PM](#)

REPRESENTATIVE LYNN offered the old saying for a lot of people not leading a successful life, "three hots and a cot." He commented that at one time prisons were called penitentiaries,

which is where penance comes from, being punished at a penitentiary and paying penance. Currently, the state has morphed into correctional centers as it is not trying to punish, but rather to correct. He said there should be some punishment element and not just to correct, such that parents punish their children by taking away the car keys. He remarked that jail should not be comfortable, although, on the other hand it should be a safe place. He reiterated that the bill is changing it from penitentiary with penance to corrections.

MS. STANFILL related that quite a few young men in both the House of Representatives and the Senate committee meetings have testified to the changes they were able to make after receiving intensive treatment while in jail. Unfortunately, she noted, the intensive treatment piece is missing because it was taken away and that intensive treatment was a key part of their testimonies. The corrections portion needs to be put back because, currently, the state is just looking at the penalties and it doesn't have the systems and processes in place to make the corrections, she stressed.

[1:45:14 PM](#)

REPRESENTATIVE KELLER referred to tying in the importance of jobs for inmates because if they do have a job they have the opportunity to pay restitution and continue to care for those depending upon them. The plan of the Alaska Criminal Justice Commission for the future is to take away some of the barriers to employment. Also, the concept is to make sure people locked up don't just sit around, but that there actually is a work penalty or reward, and that element must be built in if the system is to reform, he opined.

[1:47:52 PM](#)

SYLVAN ROBB, Policy Analyst, Office of Management & Budget (OMB), said she is available to answer questions.

REPRESENTATIVE CLAMAN reminded Ms. Robb that the committee requested an idea of the savings from this bill independent of the governor's separate cuts.

MS. ROBB answered that when taking out the \$8 million Governor Bill Walker's reduction, the five year savings from the reforms included in this bill are \$11 million, which would be the net savings after reinvestment.

MS. ROBB, in response to Representative Claman, answered that the net savings would be for five years. She added that it is worth noting that the Department of Corrections' budget will still be reduced by an additional \$40 million during that time period.

CHAIR LEDOUX surmised that the \$40 million has nothing to do with this bill.

MS. ROBB responded that Chair LeDoux is correct.

CHAIR LEDOUX asked why it is being discussed here.

MS. ROBB opined that she wanted to clarify those numbers and that the Department of Corrections will have that budget reduction. She related that Chair LeDoux is correct in that it is not part of this, so the net savings over five years from HB 205 is \$11 million.

[1:49:52 PM](#)

REPRESENTATIVE MILLETT advised that she has requested an opportunity to speak with Governor Walker about HB 205 to determine whether he supports, is neutral, or is out of favor with the commission's recommendations and the bill.

REPRESENTATIVE CLAMAN asked Kaci Schroeder to give the committee a description of the current restitution system, and the measures in place for a victim experiencing \$1,500 worth of property stolen.

[1:51:30 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, said that Alaska's current restitution statutes are fairly robust in that if a victim of a crime is entitled to restitution it is something the prosecutors frequently seek. The restitution is incorporated into the plea negotiations and the prosecution seeks it after trial as part of sentencing. They ask that judges make it both a part of their sentence and their probation, and it is important to note that restitution is a civil order so it does extend beyond the life of the criminal case. After the restitution order is made, if the victims choose they can try to collect on their own or ask the Department of Law (DOL) to assist. She offered that DOL has a collections unit dedicated to collecting restitution and child support collections.

Unfortunately, DOL does not have an attorney dedicated solely to collections, but the collections unit focuses on garnishing PFDs. Although, it does have other avenues for collections available to them; however, in its experience garnishing wages or bank sweeps are not particularly helpful because often probationers do not have steady employment and don't make a lot of money so getting restitution piecemeal sometimes is not that effective. The PFD offers a way to one-time collect a large sum of money and the unit also takes voluntary payments from probationers who are paying.

[1:53:12 PM](#)

REPRESENTATIVE CLAMAN asked how much money the Department of Law collected in 2015 for restitution.

MS. SCHROEDER advised that the collections unit collected just under \$2.8 million, and it currently has 8,000 open restitution cases.

[1:53:40 PM](#)

REPRESENTATIVE CLAMAN referred to people on probation and parole and asked whether it is a condition of all of those people to make restitution payments as a condition of their probation.

MS. SCHROEDER reiterated that the Department of Law seeks restitution both as a term of the sentence and as a term of probation.

REPRESENTATIVE MILLETT asked the order in which restitution is paid.

MS. SCHROEDER responded that child support is first and restitution is second.

REPRESENTATIVE MILLETT surmised that child support garnishment would continue through completion of the back child support being paid, and in the meantime the victim's portion would wait until the back child support is paid and the restitution then goes to the victim. She asked how often that happens.

[1:55:01 PM](#)

MS. SCHROEDER asked Representative Millett to clarify her question.

REPRESENTATIVE MILLETT said that the civil liability goes throughout the life of the person, and asked how long it takes to get the checks into the hands of the victims after child support is paid.

MS. SCHROEDER responded that it would be difficult to say because child support payments vary in their amounts and the order may stipulate how much money to take and leaving some money DOL could collect for restitution.

REPRESENTATIVE MILLETT asked whether Ms. Schroeder had charts depicting how many years out some victims receive restitution. She referred to the order in which restitution is paid in that victims are second, acknowledging the need for the payment of back child support. She related the need to balance that with the victims who sometimes don't receive restitution for 10-15 years.

MS. SCHROEDER responded that she spoke with the lead attorney in the collections unit and they do not track the amount of restitution owed versus how much has been paid per order. It is difficult to say how long victims wait, although, she offered that they can wait an exceeding long time and often they are not paid at all.

[1:56:52 PM](#)

REPRESENTATIVE MILLETT opined that the data she is looking for is not tracked, and asked whether anyone tracks that information other than the Department of Law.

MS. SCHROEDER said she does not know anyone that would be tracking that information, and that the collections unit is very small and it is overwhelmed with its workload which can be part of the reason for not tracking.

REPRESENTATIVE MILLETT said that possibly restitution could be restructured wherein at the same time the arrears in the child support are being paid, the victims are also recognized with some portion of restitution during the time PFDs and wages are garnished.

CHAIR LEDOUX commented that she understands where Representative Millett is coming from but the child support arrears are usually done when someone is on public assistance within the child support enforcement agency. Therefore, when collecting for child support, the state is actually collecting not for the

children anymore because the children have been paid by the state, but collecting for the state to [repay] public assistance. She pointed out that if the state ceases collecting as much money for the state it will be more expensive to the state. That is not saying that the legislature shouldn't necessarily be doing it that way but, she opined, it will have some fiscal impact on the state.

MS. SCHROEDER responded that Chair LeDoux is correct, that is one of the reasons PFDs are garnished for child support payment, and opined there are probably other ways but that is outside of her knowledge base.

[2:00:06 PM](#)

REPRESENTATIVE KELLER pointed out that the committee is told on the one hand that Alaska has the most robust restitution laws around and yet the total amount of money victims have received is unknown. He then asked for the total restitution compared to the amount of money collected because "certainly" that can be determined. He said he assumes the courts keep records of the restitution orders which will provide a total amount of restitution, and then DOL handles the collection so that should be an easy comparison and he would like to see the number. He pointed to the question of where the collected money goes and how much goes to the state and how much to victims and said the committee has to get to the bottom of this and start by comparing how the state is doing on restitution.

MS. SCHROEDER opined that she does not know whether DOL has the numbers as to the amount the outstanding judgments total, but she will ask. She further opined that she does not know whether the court system tracks that information, and noted that the Department of Law (DOL) does not execute every restitution order because sometimes victims take it into their hands to execute on the order.

REPRESENTATIVE CLAMAN referred to the priority of child support over restitution and surmised it would be applied if there is a levy made on a PFD.

MS. SCHROEDER said he was correct, and the priority order is for PFD garnishments.

REPRESENTATIVE CLAMAN offered a scenario of someone being on probation or parole and part of their condition is that the person must write \$100 for restitution once a month, and get a

receipt. He described that as a voluntary payment and even if that person owes child support if the probation officer says he doesn't care about the child support, the person still needs to pay the restitution.

MS. SCHROEDER answered that he was correct.

[2:03:04 PM](#)

REPRESENTATIVE CLAMAN asked whether she knew the differentiation between the amounts collected through levies from the PFD versus amounts collected for restitution in voluntary payments.

MS. SCHROEDER answered that she does not have that data but she would check on it.

[2:03:24 PM](#)

CHAIR LEDOUX asked whether she had any suggestions as to what the committee could actually do to beef up the robust restitution system because if people are waiting 10-15 years for their money it may not necessarily be working. She said she is aware that "you can't squeeze money out of a rock ... a turnip."

MS. SCHROEDER agreed, and offered that an issue is that people do not make a lot of money and sometimes restitution is in large amounts. She offered that she does not have a lot of ideas but DOL would evaluate any ideas the committee offers to determine how it would work. As far as a robust system, she opined that Alaska has a robust system as far as being able to order and obtain judgments that order restitution, and the collections issue may not be as robust.

[HB 205 was held over.]

HB 317-FORFEITURE: NO CIVIL IN REM; ONLY CRIMINAL

[2:05:05 PM](#)

CHAIR LEDOUX announced that the next order of business would be HOUSE BILL NO. 317, "An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

2:05:15 PM

TAMMIE WILSON, Representative, Alaska State Legislature, paraphrased the following sponsor statement [original punctuation provided] as follows:

House Bill 317 protects the private property rights of innocent citizens by requiring that Alaska's revered and dedicated law enforcement agencies, convict individuals of a crime before permanently seizing private property. Alaska's "civil asset forfeiture" laws have been reported to be among the worst in the country, allowing private property to be permanently taken from individuals suspected of crimes, even if they are never charged, much less found guilty.

Across the nation, civil asset forfeiture laws have gained notoriety in recent years for rampant abuse and deliberate circumvention of due process. Well-documented cases of policing for profit have sparked a wave of reform nationwide. In Alaska, local law enforcement only need to show probable cause to seize property. Failure to challenge a seizure within a given timeframe results in an automatic and permanent forfeiture. These problems are compounded by an incentive for law enforcement to seize as much as possible, since 75-100% of the revenues generated from civil forfeitures flow back to the local agency. Moreover, there is no requirement that Alaska authorities collect or report data on their forfeitures.

While assets may be reclaimed, civil asset forfeitures places the burden on individuals to fight the bureaucracy to prove that their assets were not gotten through ill means, or that they did not consent to using their property for an illegal purpose. Civil cases do not provide for free legal assistance, so for individuals that cannot afford private representation, the process is intimidating at best, and ill-fated at worst. HB 317 would require that an individual be convicted of an actual crime before forfeiture proceedings can take place, and would protect guiltless spouses and family members from property loss as a result of the process. The bill would also impose transparency and accountability for civil asset seizures and reduce financial incentives for abuse, by

providing that any revenues that do flow back to the state as a result of federalized proceedings, are deposited in the General Fund.

This bill reaffirms our confidence in local law enforcement, as well as the most basic tenets of Constitutional law and values. Convicted criminals will still see the fruits of their crime confiscated by the state, but innocent Alaskans can rest easy knowing they will no longer be deprived of property without due process.

[2:09:08 PM](#)

REPRESENTATIVE WILSON said the bill asks that "if you are going to take something until someone has their day in court, you should take good care of it. I would have already expected that to have happened." She referred to the fiscal note from the Department of Public Safety (DPS) and read as follows: "Passage of this bill could potentially increase costs to the Alaska Wildlife Troopers with respect to managing illegal taken fish and game statewide." She said it is not illegal until someone has their day in court and until they are proven guilty "we do expect you to take care of things." She then referred to the Department of Law's (DOL) fiscal note in the amount of \$2 million, which stated it would require eight additional attorneys and eight assistants for each attorney. If the department needs eight additional attorneys, she asked how much is being taken from Alaskans, who is receiving it, and where is it going. She explained that the bill does four things: criminal conviction before forfeiture, provides a consistent overall process for forfeiture, a transparent accounting, and revenues for forfeiture will go to general fund and not necessarily to the agencies deciding whether or not they get to keep it.

[2:11:28 PM](#)

CHAIR LEDOUX asked whether there is anyone seriously against this bill, but the question was answered by the fiscal notes.

REPRESENTATIVE WILSON related that the commissioner of the Department of Public Safety (DPS) advised that he did not like the bill, and the representatives from DOL and the Alaska Court System have discussed their issues and they are working on them. She further related that this is good for Alaska and they should

be excited about making sure the legislature does the right thing for Alaskan residents.

2:12:30 PM

REPRESENTATIVE LYNN opined that if property is forfeited to DPS or the state, and if [a person] does not act within an appropriate period of time, the agency can take the airplane or boat and give it to the federal government and he doubts the owner would ever see it again.

REPRESENTATIVE WILSON advised there is a process to where a person has a limited amount of days to put in paperwork, and if the person doesn't do it the agency has the right to keep it.

2:13:07 PM

REPRESENTATIVE LYNN asked whether it goes from the state agency to the federal government.

REPRESENTATIVE WILSON opined that it could be a federal case and it could go in that direction but the person would have had to break federal law. She related stories that when the state doesn't have enough evidence the state will turn it over to the federal government and allow them to pursue the action.

CHAIR LEDOUX said she presumes that if the federal government is charging an individual and seizing property initially, that as draconian as Alaska's forfeiture laws are, that probably the federal laws are at least equal if not surpassing Alaska law. She surmised that the bill doesn't do anything with the federal seizure of assets.

REPRESENTATIVE WILSON explained that the federal government can still charge but currently there is an agreement that some of the money comes back to the state. In those cases it would not come back to the troopers or any other agency, and is directed to the general fund. The bill would not change [federal] laws or processes in any fashion, she said.

2:14:41 PM

REPRESENTATIVE KELLER referred to the offenses subject to forfeiture, on pages 6-7, and asked her to explain the types of crimes being discussed.

REPRESENTATIVE WILSON responded that many are mandatory having to do with drinking and driving and she then deferred to Kevin Fitzgerald.

REPRESENTATIVE KELLER referred to the outline for the forfeiture process under the bill and asked whether she is saying that it is not currently there, and she included it. He further asked whether other states have clear standards on forfeitures as a model.

REPRESENTATIVE WILSON replied yes, and this has come from the states that are rated as "A" or "B" and not "D" as Alaska is.

[2:15:57 PM](#)

REPRESENTATIVE KELLER advised he likes the bill, but he would like a description of the crimes.

REPRESENTATIVE WILSON reiterated that Mr. Fitzgerald could speak to that issue.

CHAIR LEDOUX opened invited testimony.

[2:16:42 PM](#)

KEVIN FITZGERALD, Attorney, said he has been in practice as a prosecutor and a defense attorney for over 27 years, and is in favor of the bill. He opined that the dual aim of the bill is to put into play standardized and centralized procedures designed to protect the rights of property owners and interested parties while at the same time not undermining the ability of the government to seize or ultimately forfeit property nor to place undue burdens on the court in doing so. He said in the perspective of a practitioner that practices in the areas implicated by the existing forfeiture law, which includes fish and game, Medicaid, and other areas, he is advocating for the bill. In response to the question concerning offenses subject to forfeiture, he advised that they include liquor, assault, property, drugs, and DUIs. He described it as having quite an expansive scope and it's intended to be that way in order to centralize and standardize procedures for any number of different areas that are in some measure disparate, or contrary to each other, and difficult to find. As a practitioner, he said the current law as it addresses forfeiture is broken, confusing, ill understood even by those practicing in these areas, frequently applied in a haphazard or ad hoc fashion, is neither standardized nor centralized, and appears to be a

vehicle increasingly used by prosecution to impose sanctions. He reiterated the benefits of this bill as being profound in providing a standardized and centralized process for forfeiture. He then related a case he has of seized property spanning over the course of four years regarding current law and after explaining the details of the case, he commented that this particular case is not unusual and the circumstances and issues raises over the forfeiture law are not unique to that case. He then reiterated that he strongly supports the passage of the bill to give standardize and centralized rules governing Alaska's forfeiture law.

[2:27:59 PM](#)

REPRESENTATIVE CLAMAN referred to Mr. Fitzgerald's earlier years as a prosecutor and asked his perspective regarding civil forfeiture, whether he ever used it, and in what cases.

MR. FITZGERALD explained that it wasn't used often as much as it is now being used, or used for items of significance. Case law does reference occasional cases in which airplanes had been seized, but he estimated that the forfeiture law is being used as a tool more frequently to obtain significant items of property. He opined that when it was used when he was a prosecutor it was largely items that would be characterized as contraband and he does not remember any actions pursued pursuant to the forfeiture and what typically now is the avenue used in the fish and game context under AS 16.05.109 or 16.05.195. In answer to the question he reiterated that it is being used more often now.

[2:30:10 PM](#)

REPRESENTATIVE CLAMAN asked whether, within his current practice, he is in federal court as well as state court.

MR. FITZGERALD answered that he is in both courts and the federal arena offers even less protections than Alaska's current forfeiture law.

REPRESENTATIVE CLAMAN asked whether he sees a difference in how this is being used in drug cases and the forfeiture of property that may be the benefits of massive drug profits versus fish and game and fish and wildlife forfeiture cases that shut entire businesses down for violations.

MR. FITZGERALD remarked that the difference in many instances within the fish and game context occurs on a state level and occasionally it is in the federal level as well, but under the Lacey Act [16 USC 3371-3378] it must be predicated on a violation of state fish and game law. In a drug context, it is not uncommon that the state charges are more focused on individuals and the state side does do co-defendant cases but the federal government, because of its sentencing guidelines, utilizes a lot more conspiracy multi-defendant cases involving 10-30 individuals. In the event an individual is charged with a drug crime at the state level, Mr. Fitzgerald said he doesn't see a lot of attempts at forfeiting property, and typically if the defendant does not play ball with the state authorities the matter is referred to the federal authorities who are happy to help. He remarked that under federal law it can be scary with regard to what is seized, the nexus between the properties seized, and the offense can be extraordinarily de minimis. An individual really has no recourse at all other than under the Eighth Amendment, which is cruel and unusual punishment, and the way that has been defined under federal law is unless the property amounts to twice what the otherwise applicable fine would be, the individual does not have cruel and unusual punishment. Since most of the crimes proceeded in federal court are \$500,000 at least fine range such as million dollar plus items such as houses, he explained.

[2:35:23 PM](#)

JOHN SKIDMORE, Director, Legal Services Section, Criminal Division, Department of Law (DOL), said he has been a prosecutor for the last 18 years, and has not practiced often in the area of drug offense but he supervises the prosecutors within the state. He said he previously expressed to Representative Wilson, and now to the committee, the Department of Law's (DOL) interest and commitment in working on trying to standardize and centralize forfeiture law in Alaska. He agreed that the current forfeiture law is scattered in at least seven different titles and it addresses different types of crimes. He advised that within those seven different titles it describes the procedure or process at varying levels, and the Alaska courts have filled in the procedures or processes that are left vacant in some of the various titles. The result has been a complex system in trying to understand how forfeiture law works, and he agrees that is an issue and that trying to standardize and centralize is an excellent idea. Although, he commented, the issues between that [intent] and this bill are that this bill adds additional processes that may or may not be the intended

consequences. For example, he said, in current law a person can forfeit property in a criminal case at a sentencing when there is a preponderance of the evidence that the item is connected to the case and should be forfeited.

[2:37:30 PM](#)

MR. SKIDMORE explained that HB 317 creates a separate process tracking the criminal process to deal with those forfeitures because it wants the state to file separately against property to be forfeited, hold separate hearings to decide what should happen with the property, and raise the burden of proof from preponderance of the evidence to clear and convincing. He related that those are the sorts of things that resulted in DOL's fiscal note. He agreed that the process would be labor intensive but that doesn't mean it is not possible to standardize and centralize without having some of the requirements, thereby, eliminating the fiscal note. He reiterated that the department is committed to working with folks on those things, but there are important issues to look at which are ultimately policy decisions for the committee to decide. He pointed out that in discussing forfeiture ...

[2:39:08 PM](#)

REPRESENTATIVE CLAMAN referred to Mr. Skidmore's statement and said that due to the fiscal note it is more than a policy call because it is now about how much money is being dedicated to certain functions of government.

[2:39:49 PM](#)

REPRESENTATIVE KELLER said the policy here is the Department of Law (DOL) and the state's justice branch of the whole government, and it appears that the things Mr. Skidmore said need to be dealt with are fundamental. He referred to the job not getting done and asked why it takes more money to get it done, why hasn't the committee heard about this before, why aren't things being done right, and how does he attach a price tag to doing things right. He said he realizes that different sections of law were added on but it appears DOL would have come forward with proposed legislation to fix this on its own rather than the legislature trying to build it. He related that part of the reason he is in Mr. Skidmore's face is that time is running out, the session is moving along, and this sounds like a critical item to deal with.

[2:41:02 PM](#)

MR. SKIDMORE responded that this is an issue the department has been looking at, and pointed out that there is a distinction between forfeiture and seizure that has been somewhat lost in the discussion. For example, when Mr. Fitzgerald discussed the airplane being seized, he said, it was seized pursuant to search warrants in a criminal case. He remarked that he was unaware of that particular case and did not know whether it was evidence seized for purposes of that case, There are legal restrictions on the department regarding its obligation to preserve if it is going to trial under Thorne v. Department of Public Safety, [774 P.2d 1326 (1989)], or if it's strictly about seizure. He referred to a DUI case and driving a vehicle, and said if that vehicle is seized pursuant to a search warrant or incident to arrest, it may be that the vehicle is evidence in the case because the defense may allege the bad driving, observed by the officer, is the result of the vehicle having faulty mechanics. The department is then required to preserve that vehicle so the information can be presented at the time of trial, which has nothing to do with whether or not that vehicle is going to be forfeited at the end of the case. He extended that it may be that it's not going to be forfeited and it is just about using it for evidence, or it may be a case in which the DUI is a felony DUI or something else egregious, and not only was that vehicle needed for evidence but then later was also subject to forfeiture. He explained that it is easy to confuse those two things and he opined the area that needing the most work is returning property that is not needed in the criminal case and should not be subject to forfeiture. He stated that for the past three years while he has been director of the criminal division it has worked on trying to return property to citizens across the state. There are problems of where impound yards of law enforcement agencies have more vehicles than should be there, and that various policies have been instituted and practices to get vehicles returned to people. He opined there is evidence in evidence lockers within law enforcement agencies around that state that are not subject to forfeiture and that property needs to be returned. The law requires a process to be followed in order to get property returned and it should be looked at, which is separate from property seized, ultimately subject to forfeiture, and whether or not that forfeiture is appropriate. He related that [there are provisions] in HB 317 that he is not certain address the seizure problems because it focuses on forfeiture, although there are areas it seems to cross over. He said he views those as two separate issues, and the seizure and returning things is an area to work on and

forfeiture needs to be standardized and centralized. The law in Alaska regarding how forfeiture is supposed to work, he opined, is not broken, it is just not in one place that is easy to follow.

[2:44:59 PM](#)

CHAIR LEDOUX referred to Alaska's forfeiture law and said that sometimes a case can be dismissed against a person and yet the state will continue in an in rem action for forfeiture, not seizure. For example, she said, take a drug case and the person is acquitted, she asked whether the state is ever able to forfeit the property when someone is acquitted.

MR. SKIDMORE responded that the vast majority of materials seized should be returned, with the exception of seized cocaine and the department unable to prove its case.

CHAIR LEDOUX expressed that she knows the department is not going to give back the cocaine, but what about the house.

MR. SKIDMORE said he would change it to a different type of case, such as fish and game, because there are certain types of items in fish and game cases that are also illegal to possess. For example, in most of the state when hunting moose the antlers must be of a certain size and a hunter may have innocently shot a moose that was not legal, it is illegal to possess that animal thereafter. The seized gun in that case would have been returned, but not the moose because it is illegal to possess. Generally, he said, the department does not use civil in rem forfeiture proceedings in criminal cases. He referred to the case Mr. Fitzgerald discussed and although Mr. Fitzgerald said it was not an exception, he disagreed because he does not believe the department is using civil in rem forfeitures in the vast majority of cases other than the example offered.

[2:47:30 PM](#)

CHAIR LEDOUX asked whether civil in rem forfeitures are being used and further asked whether he was willing to say that the department is prohibited by law, and that the department never does it for something such as, a house, gun, airplane, or a legal item. She expressed that she can't see any justification whatsoever when someone hasn't been convicted of something to seize their legal property. She stressed that if the department can't get the person under criminal law, she finds it repugnant that the department would try to do it through a civil

forfeiture proceeding, and she wanted to know whether or not it is used.

[2:48:31 PM](#)

MR. SKIDMORE answered that the only case he is aware of in which civil forfeiture has been attempted to be used like that is the case Mr. Fitzgerald discussed. Wherein there was a pending prosecution that was expected to result, but hadn't gotten there until much later in the process because the investigation seemed to have taken awhile. Other than that, he said, he is unaware of it being used. He stated that the department does not have a problem eliminating that civil in rem forfeiture, it is not often used because the department doesn't think it should be used often.

[2:49:11 PM](#)

CHAIR LEDOUX surmised that the only thing the department has a problem with is taking care of the property, and figuring out where it is at a certain time.

MR. SKIDMORE said that law enforcement can tell the committee where the seized property is because it is required to track that information. The question asked was how much of that property has been forfeited and he said that is a statistic that DOL has not kept. For example, he could answer how many murder sentences, but could not answer how many of those murder sentences resulted in property being forfeited because he would have to go back and look at each individual judgment to determine which cases had property forfeited. He explained that he doesn't have the ability to track that information currently and does not know the cost, but it would not take eight attorneys. He referred to the eight attorneys in the fiscal note and qualified it is when a separate proceeding is created where the department has to file against the property, then there are court hearings about the property both before the trial and after the trial that are not the trial or the sentencing itself. If the current process is followed wherein items can be seized and subject to forfeiture at the sentencing, he opined that the fiscal note would disappear.

[2:50:40 PM](#)

CHAIR LEDOUX asked him to repeat how he would make the fiscal note disappear rather than just zeroing it out.

MR. SKIDMORE explained that in current law with regard to items that are seized a person has the opportunity to petition to have it bonded out ...

CHAIR LEDOUX argued that if it is seized she thought it was seized because it's evidence, so how could a person ever bond out the evidence. She surmised that the department is seizing property that may not be evidence or required to be kept, and that the department seizes property because it believes it will convict the defendant and; therefore, wants to make sure the property the department might want forfeited is there. She expressed that she has a problem with that because the state doesn't get to fine someone before being convicted so why does the department get to take this property if it's not evidence just to make sure it stays around.

[2:52:00 PM](#)

MR. SKIDMORE explained there are two different reasons for which seizure can occur, simply for evidence that is sometimes forfeited but it is evidence in the case and in those circumstances that property cannot be bonded out. There are also circumstances rarely used in which law enforcement can seize property that would be subject to forfeiture not because it is evidence in the case, but because it would likely be forfeited at the end of the case. He further explained that the reason is that, in the law, it is recognized that with property subject to seizure there are defendants who will frequently attempt to sell, destroy, or somehow change that property from their ownership so it can't be taken later on.

CHAIR LEDOUX pointed out that the seizure for this reason is a civil action and, other than a maritime suit which has its own unique rules of law, the property can't be seized. For example, as an attorney, Representative Claman may be 100 percent certain he has a slam dunk winnable case, he still is not allowed to ask the court to seize the property because the defendant may go to Mexico or spend the money. She reminded Mr. Skidmore that Representative Claman must wait until the end of the case and then sometimes the case is not a slam dunk.

REPRESENTATIVE CLAMAN said in the background "We know a lot about (indisc.) and they only seize them in federal court."

[2:54:15 PM](#)

MR. SKIDMORE responded that it is not a civil matter, it's a criminal matter and when people have violated the criminal law authorities are given greater power to take property. That is what the Fourth Amendment of the United State Constitution is about, the search and seizure laws are about.

CHAIR LEDOUX argued that if it is a criminal matter why isn't the standard of proof beyond a reasonable doubt when taking property, the same as when imprisoning a person.

MR. SKIDMORE explained that there does have to be proof beyond a reasonable doubt that the person committed the crime. He clarified that once it has been proven the person committed the crime with a conviction, in determining the sanctions to be imposed the courts evaluate the evidence on a preponderance of the evidence standard to determine jail time, community work service, fine, probation, probation conditions, and forfeiture. He reiterated that all of those various sanctions, after proving someone committed a crime beyond a reasonable doubt, the courts evaluate those sanctions based on a preponderance of the evidence.

[2:55:46 PM](#)

REPRESENTATIVE KELLER referred to property being seized, and whether law enforcement or a governmental entity receives any benefit from the seizure such as using it. He explained that he can't help but think about a seized airplane for four years, and being a pilot he knows that is the end of some \$30,000-\$50,000 engines because they have to be used. He referred to Mr. Skidmore's statement that it is totally up to the authorities when making that determination as to whether the property will likely be forfeited and it can take that into account or not, meanwhile the airplane sits. The state has the responsibility to store property in a dry place, possibly heated. He said he would like to know how many warehouses are available and full of evidence, how long it sits there, and the cost to the state in keeping this evidence. He commented that he saw Mr. Skidmore shaking his head no, and requested confirmed information that seized property is not ever used for the benefit of law enforcement or governmental entities until it is forfeited.

[2:57:21 PM](#)

MR. SKIDMORE responded that when property is seized prior to any forfeiture order, the state cannot and does not use any property that is seized and the state has an obligation to hold onto the

property and safeguard it. He acknowledged that there have been steps in recent years to do precisely what Representative Keller was discussing for a seized airplane and not many airplanes are seized but for those that are, they are stored indoor, the engine is foamed to try to preserve it, and other sorts of things that need to be done in order to preserve that airplane. In the event the airplane is ultimately forfeited, the state would have the opportunity to, in some cases use it, and according to statute give it to the Civil Air Patrol Wing. Other items can be forfeited and used in different ways, and other items are auctioned. He reiterated that prior to the forfeiture order, the state cannot use the property because it does not belong to the state.

[2:58:40 PM](#)

REPRESENTATIVE CLAMAN asked whether the state currently has the authority to bring a civil action for in rem forfeiture against an airplane allegedly used or connected with criminal activity.

MR. SKIDMORE answered in the affirmative, which does exist in statute and is not often used.

REPRESENTATIVE CLAMAN surmised that things are seen in the federal reporters such as "United States v. \$450,000 in Cash, or United States v. One Cessna 206, or United States v. Some fishing boat that was used in, typically we see these in drug cases," the state still has the authority as a prosecution tool to seize the property and try to forfeit the property to take some drug kingpins ill-gotten gains away even if it doesn't have the evidence to convict him of selling the drugs,

MR. SKIDMORE answered that he does know whether he would call it a prosecution tool, but the state does have that authority.

[3:00:12 PM](#)

REPRESENTATIVE CLAMAN surmised that Mr. Skidmore, speaking on behalf of the state, would have no problem cleaning up the statute with respect to these civil actions against property. Although, Mr. Skidmore would like the continued ability to forfeit property connected with a crime at the end of the criminal case with a conviction, he further surmised.

MS. SKIDMORE replied that the description is accurate except when the items are illegal in and of themselves, as he discussed with Chair LeDoux.

REPRESENTATIVE CLAMAN offered a hunting scenario wherein a big game guide has an airplane and has successfully flown clients to various areas for many years. The state performs an undercover investigation and discovers the guide is taking folks out but the wrong size game is being taken so there is a fish and game prosecution against the guide. He said the rifles are evidence of the crime but there is nothing in the airplane that is evidence other than the fact that the money he was making involved the airplane. Representative Claman asked why the state would take the airplane for purposes of trying to forfeit the airplane even though it is not needed for evidence at trial, and why the state would go after the airplane and hold it during the entire period of time awaiting trial.

[3:02:43 PM](#)

MR. SKIDMORE answered that generally the department wouldn't seize the airplane and within this scenario, the only hypothetical circumstance in which seizing the airplane would become justified is whether the guide had a history of committing fish and game violations and that he was primarily getting to the locations to commit those violations through the use of the airplane. He noted that other hypothetical concepts must be added to that scenario before it becomes appropriate, and he would have to know more information about the hypothetical before he could determine the exact crimes and determine whether the state would seek to seize the airplane. He advised that the department could hypothetically attempt to obtain a court order to seize the airplane for purposes of forfeiture, but it generally doesn't do that except in the more serious or egregious cases.

REPRESENTATIVE CLAMAN commented that it appears this bill may not perfectly do it, but the idea that the department still has the authority for civil in rem forfeiture actions, is not using it, and it is creating problems is something the legislature should fix. He surmised that the more complicated question about what happens in criminal cases, which appears must be tied into the criminal cases at all times, the department can forfeit after the conviction. He related that he does not like the idea of anyone being able to forfeit property absent the conviction and there have been a tremendous amount of comments about how the federal government and many states are using civil forfeiture where they can't get convictions and that is what the committee is unhappy about.

CHAIR LEDOUX expressed that she is definitely unhappy about it.

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REPRESENTATIVE CLAMAN expressed concern that Representative Wilson's bill may go further and create burdens on the prosecution and costs that may not be appropriate, and stressed his concern about having laws on the books that no one wants enforced and are not enforceable.

CHAIR LEDOUX encouraged Mr. Skidmore to work quickly with Representative Wilson because members of the committee believe there is a real problem here and it wants to do something about it.

MR. SKIDMORE reiterated that he is committed to continuing to work with Representative Wilson.

[HB 317 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was recessed at 3:06 p.m., and will reconvene on March 31, 2016, at 1:00 p.m.