ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 7, 2016
1:33 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Charisse Millett
Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 347
"An Act relating to the limitation period to commence a false claims action; relating to recovery for false claims for state or municipal funds; and amending Rules 4, 24, and 46, Alaska Rules of Civil Procedure."

- HEARD & HELD

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 347
SHORT TITLE: RECOVERY OF FALSE CLAIMS FOR STATE FUNDS
SPONSOR(s): REPRESENTATIVE(s) KREISS-TOMKINS

02/24/16	(H)	READ THE FIRST TIME - REFERRALS
02/24/16	(H)	JUD, FIN
04/07/16	(H)	JUD AT 1:00 PM GRUENBERG 120

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
03/30/16	(H)	Heard & Held
03/30/16	(H)	MINUTE (JUD)
03/31/16	(H)	JUD AT 1:00 PM GRUENBERG 120
03/31/16	(H)	-- Will be continued from 3/30/16 --
04/04/16	(H)	JUD AT 1:00 PM GRUENBERG 120
04/04/16	(H)	Scheduled but Not Heard
04/04/16	(H)	JUD AT 5:30 PM GRUENBERG 120
04/04/16	(H)	-- MEETING CANCELED --
04/05/16	(H)	JUD AT 1:00 PM GRUENBERG 120
04/05/16	(H)	Scheduled but Not Heard
04/05/16	(H)	JUD AT 5:00 PM GRUENBERG 120
04/05/16	(H)	-- MEETING CANCELED --
04/06/16	(H)	JUD AT 1:00 PM GRUENBERG 120
04/06/16	(H)	Heard & Held
04/06/16	(H)	MINUTE (JUD)
04/07/16	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

REID MAGDANZ, Staff
Representative Jonathan Kreiss-Tomkins
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 347 on behalf of Representative Kreiss-Tomkins.

STACIE KRALY, Chief Assistant Attorney General
Section Statewide Supervisor,
Human Services
Department of Law
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 347, answered questions.

DAVID BOYLE
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 347, offered testimony.

STEVEN MERRILL
Alaska Policy Forum

Anchorage, Alaska
POSITIION STATEMENT: During the hearing of HB 347, offered testimony.

RAY KREIG
Alaska Policy Forum
Anchorage, Alaska
POSITIION STATEMENT: During the hearing of HB 347, offered testimony.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 347, offered testimony and answered questions.

GRACE ABBOTT, Staff
Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 205, discussed various amendments.

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

GREG RAZO, Chair
Alaska Criminal Justice Commission
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205, answered questions.

LAURA BROOKS, Health Care Administrator
Office of the Commissioner
Department of Corrections (DOC)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205, answered questions.

TRACEY WOLLENBERG, Deputy Director
Appellate Division

Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205, answered questions.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System (ACS)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 205, offered testimony and answered questions.

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

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

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

ACTION NARRATIVE

1:33:54 PM

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:33 p.m. Representatives Claman, Kreiss-Tomkins, Keller, and LeDoux were present at the call to order. Representatives Foster and Lynn arrived as the meeting was in progress.

HB 347-RECOVERY OF FALSE CLAIMS FOR STATE FUNDS

1:34:29 PM

CHAIR LEDOUX announced that the first order of business would be HOUSE BILL NO. 347, "An Act relating to the limitation period to commence a false claims action; relating to recovery for false claims for state or municipal funds; and amending Rules 4, 24, and 46, Alaska Rules of Civil Procedure."

1:35:03 PM

REPRESENTATIVE KREISS-TOMKINS explained that the qui tam bill or the Alaska False Claims Act is an anti-waste, fraud, and abuse piece of legislation that has been adopted on the federal level by approximately 29 states around the nation. He advised that it is fairly well vetted and modeled after other states, specifically the State of New York, and is substantially similar to language in the Medicaid Reform bill, currently in the other body. While there are a few cosmetic differentiations, he offered, it is effectively the same idea except this is inclusive to all subject matter, whereas the Medicaid Reform bill is specific to only Medicaid. He deferred to his staff for a greater analysis.

1:36:27 PM

REID MAGDANZ, Staff, Representative Jonathan Kreiss-Tomkins, Alaska State Legislature, reiterated that the False Claims Act is based off of false claims acts enforced at the federal level and approximately 29 other states in the union. The central components include: defining false claims (Sec. 2 of HB 347); the attorney general is charged with investigating false claims cases; and the portion of the bill that is perhaps most noteworthy relates to the ability of a private plaintiff, the qui tam plaintiff, to bring a case alleging false claims in situations where the attorney general does not bring a case due to limited resources or because the attorney general is unaware. House Bill 347 spells out the process for the private plaintiff to bring a case, wherein they would file a [complaint] with the court under seal and at the same time serve the attorney general, whereby the attorney general has 60-days to review that case and investigate the claims made. At the end of the 60-day period or an extension, the attorney general can either pursue the case or allow a municipality to pursue the case if the claim is against a municipality. Although, he explained, if the attorney general declines to pursue the case, the private party who originally identified the fraud can pursue the action to conclusion. He offered that no matter which course is chosen,

the private plaintiff is entitled to receive a portion of the money recovered if the case is won, and the exact percentage varies based upon how much information and how large of a role the private plaintiff played. The federal law has resulted in over $30 billion worth of recovery to the federal government in cases originally brought by a private plaintiff. He noted that this [bill] provides a powerful tool against fraud by allowing individual people the ability to bring cases when they identify fraud, and it provides a financial incentive to do so.

1:40:01 PM

CHAIR LEDOUX opined there is a federal qui tam statute but that statute specifically excludes tax matters. She asked whether this bill includes tax division issues, and further asked him to explain what this bill does where the federal statute decided not to, and whether the qui tam statutes in other states include taxes.

MR. MAGDANZ referred to Sec. 2(b) [page 2, line 25], which read:

> (b) This section applies to claims, records, or statements made under AS 43 if

MR. MAGDANZ advised that HB 347 does apply to tax cases, and it only applies to claims, records, or statements made under AS 43, Alaska's tax title, if the net income or sales of the person against whom the action is brought is equal to or exceeds $1 million or the damages sought exceed $350,000. He continued that the bill includes tax matters because the state law the sponsor modeled it after also includes tax matter.

1:41:27 PM

CHAIR LEDOUX questioned whether Mr. Magdanz said that there must be a claim in excess of $1 million.

MR. MAGDANZ opined that it is not a claim in excess of $1 million, the net income or sales of the person against whom the false claims action is being brought must exceed $1 million a year. Therefore, it cannot be used to bring a claim against small businesses or individuals with small tax burdens.

1:42:05 PM

REPRESENTATIVE CLAMAN asked, in addition to the tax question, whether there are other ways wherein the Alaska False Claims Act

would differ from the federal False Claims Act in terms of the kinds of claims that can be brought.

MR. MAGDANZ offered that he has not performed an exhaustive side-by-side analysis of the two acts, but their definitions of false claims are relatively similar and he would provide the information.

1:43:07 PM

STACIE KRALY, Chief Assistant Attorney General, Human Services Section Statewide Supervisor, Department of Law, available to answer questions.

MS. KRALY, in response to Chair LeDoux, responded that she does not do any work with respect to taxes.

CHAIR LEDOUX asked in what situations there might be a valid case for tax fraud that the attorney general's office would decide not to pursue a case.

MS. KRALY requested clarification and asked whether the question was that Chair LeDoux would like to understand under what circumstances the attorney general may decline to pursue an action where the monetary thresholds had been met.

CHAIR LEDOUX agreed, and she clarified where the monetary circumstances have been met and under what circumstances the attorney general would decline to pursue a case.

MS. KRALY responded that she can answer that question generally, and will return with more specifics. She explained that the way false claims acts are designed is that the attorney general will be served with a copy of the complaint that has been filed in court under seal, and would have 60-days to evaluate the merits of the allegations within that complaint. At which time the attorney general has to make a decision either to: proceed with the case on their own accord; defer to the qui tam plaintiff, in this instance; or move the court to dismiss the claim because even though the monetary thresholds had been met there would be circumstances as set forth in the statutes. She remarked that she is not as familiar with this statute as with the statute for Medicaid fraud cases. There are specific limitations as to certain claims not considered to be a false claim even if it may arise to be a false claim in general or it may appear to be a false claim, such as information that is within the public's sphere. For example, she said, an investigative news story

advises that "Organization X has been doing these bad acts" and then someone files a case and states that "This is a false claim." That scenario would not be considered a false claim under the statute, so that claim could not be pursued even though the monetary thresholds had been met. In the event an ongoing investigation had taken place for some other civil or criminal action related to that allegation, the Department of Law would be limited from pursuing those. She related that there are specific provisions within HB 347, and within false claims acts in general that limit and preclude the prosecution of a false claim under very certain circumstances in statute. She offered a scenario where the Department of Law determined there wasn't sufficient evidence to support the claim and meet the burden of taking it to trial, the Department of Law could then move to settle or dismiss the case.

1:46:39 PM

CHAIR LEDOUX surmised that in the event the Department of Law (DOL) decides not to pursue the case they could determine whether it is a frivolous case or not and dismiss it themselves.

MS. KRALY responded generally yes, and advised that she has reviewed several versions of the general false claim act and all have the provision where the Department of Law (DOL) or in this case because municipalities were involved, the governmental agency would be able to evaluate that claim and determine whether or not to move to dismiss the court. She opined that it is not an automatic dismissal because they would have to petition the court to dismiss the claim. In those circumstances, she advised, the qui tam plaintiff would be able to be present in the court and make an argument or evidentiary offer to the court to say, "No, this claim should not be dismissed and I should be allowed to go forward." It is not an automatic dismissal, she reiterated, it is a process of requesting the court to consider dismissal with the plaintiff being able to argue otherwise.

1:48:01 PM

CHAIR LEDOUX pointed out that she wants to be certain the committee does not pass something that allows qui tam plaintiffs to, perhaps, unjustly harass.

MS. KRALY responded that that is a very good point and it has been raised in both bodies in dealing with the Medicaid reform bill. Due to the 60-day investigation by the attorney general's

office and the ability of the attorney general to move for dismissal and/or to settle a case, those protections are such that they will limit what has been characterized as frivolous or harassing litigation by individuals. There are built-in protections under these statutes for the Department of Law to come in and perform a robust evaluation of the allegations and the evidence that supports those allegations, she remarked. Within that 60-day period of investigation the Department of Law has the ability to subpoena for records and conduct discovery. There is a provision in the statute that allows the Department of Law a continuation of 30-days to be certain of a complete investigation to assure that the claim does have merit, or that it should be dismissed, or settled.

1:49:32 PM

CHAIR LEDOUX asked whether the Department of Law is supportive of this bill.

MS. KRALY responded that the Department of Law has no position on this bill.

1:49:42 PM

REPRESENTATIVE CLAMAN referred to the attorney general's notice of the [complaint], and offered a circumstance where the attorney general knows little or nothing about the claim and decides it is a good claim. The attorney general then takes over the claim and the qui tam plaintiff is out of the picture as it is the state's lawsuit. He asked whether that is what happens when the state decides to accept the claim.

MS. KRALY said in a sense yes, but the qui tam plaintiff is still able to participate, possibly not given party status but they are involved and if there is a settlement they have the ability to participate and object to a settlement. She pointed out that she has not studied this bill in detail, but the other false claims acts read as such and they participate but the litigation would be directed by the Department of Law.

1:50:57 PM

REPRESENTATIVE CLAMAN offered a second scenario in that after being notified of the claim, the state moves to dismiss it. He asked whether the determination is based on the merits based on the facts, or a legal determination assuming the facts are as the qui tam plaintiff says they are, it is still not a

recognizable claim under the False Claims Act so it should get dismissed.

MS. KRALY opined that it could be done either way, and further opined that there is kind of a merits based analysis but there is also a substantive review that is required by the Department of Law (DOL) that would then determine whether or not there was sufficient evidence. For example, she offered, the complaint comes in and alleges a situation within the public sphere and as a matter of law, it is not a false claim and DOL would move to dismiss, which is easy to decide. In the event there is not an easy answer, which would go through the four or five provisions in this bill and other bills like it, which reads these do not constitute false claims; therefore, they can't proceed. At that point, a more substantive review of the allegation would be required through discovery and an investigation to determine the merits of the allegations, she explained.

1:52:30 PM

REPRESENTATIVE CLAMAN asked how this bill gives the state or a potential false claims plaintiff something they don't already have by using the federal act.

MS. KRALY pointed out that the quick answer is that it allows a false claims for state administered programs and, she opined that the federal act would not allow pursuing a false claim for a state funded program. She offered the example of Medicaid programs and said there are a number of federal false claims dealing with pharmaceuticals that the state participates in, but those are a broader based issue and also have a federal component to it. She opined that this would give the qui tam plaintiff the ability to identify and pursue a false claim based upon state funded activities under state statutes and regulations.

1:53:50 PM

REPRESENTATIVE CLAMAN referred to the state's current budget situation and asked the department's capacity to get involved in the false claims actions on a state level.

MS. KRALY referred to the fiscal note attached to the Medicaid reform bill (SB 74), and noted that the department asked for some resources to pursue that. She said it is a matter of how it would be calculated out and that it may require additional

resources by the Department of Law, but she is not familiar with how the department will calculate those out.

1:54:47 PM

CHAIR LEDOUX asked who the Alaska False Claims Act might be used against and noted that Medicaid has a federal component; therefore, couldn't an action be brought under the federal law. She asked for an example.

MS. KRALY deferred to the sponsor or his staff.

REPRESENTATIVE KREISS-TOMKINS deferred to his staff.

1:55:45 PM

MR. MAGDANZ said the definition of false claims in Sec. 2 of the act applies to basically anyone asking the state for money or resources or receiving money or resources from the state. He offered that he has not performed a precise legal analysis to know exactly which cases might fall under it or might not. Basically, he noted, anyone who had a contract with the state could be subject to a false claims action if they were defrauding the state. For example, he said, IT procurement cases.

1:56:42 PM

REPRESENTATIVE KREISS-TOMKINS asked whether Mr. Magdanz was familiar with false claims brought in other states and jurisdictions that settled, and the subject matter.

1:56:55 PM

MR. MAGDANZ answered that he copied a short list from the "Taxpayers Against Fraud" website and many of the cases have to do with medical claims or pharmaceuticals. He then offered examples of different cases, such as, oil on public lands, the United States Department of Housing and Urban Development (HUD) ...

1:57:34 PM

CHAIR LEDOUX questioned why that would have been brought under a state statute.

MR. MAGDANZ responded that these are examples of claims brought under federal statute.

1:57:48 PM

REPRESENTATIVE KELLER referred to [Sec. 37.10.110], beginning page 1, line 11 through to page 2, line 24, and said he found the language confusing and was advised that this language came from the federal act. He pointed to [Sec. 37.10.110(a)(4)] on page 2, lines 9-11, which read:

> (4) possess or control public property or money used or to be used by the state or a municipality and knowingly deliver or cause to be delivered less property than the amount for which the person receives a certificate or receipt;

REPRESENTATIVE KELLER opined that Alaska is the only state where all of the natural resources of the state are public property. He pointed this out, not because he sees it as a large problem, but rather because it is simply importing language without a careful analysis of all of the language in every single subsection.

Representative Keller referred to [Sec. 37.10.110(a)(6)] on page 2, lines 15-16, which read:

> (6) knowingly buy or receive as a pledge of an obligation or debt public property from a person who may not lawfully sell or pledge the property.

REPRESENTATIVE KELLER referred to [Sec. 37.10.110(a)(8)] on page 2, lines 15-16, which read:

> (8) fail to disclose a false claim to the state or a municipality within a reasonable time after discovery of the false claim if the person is a beneficiary of an inadvertant submission of a false claim to an employee, officer, or agent of the state or a municipality or to a contractor, grantee, or other recipient of state or municipal funds.

REPRESENTATIVE KELLER described subsections (4), (6), and (8) as confusing because it is difficult to imagine a case where this might be applied. He asked whether this language had been carefully considered, whether this language is common to

Alaska's laws, and whether the committee is doing things it may regret.

2:00:01 PM

MR. MAGDANZ acknowledged that this language was largely drawn from other examples in templet legislation, and that Representative Keller made good points.

CHAIR LEDOUX said she is not moving HB 347 today and opened public testimony.

2:01:04 PM

DAVID BOYLE said he is testifying on his own behalf and that he is a member of the Alaska Policy Forum. He explained that the Alaska False Claims Act has a deterring effect on preventing fraud, such as Medicaid fraud. More importantly, he noted, it rewards public employees and protects them from reprisal actions, it rewards everyday Alaskans to be active in daily governmental functions, and there are 29 states including Washington D.C., with false claims acts. He then listed various cases within the federal program, which included: the McKesson Corporation (Pharmacy) was found guilty of $151 million for sales in Medicaid fraud; the Walter Investment Management Corporation submitted $30 million in false claims to the United States Department of Housing and Urban Development (HUD) and they later received $5.5 million in reward incentives; and recently 12 Detroit public school principals, an assistant superintendent, and the vendor were charged by the FBI in an illegal bribery and kick-back scheme - fraudulent invoices for supplies totaling over $900 thousand. In 2009, the Alaska Policy Forum recommended to the Anchorage School District that they "Formulate, invest, and implement a fraud waste and abuse policy to ensure most efficient operations. The focus on fraud and abuse should be: 1. procurement and contracting and the potential theft of district property. This requires that stringent equipment control policies be established and followed. The comprehensive fraud and abuse policy should also include full whistleblower protection and incentives for the identification of fraud waste -and abuse." Unfortunately, he said, the Anchorage School District did not agree because it would be too difficult to implement and the incentivization of the program would not be fair. He asked that the committee pass HB 347 out of committee because "we need to squeeze every penny out of the Alaska budget due to our fiscal crisis."

2:03:51 PM

STEVEN MERRILL said he is testifying on behalf of the Alaska Policy Forum, is an Anchorage attorney, "and a long-time freedom fighter." Mr. Merrill offered testimony as follows:

> My statement here for you today is entitled, Gangsters Beware, and I want to start with an old Scottish proverb: '*Thieves operate in the dark, yet are visible in many ways people can see.*'
>
> Every year paperwork con artists, from mega billion dollar corporations to family run fraud shacks rip off American government to the tune of untold billions of dollars. Few perpetrators are ever caught. The ones that are caught typically are discovered and exposed by those working in some way with the fraudster. Maybe someone who becomes outraged at the crime being committed. But that kind of event might usually be the end for justice, just silent, disgusted what was happening. That is unless the potential whistleblower manages to use the only effective means that has ever been in the United States for exposing fraud against the public treasury. That is called the False Claims Act. It's time Alaska joined 29 other states in trying to do something about the tens of millions of dollars in state government, right here in our state, is conned into giving to flim-flam men every year. Alaska needs its own false claims act, as proposed here by Representative Kreiss-Tomkins, it also needs a whistleblower protection act, and an Alaska fraud hot-line so people can be aware of these laws, both government contractors, government employees, and management of government contractors, so everyone knows what the law is and how they can contact a confidential source. The fraud hot-line could offer confidentiality that is kept outside the direct state record keeping, which is quite often very important to a whistleblower. I helped the Alaska Policy Forum this year draft a false claims act for Alaska that is drawn from a number of state laws across the county. So -- that is the case also with this bill proposed by Representative Kreiss-Tomkins, primarily drawn, I'm told, from the New York statute. The major difference between the two is that the New York law caps whistleblower compensation at a 25 percent share of the total recovery. And it also, more importantly and

to me oddly, sets a minimum amount in controversy that is quite high, $350 thousand dollar limit.

2:06:54 PM

Now most states, and most -- and the federal government have a higher cap and no floor. Typically the cap is 30-35 percent. The difference between these approaches can be critical to whether a case is going to be accepted or not. One that may not have an exceptionally large recovery to be had. A false claim could be for vast millions of dollars or for rip offs that do not even reach $100 thousand dollars. Why should lesser fees face no consequences -- no possible consequences? The solution we propose is to delete the cap in this bill and to use brackets like tax brackets for determining the (indisc.) share of the recovery. A higher proportion of the first dollar recovered and a lesser proportion as the size of the recovery rises. Ladies and gentlemen, this proposed new law, before the committee, would finally greatly endanger the hosts of parasites who are routinely stealing the public funds of Alaska. This year let's make the first serious effort ever in Alaska to combat fraud, waste and abuse of public funds. Thank you.

2:08:14 PM

MR. MERRILL, in response to Chair LeDoux, agreed to forward a copy of the qui tam bill formulated by the Alaska Policy Forum.

CHAIR LEDOUX said the committee would like to compare their bill with the current HB 347 to determine how to make it into a better bill.

MR. MERRILL advised that the Alaska Public Forum bill recommends a hot-line law and a whistleblower protection act which, he opined, are necessary components of this.

2:09:22 PM

RAY KREIG, Alaska Policy Forum, said he is probably testifying both on behalf of the Alaska Policy Forum and himself. He offered testimony as follows:

And I just wanted to say, in listening to the earlier questions, including Madam Chair your own questions of

'Why do we need this if there is a federal statute?' Just to give you a little bit of history, the Policy Forum was looking into the excesses of the new crime lab on Tudor Road while it was being proposed. And I got involved with that investigation and our first attention at the Policy Forum to the problem with Alaska not having fraud, waste, and abuse statutes came from our interviewing a former crime lab director, Chris Beheim. He strongly felt that our state procedures and statutes were lacking in this area. And the ongoing outcome of the investigations surrounding the crime lab was this whitepaper that Mr. Beheim was a co-author of, that came out and was distributed to the legislature several months ago. We didn't know about this hearing today, we had no idea it was coming up. Mr. Beheim undoubtedly would have testified, but he's just unavailable right now as this is going on. So, I am not nearly the expert on the statute, obviously, as Mr. Merrill but I thought the committee should know that the retired crime lab director Beheim was the original origin of this and strongly is in favor of passing this legislation and the other accompanying whistleblower legislation that's in the Policy Forum whitepaper. Thank you very much.

CHAIR LEDOUX held public testimony open.

2:12:31 PM

MS. KRALY clarified for the record the issue of the federal False Claims Act in Medicaid and explained there is a reason to have a state false claims act even when Medicaid is involved. She further explained that if the state had an approved and federally certified Alaska False Claims Act, the State of Alaska would receive a ten percentage point swing for Alaska from the federal government for monies recovered under its state false claims act, a 55/45 percent axle. She expressed that the record should be clear that the fact that the federal act would allow the state to pursue Medicaid claims under that federal act, the state act has a direct benefit to the State of Alaska.

2:13:31 PM

REPRESENTATIVE KELLER noted that there are fraud occasions now and asked whether any federal monies are currently available for that which the state has pursued.

MS. KRALY responded that the state has participated in multiple class actions related to Medicaid and Medicaid fraud through the Consumer Protection Section, Medicaid Fraud Control Unit of the Department of Law (DOL).

REPRESENTATIVE KELLER asked whether there is federal money that helps the state in those fraud investigations now.

MS. KRALY answered that if the action is prosecuted or dealt with through the Medicaid Fraud Control Unit there is federal funding that pays for the attorneys and investigators that work on those cases and they provide an "administrative match" and they are funded at 75 percent federal dollars to 25 percent state dollars.

2:15:00 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), said the record should be clear that the Alaska Court System is still looking at the impact HB 347 may have on the court system. She noted that the Department of Law (DOL) provided an indeterminate fiscal note on the grounds that they are unclear as to how many cases this might generate. There is some expectation that the cases it does generate will be mostly by self-represented parties. She offered that this is a policy call and should the legislature pass the bill, the court system will be able to implement it. She advised that she spoke to the staff of the sponsor regarding the unusual procedures in the bill, and that perhaps it isn't quite as stylized to what is typically done in Alaska as it could be. It is unclear how a complaint will be filed with the court in-camera and then remain under seal for 60-days because currently there are no procedures set up, although, she noted, the court system could develop a procedure if it becomes law. She suggested that it could be more efficient and effective that the complaints are delivered directly to the attorney general's office without having the court more or less be the babysitter for those complaints for 60-days until the attorney general decides what to do. She noted it is something her office will work out and she looks forward to continuing to work with the sponsor's office.

2:16:40 PM

CHAIR LEDOUX asked why Ms. Meade thought that most of the complaints will be brought by pro per plaintiffs.

MS. MEADE opined that if the complaints or claims have merit, the attorney general's office would be inclined to take the case and pursue the case. With regard to oil companies, she opined, the Department of Revenue routinely audits and the attorney general's office pursues the audit on every single tax return the oil companies file. She referred to Medicaid and said it appears that if the attorney general was told there was a problem with a doctor falsely making Medicaid claims against the state, the attorney general would pursue it. It is true that this is for those cases that the attorney general opts not to pursue either because it doesn't think there is enough evidence to win, or alternatively, it doesn't have the resources to pursue every single case. She offered that some of these will be brought by self-represented people whether there is a lot of basis for them, or maybe not.

2:18:08 PM

CHAIR LEDOUX referred to the incentive piece and asked whether Ms. Meade believes this would bring out employees of companies who see something legitimately wrong in their companies. Yet, without the bill the employees might ask themselves whether they really want to step forward. Although, if they see there is a monetary reward to it they might take that chance, and if it's legitimate they will find an attorney.

MS. MEADE agreed, and said that the intent of the bill is to help people who witness legitimate fraud recover the funds for the state and receive a reward. She related that, particularly in this state, there are a high number of self-represented litigants and under this bill self-represented people could pursue claims that the attorney general's office determines are not pursuable. Again, she said, this is the committee's policy call and those are some of the questions she has as she determines how this bill will affect the court system.

2:19:34 PM

CHAIR LEDOUX asked why the claims would be filed in-camera.

MS. MEADE responded that that is exactly her question. The bill reads that the complaint shall be filed with the court in-camera and remain under seal with the court holding it for 60-days, which is not the typical procedure for a complaint. She expressed that she was unsure what the judge would be looking for in the in-camera review to decide whether the next step

should be taken or not. Again, she related, those are procedural issues that could perhaps be worked out with the sponsor and possibly a different procedure could be developed.

2:20:17 PM

REPRESENTATIVE CLAMAN noted there is the potential of pro per claims being brought, but isn't another one of the likely consequences of having a false claims act in the state is that there will be some group of law firms that become specialists in bringing these claims because that is his impression on a national level.

MS. MEADE expressed that she would be speculating and does not know the consequences of false claims acts in other states.

2:21:25 PM

CHAIR LEDOUX asked Representative Kreiss-Tomkins whether he can advise the committee as to why the bill reads filing in-camera.

REPRESENTATIVE KREISS-TOMKINS deferred to Ms. Kraly or Mr. Magdanz, and opined that the preview is to be certified by the federal government as a false claims act on the state level in order to receive enhanced recovery for Medicaid fraud. He asked the witnesses whether this language is different from what is in the Medicaid reform bill in the Senate.

2:22:18 PM

MS. KRALY referred to the in-camera and under seal requirement in this bill and opined that there is an under seal provision language in SB 74, but she needed to confirm. She explained that the Office of the Inspector General has guidelines for purposes of certifying a Medicaid False Claims Act and that language is required to be a state act in order to receive certification, especially as to it being under seal. The purpose of the in-camera provision is to allow the Department of Law to investigate the merits of the claim without the person who committed the alleged false claims being served with the complaint which, she noted, goes back to the question of protecting against frivolous complaints. Normally, a complaint is filed, the defendant is served, and answers happen. Whereas, in this bill, the complaint is filed in-camera, under seal, and is confidential; therefore, the Department of Law has the ability to properly investigate the claim to determine the merits of the claim and to avoid the frivolous lawsuits or

inappropriate prosecution of the claim before it is determined necessary to proceed. It is a procedural safeguard, she described, to avoid individuals who may be alleged to have committed frauds or false claims from having to defend something before it is actually proven that it's a meritorious claim. She reiterated that it is a procedural safeguard built into all of the false claims she reviewed while working on the other bill, and then she reviewed this bill this past week.

2:24:18 PM

CHAIR LEDOUX questioned whether it would be just the opposite by allowing someone to be investigated without their knowledge of an investigation. She said she does not see it as something that is going to safeguard the interests of the defendant, but rather something that allows a person to file a suit against another person and investigate that suit without them being aware of it. She added that it is not necessarily a bad thing, but the reasoning.

MS. KRALY agreed that there is truth to Chair LeDoux's statement and some accuracy to what Ms. Kraly said as well. She opined that in order to investigate the claim, the Department of Law has the ability to conduct discovery and seek subpoenas. Absent an open court file, she said she was not sure how it happens under the construction of the False Claims Act. It would be necessary to have a court case number and a case to proceed in order to get a subpoena and do those sorts of things. She opined that it is a procedural safeguard and she could look into it further, but generally those are the protections that are out there to alleviate some of those issues. Further, she related, it is a requirement for federal certification in false claims for Medicaid purposes.

2:25:53 PM

REPRESENTATIVE KELLER asked whether the in-camera requirement was to protect health records.

MS. KRALY answered that there could be other confidential proprietary tax information. When filed under seal, there is limited access of information not allowed to be shared elsewhere under an administrative rule to court personnel, she said. It would protect not just health information but potentially other business information that would be proprietary in nature.

REPRESENTATIVE KELLER asked the number of qui tam cases in Alaska she is aware of.

MS. KRALY answered that she is not familiar with whether there are active cases currently, but she could provide information to the committee regarding the number of cases the state has participated in on the federal level and information regarding recoveries.

2:26:53 PM

REPRESENTATIVE CLAMAN referred to the 60-day period and commented that it has been part of federal law since it was enacted, just after the Civil War, and he opined that it relates to all of the things being discussed and not being able to investigate the claim before the evidence goes away. He surmised there are the issues of how the government gets its investigation together, and how the investigation is performed before the party finds out they are being investigated. He said he thought that it may have to do with whistleblower protections in that if someone comes forward and the government elects to take on the lawsuit, the complaining party has more protections than they might if they were going solo.

MS. KRALY noted those were excellent points.

2:28:44 PM

MS. MEADE said that, although, the language may be required by federal law, Alaska has definite definitions for what is "under seal" and what is "confidential." She explained that documents filed "under seal" are available solely to the judge, whereas, documents filed "confidential" are available to the judge, the judge's assistant, and court employees for case processing purposes. Ms. Meade reiterated that she would like to work with the sponsor regarding possible language that documents can be filed confidentially, which is different than under seal. She noted that she continues to wonder what filing with the court in-camera means, and they will work on that.

[HB 347 was held over.]

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

2:30:02 PM

CHAIR LEDOUX announced that the next 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.]

[Due to their length, some amendments discussed or adopted during the meeting of HB 205 are found at the end of the minutes for HB 205. Shorter amendments are included within the main text.]

CHAIR LEDOUX said the committee will hear amendments to HB 205, and advised that the committee will begin with [pending] conceptual language for Amendment 9 [from the 4/6/16 meeting].

2:30:29 PM

CHAIR LEDOUX advised the committee that Representative Millett provided revised language for Conceptual Amendment 9, and Representative Millett had decided to withdraw her motion to adopt Conceptual Amendment 9.

2:30:56 PM

The committee took an at-ease from 2:30 to 2:33 p.m.

2:33:11 PM

CHAIR LEDOUX moved to adopt Amendment 9[A].

REPRESENTATIVE KELLER objected for purposes of discussion and clarified that the amendment is labeled Version H.26, but there is red print and suggested naming it "Amendment 9A."

CHAIR LEDOUX moved to adopt Amendment 9A. [Amendment 9A is provided at the end of the minutes for HB 205.]

REPRESENTATIVE KELLER objected for purposes of discussion.

2:33:58 PM

GRACE ABBOTT, Staff, Representative Charisse Millett, Alaska State Legislature, offered to recap the prior hearing's discussion of Amendment 9, and turned to [Sec. 62. AS 12.55.027(f)(3), page 1, beginning line 11]. She said subsection (3) of the amendment requires notification of the court or probation officer of violations of conditions of bail, release, or probation in the event someone violated those while in their treatment program. The prior discussion, she explained, was that, perhaps, that language would inhibit operations of the treatment program and potentially limit its effectiveness. She advised language was then brought to the sponsor such that the treatment program should alert the pretrial services office or probation officers if the person is discharged from the program for noncompliance. She said [Amendment 9A] solves two problems, one that the information need not lay with the court as it would be more effective and swifter for the pretrial services office or probation officer to know that a person has been discharged. Thereby, she explained, allowing them to serve in a capacity of enforcing their terms and possibly remanding the person. It would allow an effective definition of what is necessary to alert the pretrial services office or probation officer, she further explained.

2:35:46 PM

REPRESENTATIVE KELLER removed his objection. There being no objection, Amendment 9A was adopted.

2:36:10 PM

REPRESENTATIVE CLAMAN moved to adopt Amendment 10, Version 29-LS0896\H.69, Gardner, 4/6/16, as follows: [Amendment 10 is provided at the end of the minutes for HB 205.]

CHAIR LEDOUX objected for purposes of discussion.

2:36:19 PM

REPRESENTATIVE CLAMAN noted that a sponsor statement for Amendment 10 was provided to the committee. He explained that for a quarter of a century the question of time served in treatment was initially defined in Nygren v. State of Alaska, [658 P.2d 141 (1983)], and that the definition worked quite well. Over time there was an effort by the legislature to try to write Nygren into statutes and then discovered that they created a more restrictive definition under Nygren.

CHAIR LEDOUX asked Representative Claman to explain Nygren to the public.

2:37:21 PM

REPRESENTATIVE CLAMAN explained that Nygren is a lawsuit that provided that a person who went into alcohol or drug treatment before they went to trial and before they were convicted, they would receive credit for their time in the treatment program that would count toward their time in jail. The general theory was that someone with an alcohol or drug problem, which is much of the focus of HB 205, would receive treatment and they would be less likely to reoffend if they had the treatment. Therefore, rather than have someone in jail and not receiving treatment, this was a means to encourage people to go into in-patient treatment settings that were fairly restrictive on their behavior while they were in treatment. In the event the person completed their treatment and later pled guilty to the charge, the judge would give them credit for that time. Basically, he explained, legislative efforts to write a statute that was the same thing as what the court determined in Nygren turned out to make it harder for people to receive credit for time served in treatment than they were getting under the Nygren case. Subsequent to discussions last year with Deputy Attorney General Rick Svobodny, this amendment is an effort to bring in a means more like the Nygren situation, wherein the courts have more discretion in determining what is an appropriate treatment program. He noted it still has fairly strict guidelines and follows the court system tradition, but also recognizes the changing times with electronic monitoring and advances in

treatment programs. He described it as a means to give the courts discretion on credit for time in a treatment program which, he commented, is the spirit of the criminal justice reform.

2:39:24 PM

REPRESENTATIVE CLAMAN responded to Chair LeDoux that he was not aware of anyone that would like to testify on Amendment 10.

CHAIR LEDOUX noted that several commissioners from the Alaska Criminal Justice Reform Commission are in the audience and asked whether they would like to offer testimony.

2:40:34 PM

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), said he is the state's public defender and is also a commissioner on the Alaska Criminal Justice Reform Commission. He expressed concerns regarding Amendment 10 and the potential unintended consequences that may result. He pointed out that the Nygren opinion set forth a body of case law and resulting decisions by trial court judges that resulted in arbitrary application of the case law. Therefore, some individuals would receive credit for the program and another individual in the same program, following the same conditions, would not receive credit from a different judge due to the loose standards applicable under the law. Subsequently, a more narrow definition was passed by the legislature and it substantially restricted the availability of credit for programs and participation. Subsequent to the McKinley v State of Alaska, Case No. 2357 (AK Ct. App., May. 4, 2012) decision, which evaluated that piece of legislation, it was changed again to open it up a little bit more. Consequently, it was a strict, formulaic application of this concept that reduced the disparity between applications amongst judges. He said that Amendment 9 takes that a little bit further by opening up the definition of "treatment program" to not only be substance abuse treatment or mental health treatment, but anything that may address criminogenic needs. Although not defined, he said it does appear to open up that definition while maintaining the structure. One of his concerns, and what the committee must weigh, is the narrowness that exists in the bill and how that will promote uniform application, and uniform predictability of people getting credit, and then something that is a little bit more open that might result in disparities in application, although, a greater opportunity to receive credit, he opined.

2:42:55 PM

CHAIR LEDOUX surmised that as a member of the Alaska Criminal Justice Reform Commission he would oppose the amendment, but as a public defender he might like it.

MR. STEINER responded that in either position he is not opposing or promoting the legislation. He indicated he was pointing out his concerns and to make certain the committee understands what the potential consequences are and weigh the value of the expansion versus the potential disparity in the application that might occur. He pointed out that the goal is appropriate to weigh the expansion, but he is not taking a position on it.

2:43:50 PM

REPRESENTATIVE CLAMAN noted that some of the challenges in Anchorage, specifically, both with the statute and with the Nygren line of cases before the statute was amended, is that Judge A would approve a particular program for credit, and Judge B would not approve that program for credit, and that it was frustrating for defense attorneys and prosecutors. He asked whether that was a fair description of the situation.

MR. STEINER answered in the affirmative.

REPRESENTATIVE CLAMAN noted that some of the efforts were made to try to get the judges all ruling in the same manner.

MR. STEINER asked whether Representative Claman was discussing the legislation that occurred, or just defense efforts to litigate the issues.

REPRESENTATIVE CLAMAN clarified that he was discussing the legislation.

2:44:54 PM

MR. STEINER opined that the subsequent legislation was billed as a codification of a decision that came later, but it turned out to be significantly more restrictive on the Nygren line of cases. It severely restricted its use, he said. A few years ago, he related, the legislature recognized that and opened it back up to be more in line with the Nygren line of cases. Although, he commented, it is still more restrictive than the Nygren line of cases, but what was an advantage to what happened

was that there was less disparity. He extended that within the current Amendment 9, the amendment opens it up a bit further without creating disparity because the structure exists. He explained it is the structure of requirements that currently exists that judges are comfortable with the legislative intent that they grant credit if a person fits the certain parameters. Wherein, that didn't exist with Nygren in that it wasn't clear that the credit should be granted, and there wasn't legislative intent pre-legislation, he said.

REPRESENTATIVE CLAMAN surmised, in terms of the current amended statute, it provides less grounds for receiving credit for treatment than existed under the Nygren line of cases.

MR. STEINER agreed.

2:46:42 PM

REPRESENTATIVE CLAMAN commented that if the goal was to improve opportunities for people to receive credit for treatment, and the committee is trying to expand those opportunities, this amendment helps do that.

MR. STEINER responded correct, and he added that the amendment would allow people to argue for credit in more situations than exist under the current statutory scheme.

REPRESENTATIVE CLAMAN surmised, ultimately, it would be up to the judge's discretion, but there would also be the history of others that had received credit for different programs.

MR. STEINER answered that the histories would exist, but he anticipated that the disparities would increase over time.

2:47:27 PM

REPRESENTATIVE CLAMAN referred to the disparity between different judges and asked whether the issue of programs being approved with one judge doing one thing and another judge doing something else, and ask where it has primarily been an issue in Anchorage and not other parts of the state.

MR. STEINER responded that he could not answer that question but he could try to find out.

REPRESENTATIVE CLAMAN said, sitting here today and discussing the disparity about the application of the Nygren credit, he

asked whether that's only been an issue in Anchorage and not elsewhere.

MR. STEINER opined that he couldn't say for sure, but it was primarily in Anchorage. There are more criminal judges in Anchorage and that is where the disparities occurred, whereas, in smaller jurisdictions there may only be one judge so it wouldn't occur, he said.

2:48:26 PM

REPRESENTATIVE CLAMAN asked whether he agreed that one of the advantages of the approach proposed in Amendment 10 would give judges in rural Alaska more flexibility to determine treatment programs that may work well in rural areas. Whereas, strictly following things that may work in Anchorage might cause a disparate influence in trying to get people into successful treatment living in rural Alaska, he asked.

MR. STEINER agreed.

REPRESENTATIVE CLAMAN surmised that Amendment 10 is a good thing for defendants in rural settings.

MR. STEINER opined that it would provide more latitude.

2:49:22 PM

REPRESENTATIVE KELLER hesitated because he did not want to be in the position of speaking for a judge, but he recalled that the two judges on the commission favored the narrower approach. He noted that he could not recall anything specific and asked whether Mr. Steiner could recall.

MR. STEINER responded that he could not recall the discussion on Nygren, or whether or not disparity was an issue they particularly grappled with.

2:50:55 PM

GREG RAZO, Chair, Alaska Criminal Justice Commission, referred to Amendment 10, and said it was not an issue that came before the Alaska Criminal Justice Commission. He remarked that all of the recommendations from the commission went through a rigorous process of data gathering, policy research, and are evidence based.

MR. RAZO noted that as the committee reviews and possibly moves the amendments forward, to consider whether that amendment would withstand the test of determining what the criminal law is in Alaska, and whether there was enough evidence to support the change.

2:52:01 PM

REPRESENTATIVE KELLER agreed, and he said he has been uncomfortable also, but the committee has the issue of receiving the evidence within the timeframe of the session, and requested his assistance.

MR. RAZO said the commission is certainly not finished with its work under its original charter under Senate Bill 64. Under the current proposals before the legislature, there is an ability to extend the duties and length of time the commission works which, he commented, is an important oversight function should the crime bill pass. For all of the good ideas presented to the House of Representatives and the Senate, the commission has the ability to perform research with the technical assistance necessary. In moving forward, the commission has the benefit of the "Results First Initiative," and the data gathering that has been significantly improved over the period of time the Alaska Criminal Justice Commission has been working. In the event the House Judiciary Standing Committee has issues with a proposed amendment, he suggested tasking it to the commission to take under consideration. The commission will then provide the committee with a policy recommendation based upon evidence, research, and study, he said.

2:53:31 PM

CHAIR LEDOUX extended that the commission can provide a recommendation, but there are certain things the commission did not provide recommendations on because there wasn't necessarily a consensus.

MR. RAZO responded, at the end of the report there were items that would provide for additional savings and additional public safety considerations. He explained they were not consensus recommendations but rather majority recommendations and were presented simply for an informational purposes. The policy recommendations were consensus and unanimous, he said.

CHAIR LEDOUX surmised that the commission would probably like this bill passed with the exact recommendations that came out of

the commission. Although, political reality indicates that it isn't going to happen exactly like that because legislators like to put their hands on things, she commented.

MR. RAZO related that all of the commissioners worked incredibly hard, based upon their education and experience on the recommendations, and the commission does not comment on the pending legislation, it simply explains the process and its recommendations.

2:55:06 PM

REPRESENTATIVE CLAMAN asked whether the commission's recommendations try to give judges more flexibility in dealing with substance and alcohol abuse issues particularly with regard to non-violent offenders, and whether Amendment 10 is consistent with those approaches.

2:55:58 PM

MR. RAZO said he does not necessarily agree there was a significant focus on increased judicial discretion, in that their goal was to offer uniformity in how criminal justice is applied across the State of Alaska. The commission reviewed research that showed the origins of the presumptive sentencing law, for example, and whether there were disparities that resulted post-presumptive sentencing and before pre-presumptive sentencing. Issues such as, determining whether the court, with discretion, would have such significant disparities there is the potential for racial bias, for example. He explained those are factors the commission reviewed, and that the recommendations show that a uniformity in approach that is fair, just, and based upon strong evidence, is the best public policy.

MR. RAZO, in response to Representative Claman's second question of whether Amendment 10 is consistent with the goals of the commission, stated that since the commission didn't take a position on this he would speak from experience and as an individual. He said that generally the ability to give appropriate good time credit for legitimate treatment programs is very important, and it is actually an incentive for someone facing their drug and alcohol problem to immediately deal with that. He opined it is consistent, and further opined that the risk based approach identifies those things immediately with a pre-trial screening substance abuse process that upon examination identifies a problem, and they are assigned to that problem. In the event the person completes the corrective

program related to that assignment successfully, they should receive credit for that. Whether this bill actually says that or not, he does not have an opinion. He referred to the previous Amendment 9[A] which deals specifically with treatment, this amendment seems to take out the word treatment and broadens ...

2:58:58 PM

REPRESENTATIVE CLAMAN interjected that the amendments must be viewed in combination because "Amendment 10 recognizes that Amendment 9 would be part."

MR. RAZO said that that was the best answer he had for Representative Claman.

CHAIR LEDOUX asked whether any other commissioners had thoughts on this amendment, hearing no response she suggested Amendment 10 be set aside.

CHAIR LEDOUX set Amendment 10 aside.

3:00:06 PM

CHAIR LEDOUX moved to adopt Amendment 11, Version 29-LS0896\H.23, Martin/Gardner, 3/28/16, as follows:

Page 82, line 13, following "plan":
Insert "receives a positive recommendation from the supervisor of the prisoner's treatment program"

REPRESENTATIVE KELLER objected for purposes of discussion.

3:00:41 PM

MS. ABBOTT explained that Amendment 11 addresses a concern discussed in committee regarding the recommendation for sex offenders. In the event sex offenders undergo treatment, while incarcerated, that the completion of the treatment be a trigger for them to receive good time, which is usually one-third off of their sentence. Amendment 11 offers that upon completing that treatment, before the good time would be applied they would also need a positive recommendation from the supervisor of the prisoner's treatment program. Members of the committee have expressed concern with the manner in which the successful completion of treatment was evaluated, and whether it was a participation grade wherein an inmate had undergone all of the

steps of treatment, yet, performed as substandard participants. She continued, no one would know better than the supervisor of the treatment program whether or not progress was made, other than the offender. She said Amendment 11 aims to allow that additional mechanism and allow the supervisor to offer human input as to whether or not progress was made and whether this person should be eligible for good time.

CHAIR LEDOUX removed her objection.

REPRESENTATIVE KELLER objected as he would like to hear from Mr. Steiner.

3:02:57 PM

REPRESENTATIVE CLAMAN offered to make a conceptual amendment within the technical language and suggested that the word "and" be inserted before the word "receives" for it to read properly.

CHAIR LEDOUX referred to [Sec. 136. AS 33.20.010, page 82, lines 12-13], which read:

> (d) ... until the prisoner completes the treatment requirements in the prisoner's case plan.

CHAIR LEDOUX then included the language from Amendment 11, [line 13] and the conceptual amendment, which would read:

> and receives a positive recommendation from the supervisor of the prisoner's treatment program.

CHAIR LEDOUX suggested listening to Mr. Steiner's testimony first.

3:03:33 PM

MR. STEINER offered concern regarding the idea of completion and receiving good time credit because the carrot was automatically when the person had completed their treatment plan, and this would inject some discretion into that process. He noted that it would undermine its effectiveness and because it would rest on a [supervisor] approving a person, they would essentially be approving them for release. He continued that the weight of that decision on one single person would undermine its actual application because there would be few people willing to take that responsibility rather than writing a structure where it is automatic.

3:04:31 PM

CHAIR LEDOUX expressed concern about the person that just showed up so all of the boxes could be checked, but the person really didn't have their heart into it, so to speak.

MR. STEINER responded that the data revealed that completion of treatment had a positive effect, and the commission did not evaluate any sort of discretionary weight as to whether or not someone's heart was in it. He said he understands the concern but when the commission looked at it, it was simply that completion of treatment results in reductions in recidivism. He pointed out that Amendment 11 injects a discretionary decision and the commission did not review whether or not discretionary decisions were accurate. He related that what is at stake here is whether or not the decision is even accurate in the first place, and whether someone is willing to take the responsibility for making the discretionary decision that the person is essentially treated and ready to go out into the community.

3:05:33 PM

REPRESENTATIVE CLAMAN offered that he shares Chair LeDoux's concern in that if all someone has to do is check the box it leaves no room for someone working in the treatment program to say the inmate is faking it. He remarked that the risks are just as high when all the boxes have been checked but [the supervisor] thinks this person is just as [likely] to reoffend as they were before starting the program.

MR. STEINER noted he could not specifically respond to how that is evaluated in the program, that the individual running these programs may be able to advise whether or not someone successfully completes their active participation and whether or not it is substantial, is factored in.

CHAIR LEDOUX noted that she receives a medal for participation when running a race that she didn't win. Simply because a person is in a treatment program does not mean they have successfully completed the treatment program and, she pointed out, the statute currently reads that until the prisoner completes the treatment requirements within the prisoner's case plan -- it doesn't even read "successfully" completes.

MR. STEINER answered that the Department of Corrections (DOC) requested the word "successfully" be removed because it didn't

want to label individuals treated. He reiterated that the commission reviewed the question of completion of the program and how that related to reductions in recidivism.

3:07:48 PM

REPRESENTATIVE LYNN asked the length of the treatment program and whether there are there different treatment programs for different types of sex offences.

MR. STEINER responded that he is not the authority on the treatment programs, but knows that in-custody treatment programs exist in two locations. He said he does not know how they accommodate different convictions for different people and he is not sure how they are distinguished.

REPRESENTATIVE LYNN referred to the program, and asked whether the discussion is regarding weeks, months, or years, or whether there is such a thing as a typical offense.

MR. STEINER reiterated that he does not know the answer to that question, and opined that it is a lengthy program and DOC would be able to answer that question.

REPRESENTATIVE LYNN said he would like to know the answer as to the length of treatment programs, and he noted that because the variety of sex offenses are so broad that surely there would be different types of programs.

CHAIR LEDOUX advised that her staff was in the process of contacting Laura Brooks.

3:09:27 PM

The committee took an at-ease from 3:09 to 3:016 p.m.

3:16:45 PM

LAURA BROOKS, Health Care Administrator, Office of the Commissioner, Department of Corrections (DOC), advised she was available.

REPRESENTATIVE LYNN asked the length of the treatment programs, whether there are different treatment programs for different sex offenses, and whether the treatment programs match the sex offense.

MS. BROOKS responded that different programs are different lengths. The program in the Lemon Creek Correctional Center is for the state's highest risk offenders and it is anywhere from 24-36 months, although, it may be shorter if they move through their treatment plan more quickly, which is rare or it may be extended if they are not making progress in treatment. A program in the Palmer Correctional Center is 18-24 months because the program is tailored to the more moderate risk offenders, and there is a program for women at Hiland Mountain Correctional Center that is 18-24 months. The programs work to identify specific needs based upon a number of things and their offense is one of the critical factors in determining a treatment plan. She advised that in each of DOC's programs, every participant has an individualized treatment plan developed and it absolutely takes into account the type of offense, whether it is a sexual assault of an adult, sexual abuse of a minor, the circumstances around the crime, the level of violence involved in the crime, and a host of different issues are analyzed in order for the treatment provider to tailor the treatment plan to that individual's criminogenic needs and specific sex offender offense.

3:19:26 PM

REPRESENTATIVE LYNN referred to an Individualized Education Program (IEP) in special education and asked whether it is more or less that type of program wherein they analyze the offense and tailor the program to that offense so it is individualized and not five individuals in the same room with the same program.

MS. BROOKS answered that Representative Lynn was correct in that it is very similar to an IEP and it is not a static treatment plan. She offered that as the individuals move through treatment, if a problem comes up such as showing aggression toward the treatment provider, their treatment goals may be adjusted and certainly some of their homework assignments and change the focus in treatment to address those issues. The treatment plan, although developed at the beginning of the program, is fluid throughout the treatment to make sure that as the offender's behavior changes, as their thinking patterns change for better or for worse, that treatment plan adjusts with them.

3:20:35 PM

REPRESENTATIVE LYNN referred to the AA treatment program wherein the first thing a person does is state they are an alcoholic,

and he asked whether it works in that manner for this program. For example, state they are a sex offender, and acknowledge they have a problem. He further asked whether they even know they have a problem.

MS. BROOKS noted that is a common question when it comes to sex offenders and she expressed that, generally, to accept someone into DOC's program they cannot deny that they committed the crime and must acknowledge what they did because that then opens the door for them to be more amenable to treatment, potentially. Often, she said, it has been noted that once they come into treatment they still have a huge amount of denial with ability to rationalize most of the behaviors around those crimes. She continued that a sex offender has a sophisticated denial system and manner of manipulating people of which they attempt to use on their treatment providers the moment they walk in the door. A 12-step program, such as AA or NA, doesn't come close to touching the amount of pathology seen in sex offenders, which is why their treatment is long, intensive, and specifically structured to the individual, she explained.

3:22:51 PM

REPRESENTATIVE CLAMAN referred to the proposed amendment that discusses receiving a positive recommendation from the supervisor of a sex offender treatment program, and opined the department has concerns. He asked the reason for the concerns, and further asked whether an inmate receives a positive recommendations when the program is completed.

MS. BROOKS opined that the concern for a treatment provider may be that even though sex offenders can be considered "program complete" there may be some reluctance to give a positive recommendation due to the severe pathology associated with this population. She explained that when an inmate is program complete they have gone through all of the requirements necessary to complete the program, reached their goals, turned in their homework, said what is needed to be said, and passed their polygraph. She opined that treatment providers may be concerned about liability and whether to say anything more than "this person is treatment complete" because they cannot say the person is cured. The providers will be willing to say the person has completed the necessary steps in treatment but, she warned the committee that it must be careful when asking them for a positive recommendation because that may certainly mean very different things to different people.

3:24:56 PM

CHAIR LEDOUX interjected concern because if a treatment provider does not have enough trust in their own treatment plan that they are willing to say an offender has successfully completed the plan, it sounds somewhat problematic.

MS. BROOKS answered that the treatment provider would absolutely say the offender successfully completed everything in treatment. She explained that she was responding from her own previous private practice and that she would not be willing to give a positive recommendation for a sex offender. Although, she said, she would say that this person had successfully completed all the steps of treatment.

CHAIR LEDOUX interjected that, in that case the offender is just receiving the participation medal which doesn't mean anything.

MS. BROOKS asked Chair LeDoux to repeat herself.

CHAIR LEDOUX mentioned that Ms. Brooks was not online at the time Chair LeDoux offered the scenario of being a runner and receiving a medal at the end of the race. Except, she related, the medal didn't mean she was a good and successful runner, it just meant that she paid her money and received her medal. Therefore, she said, if the offender's treatment provider isn't even able to say they are giving the person a positive recommendation, "I've got some real problems there."

3:27:00 PM

MS. BROOKS stated that she does not disagree with Chair LeDoux and there are treatment providers who are willing to say this person "successfully completed treatment," but offered concern that some providers wouldn't feel comfortable doing that.

CHAIR LEDOUX interjected, "Then they'd better get their treatment programs in order if they are not feeling comfortable doing that." She equated it to a teacher saying they are going to pass the student, but the teacher wouldn't say the student successfully completed the course work.

MS. BROOKS explained, treatment providers may be willing to say the person is better "but to put themselves out there and say this person is no longer going to reoffend, I don't know that they all would be willing to say that."

CHAIR LEDOUX stressed that if the treatment provider is not willing to say it, she doesn't think the offender should be released.

3:28:42 PM

REPRESENTATIVE CLAMAN referred to her statement that while providing sex offender treatment in private practice she would not have wanted to be in a place of saying someone was cured, and he noted that currently she is a public employee of the Department of Corrections (DOC). He pointed out that all the committee is discussing is "positive" and it doesn't mean there is any guarantee that the person will never offend again. He asked whether, in the state context, she would be willing to say that this is a positive recommendation on a person completing the treatment.

3:29:38 PM

MS. BROOKS clarified that she was referring to all of DOC's treatment providers which include a number of practitioners within the community. She pointed out that these providers are providing sex offender treatment under contract, that [DOC] is a piece of their practice, and that they are cautious about what they are willing to say.

3:30:21 PM

REPRESENTATIVE KELLER noted that he thinks about One Flew Over the Cuckoo's Nest when listening to Mr. Steiner's concern that everything is put upon one person who can say yea or nay, and not all supervisors of treatment programs are going to be created equal or trained equal and have equal access to the risk assessment tools. He described it as part of the horrendous job as the head of the Department of Corrections, and opined that the testimony is sincere and it rings a chime with him.

MS. ABBOTT pointed out that this language is specific and purposeful in not saying cured, and the amendment is not asking that a treatment provider say the reoffender will not reoffend. She noted that the amendment injects some of that discretion that exists in treatment. She continued that there are individual cases, education plans, and individual aspects of each person's case and that the positive recommendation could be that they have made progress and were an active participant. In her mind, she offered, that would be deemed as a positive recommendation and would not require someone to put their career

or liability at stake and say this person will never reoffend. This is not a difference between someone being released and someone never seeing the light of day. She pointed out that it is simply an award of good time credit. Therefore, an offender, under this situation, who was unable to complete treatment would still potentially be eligible for release, but they would not be eligible for the one-third good time credit. In the event the offender was unable to receive the positive recommendation it would allow for more time for supervision and more time for corrective action to be taken, she said.

3:34:27 PM

REPRESENTATIVE CLAMAN [referred to the previous discussion regarding the addition of the word "and" before the word "receives", on page 82, line 13] and moved the adoption of Amendment 1 to Amendment 11. There being no objection, Amendment 1 to Amendment 11 was adopted.

3:34:40 PM

REPRESENTATIVE KELLER maintained his objection to Amendment 11, as amended.

A roll call vote was taken. Representatives Foster, Claman, Kreiss-Tomkins, and LeDoux voted in favor of Amendment 11, as amended. Representatives Keller and Lynn voted against it. Therefore, Amendment 11, as amended, was adopted by a vote of 4-2.

3:35:35 PM

The committee took an at-ease from 3:35 to 3:36 p.m.

3:36:56 PM

CHAIR LEDOUX moved to adopt Amendment 12, Version 29-LS0896\H.67, Martin/Gardner, 4/1/16, which read: [Amendment 12 is provided at the end of the minutes for HB 205.]

REPRESENTATIVE KELLER objected for purposes of discussion.

3:37:05 PM

MS. ABBOTT explained that Amendment 12 seeks to allow the pretrial services office, and its officers, to require that an offender awaiting trial could be required to participate in the

24/7 program, which is a corrective program for alcohol and substance abuse related offenses. The amendment also allows the Board of Parole to require, as a condition of parole, that they participate in the 24/7 program, she said.

3:38:30 PM

MR. STEINER related his concern as it applies to the pretrial services officer because it would allow that pretrial service officer to decide whether or not someone enters the program under the statute. Typically, the scheme would be recommended to the court. He explained that on bail those things are handled by the court and the amendment would take the discretion away from the court and hand it entirely to the pretrial services officer. This amendment does the same for parole but it is typical for the Board of Parole to have that authority. He suggested that if the committee prefers to maintain discretion with the court and not pretrial services to change "require" to "recommend to the court."

MR. STEINER, in response to Chair LeDoux, [referred to page 1, line 4], suggested that after subsection (4) delete the word "require" and substitute with the words "recommend to the court."

MS. ABBOTT opined that Mr. Steiner's recommendation meets with the intent of the amendment.

3:40:18 PM

REPRESENTATIVE KELLER moved [Conceptual] Amendment 1 to Amendment 12, as follows: [page 1], line 4, immediately after the subsection number "(4)" delete the word "require" and insert "recommend to the court."

REPRESENTATIVE CLAMAN asked for clarification as to whether it should be "recommend" or "recommend to the court."

MS. ABBOTT stated it is "recommend."

REPRESENTATIVE KELLER restated his motion to adopt [Conceptual] Amendment 1 to Amendment 12 as follows: [page 1] line 4, immediately after the number subsection "(4)" delete the word "require" and insert the word "recommend." There being no objection, [Conceptual] Amendment 1 to Amendment 12 was adopted.

REPRESENTATIVE KELLER removed his objection to Amendment 12. There being no objection, Amendment 12, as amended, was adopted.

3:41:57 PM

CHAIR LEDOUX moved to adopt Amendment 13, Version 29-LS0896\H.68, Gardner, 4/1/16, as follows:

Page 96, following line 21:
Insert a new bill section to read:
"*** Sec. 152.** AS 47.38.020(d) is repealed and reenacted to read:
(d) The department may, in accordance with AS 36.30, procure and enter into agreements or contracts to establish and implement the program and testing required under (a) - (c) of this section."

Renumber the following bill sections accordingly.

Page 102, line 15:
Delete "secs. 152 - 154"
Insert "secs. 153 - 155"

Page 102, line 16:
Delete "152 - 154"
Insert "153 - 155"

Page 103, line 6:
Delete "sec. 152"
Insert "sec. 153"

Page 103, line 8:
Delete "sec. 156(a)"
Insert "sec. 157(a)"

Page 103, line 11:
Delete "sec. 156(b)"
Insert "sec. 157(b)"

Page 103, line 14:
Delete "sec. 156(b)"
Insert "sec. 157(b)"

Page 103, line 17:
Delete "sec. 156(c)"
Insert "sec. 157(c)"

Page 103, line 20:
Delete "sec. 156(d)"
Insert "sec. 157(d)"

Page 103, line 23:
Delete "sec. 156(e)"
Insert "sec. 157(e)"

Page 103, line 26:
Delete "sec. 156(f)"
Insert "sec. 157(f)"

Page 103, line 30:
Delete "143 - 151, and 155"
Insert "143 - 152, and 156"

Page 104, line 2:
Delete "sec. 152"
Insert "sec. 153"

Page 104, line 4:
Delete "152 - 154, and 156(f)"
Insert "153 - 155, and 157(f)"

REPRESENTATIVE KELLER objected for purposes of discussion.

3:42:16 PM

MS. ABBOTT explained that the intent of Amendment 13 is to insert the procurement process into the Alaska Alcohol Safety Action Program (ASAP) and the 24/7 program, and require that procurement for any of those programs be part of the process before entering into contracts.

REPRESENTATIVE KELLER removed his objection. There being no objection, Amendment 13 was adopted.

3:42:56 PM

CHAIR LEDOUX moved to adopt Amendment 14, Version 29-LS0896\H.54, Martin/Gardner, 3/31/16, as follows:

Page 98, following line 12:
Insert a new bill section to read:
"*** Sec. 157.** The uncodified law of the State of Alaska is amended by adding a new section to read:

REPORT OF THE ALASKA CRIMINAL JUSTICE COMMISSION REGARDING RESTITUTION. The Alaska Criminal Justice Commission established in AS 44.19.641 shall submit to the governor and the legislature not later than December 1, 2016, a report regarding the implementation of a financial recovery and victim's restitution program. The Alaska Criminal Justice Commission shall deliver the report to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available. The Alaska Criminal Justice Commission shall make recommendations for statutory changes to improve the payment and collection of victim's restitution. The report must include recommendations regarding restitution for crimes against a person and for property crimes against businesses and members of the public."

Renumber the following bill sections accordingly.

REPRESENTATIVE KELLER objected for purposes of discussion.

3:43:09 PM

CHAIR LEDOUX explained that Amendment 14 tasks the Alaska Criminal Justice Commission to provide a report and recommendations on the complex issue of restitution programs.

REPRESENTATIVE KELLER removed his objection. There being no objection, Amendment 14 was adopted.

3:44:05 PM

CHAIR LEDOUX moved to adopt Amendment 15, Version 29-LS0896\H.62, Gardner, 4/1/16, as follows:

Page 98, following line 12:
Insert a new bill section to read:
"*** Sec. 157.** The uncodified law of the State of Alaska is amended by adding a new section to read:
REPORT ON OFFENSES OF DRIVING WHILE INTOXICATED, REFUSAL OF A CHEMICAL TEST, AND DRIVING WITHOUT A VALID DRIVER'S LICENSE. The Alaska Criminal Justice Commission, established in AS 44.19.641, shall submit to the governor and to the legislature, not later than December 1, 2016, a report regarding the effectiveness of the penalties, fines, and reformative and

rehabilitative measures under state law for the offenses of driving while intoxicated, refusal to submit to a chemical test, and driving without a valid driver's license. The Alaska Criminal Justice Commission shall deliver the report to the senate secretary and the chief clerk of the house of representatives and notify the legislature that the report is available. The Alaska Criminal Justice Commission shall include in the report an opinion on whether the penalties, fines, and reformative and rehabilitative measures under state law for the offenses of driving while under the influence, refusal to submit to a chemical test, and driving without a valid driver's license reduce recidivism, promote rehabilitation and protect the public. The Alaska Criminal Justice Commission shall propose statutory changes for those offenses to reduce recidivism, promote rehabilitation, and protect the public."

Renumber the following bill sections accordingly.

REPRESENTATIVE KELLER objected for discussion.

3:44:22 PM

CHAIR LEDOUX explained that Amendment 15 tasks the Alaska Criminal Justice Reform Commission to provide a report and recommendation on the complex issues of administratively revoked licenses, and driving while intoxicated and refusal of a chemical test. She said [the intent] is making sure people have access to licenses. A problem has been that a person's license is administratively revoked without a conviction.

REPRESENTATIVE KELLER removed his objection. There being no objection, Amendment 15 is adopted.

3:45:37 PM

REPRESENTATIVE LYNN moved to adopt Amendment 16, Version 29-LS0896\H.16, Martin/Gardner, 3/25/16, as follows: [Amendment 16 is provided at the end of the minutes for HB 205.]

CHAIR LEDOUX objected for purposes of discussion.

3:45:54 PM

REPRESENTATIVE LYNN noted that the Office of Victims' Rights requested Amendment 16, and that this version was been submitted in [the other body]. The intent is to be certain the victim, for their safety, has the right to know when the offender has moved from one facility to another facility. It also ensures that the victim's information is updated with the Department of Corrections and Victim Information Notification Everyday (VINE), he explained.

CHAIR LEDOUX removed her objection. There being no objection, Amendment 16 was adopted.

3:46:56 PM

REPRESENTATIVE LYNN moved to adopt Amendment 17, Version 29-LS0896\H.18, Martin/Gardner, 3/25/16, as follows:

Page 41, lines 12 - 15:
Delete "the court shall, if feasible, send a copy of the motion to the Department of Corrections sufficiently in advance of any scheduled hearing to enable the Department of Corrections to notify the victim of that crime. If"
Insert "and"

CHAIR LEDOUX objected for purposes of discussion.

3:47:11 PM

REPRESENTATIVE LYNN explained that Amendment 17 ensures that the Department of Corrections is advised of hearings and, thereby, notifies the victim of the movement of a prisoner from one facility to another facility.

CHAIR LEDOUX removed her objection. There being no objection, Amendment 17 was adopted.

3:47:35 PM

REPRESENTATIVE LYNN moved to adopt Amendment 18, Version 29-LS0896\H.17, Martin/Gardner, 3/25/16, as follows: [Amendment 18 is provided at the end of the minutes for HB 205.]

CHAIR LEDOUX objected for purposes of discussion.

3:47:51 PM

REPRESENTATIVE LYNN explained that Amendment 18 allows that a case granted a suspended entry of judgment is listed on CourtView.

REPRESENTATIVE CLAMAN recalled that last year the committee reviewed a fairly complicated bill regarding what was, and was not, on CourtView, with important policy related discussions. He further recalled that the committee went through the bill, with the court, in a fair amount of detail and approved certain things taken off CourtView due to the potential for misuse.

CHAIR LEDOUX agreed that the committee did discuss CourtView issues where people had not been convicted, whereas with a suspended imposition of judgment someone has actually been convicted of something even though the judgment has been suspended.

REPRESENTATIVE CLAMAN opined that suspended entry of judgment would not have a conviction because part of the newly proposed statute regarding suspended entry of judgment "is they actually would not enter a plea under the suspended imposition of judgment section under the current statute they actually have to plead guilty before they get -- they don't impose sentence even though they plead guilty under this suspended entry of judgment, they actually are not pleading guilty they are just being sent off on a program and if they do well they are never convicted."

3:49:41 PM

MR. STEINER clarified that, currently, the suspended imposition of sentence is where a person pleads, is found guilty, and it is entered. Subsequently, in the event the person successfully completes their probation, they have completed their suspended imposition of sentence, and the person won't be sentenced or receive a jail sentence. Although, through case law, the person is considered convicted and at that point it is on CourtView. He said he does not know what changes the Alaska Court System has made with respect to that. He stressed that the real problem is when a person has to answer the question on an employment application, they have to admit they were convicted because they were, in fact, convicted.

MR. STEINER explained that the suspended entry of judgment was created through the commission's process and that, although, a person does actually plead guilty, the judgment is never entered; therefore, the person is never formally found guilty. He explained that the person then completes the terms of the

agreement made with the state, and then the judgment is never entered at all. Technically, he said, the person was not convicted and the person can answer "No" to the employment application question of whether they have been convicted of a crime because the admission was never entered. The idea being that the commission would create what was intended with the original suspended imposition of sentence, which through case law became something else. He suggested the question the committee should weigh with regard to this issue, will leaving it on CourtView impact the intended effect of the suspended entry of judgment, which is to allow someone to say they have never been convicted.

3:51:41 PM

CHAIR LEDOUX asked whether it is anticipated those files will be sealed.

MR. STEINER responded that he could not recall the specific conclusion the commission recommended, but it was discussed that the file would be available in the court system so anyone performing a search would find it, but not simply be on CourtView. He offered that it would have to be something a person must know existed and go to the courthouse to find, or it could be considered confidential where court system employees have access but the public would not have access. He said he was unsure whether the commission specifically resolved that issue.

CHAIR LEDOUX asked what sorts of crimes would allow for a suspended imposition of judgment.

MR. STEINER answered that he could not recall whether there were any restrictions to it at all and that Tracey Wollenberg, Deputy Public Defender may be able to answer that question but it is essentially an agreement with the state and the defendant as to whether or not to pursue this resolution.

3:53:11 PM

TRACEY WOLLENBERG, Deputy Director, Appellate Division, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), said there are exclusions for eligibility for a suspended entry of judgment and they are listed in subsection (f) of the suspended entry of judgment section in the bill.

3:53:46 PM

The committee took an at-ease from 3:53 to 3:54 p.m.

3:54:08 PM

MS. WOLLENBERG referred to Sec. 67, [AS 12.55.078(f)], page 39, lines 4-5, which read:

> (f) The court may not suspend imposing or entering the judgment and defer prosecution under this section of a person who

MS. WOLLENBERG advised that the language then lists several subsections of exclusions which include certain assaults, sex assaults, use of a firearm in the commission of the offense, convicted of a crime involving domestic violence, and other exceptions.

3:54:51 PM

CHAIR LEDOUX surmised that crimes of violence are exempt from this.

MS. WOLLENBERG advised that certain crimes of violence are exempt from this.

MS. WOLLENBERG, in response to Chair LeDoux, answered that sexual assaults and sexual abuse of a minor are excluded. Although, she advised, she is working off of her memory from knowledge of the numeric statutes and asked for a few moments to review the statutes.

CHAIR LEDOUX set Amendment 18 aside.

3:56:14 PM

REPRESENTATIVE LYNN moved to adopt Amendment 19, Version 29-LS0896\H.66, Martin/Gardner, 4/1/16, as follows: [Amendment 19 is provided at the end of the minutes for HB 205.]

CHAIR LEDOUX objected for purposes of discussion.

3:56:25 PM

REPRESENTATIVE LYNN advised that Amendment 19 moves the property felony theft threshold up to $1,000, and further advised he

worked on the amendment with Representative Claman and the National Federation of Independent Business (NFIB) people. He pointed out that a few years ago the property felony threshold was at $500, it then moved up to $750, and under this bill it is at $2,000. There were problems with that figure and, he related, there was a meeting of the minds in moving it from the current $750 to $1,000, which would affect some of the issues of concern and still keep it within reasonable limits.

3:57:23 PM

MR. RAZO commented, with regard to the recommendation of the felony theft threshold, the commission spent a lot of time reviewing this particular recommendation because it was aware that two years ago there were substantial comments from local business people when it moved from $500 to $750. The commission also took into consideration the substantial amount of evidence which showed that there was no correlation between the top value felony theft threshold and an increase on crime. The commission looked at 26 other states that chose to raise its felony theft threshold to $2,000, and in those states the number of property crimes went down. That information allowed the commission to be comfortable in saying that if Alaska raised its felony theft threshold to $2,000, that a substantial body of evidence showed that it would not increase the public safety impact on the business community even though that appears counterintuitive. The commission also reviewed the period when the felony theft threshold was $500, and when accounting for the increase in what $500 was when it passed in 1978, that $500 would be $1,800 today. Therefore, especially with a property crime involving value, the commission wanted to set a value that was realistic, would have no impact on the amount of property crime, and was consistent with what the majority of states were doing. He explained there was a substantial amount of evidence that $2,000 is the correct number.

3:59:52 PM

REPRESENTATIVE KELLER asked whether there was a PEW Charitable Trust estimate of the difference between what it would save the state for the difference between $1,000 and $2,000.

MR. RAZO stated he could not recall and stressed that out of all of the recommendations this one is substantial.

4:00:29 PM

REPRESENTATIVE CLAMAN commented that Representative Lynn's initial amendment would have taken out the indexing for inflation provisions that are part of the bill. Under the House bill, every fifth year the legislature would look at inflation and it would automatically increase every time inflation suggested the legislature should increase; therefore, the legislature wouldn't have to come back and hold hearings to raise the amount and, he opined, that is an important part of the amendment being offered.

4:01:21 PM

REPRESENTATIVE KELLER asked Representative Claman whether anything was done with the fine.

REPRESENTATIVE CLAMAN answered yes, and he advised that Amendment 24 raises the misdemeanor fine level from $10,000 to $25,000.

REPRESENTATIVE KELLER quiered whether Representative Claman's theory is that the increase in the fine will act as a deterrent.

REPRESENTATIVE CLAMAN responded yes.

4:01:59 PM

REPRESENTATIVE FOSTER stated he is siding with the Alaska Criminal Judicial Commission on this amendment.

REPRESENTATIVE FOSTER repeated, for Representative Lynn's benefit, that he supports the amount the Alaska Criminal Judicial Commission recommended and he does not support the amendment.

CHAIR LEDOUX set Amendment 19 aside.

4:02:46 PM

REPRESENTATIVE LYNN moved to adopt Amendment 20, Version 29-LS0896\H.65, Martin/Gardner, 4/1/16, as follows:

Page 66, line 19:
Delete "**55**"
Insert "**70**"

CHAIR LEDOUX objected for purposes of discussion.

4:03:03 PM

REPRESENTATIVE LYNN offered that Amendment 20 changes the age of geriatric eligibility for discretionary parole for sex offenders from 55 years of age to 70 years of age.

4:03:47 PM

The committee took an at-ease from 4:03 to 4:04 p.m.

4:04:42 PM

REPRESENTATIVE CLAMAN acknowledged that the commission performed research and he would like to know the results of that research.

MR. RAZO apologized because he should have said "elder parole" rather than "geriatric parole" in that it sets the whole consideration on a bad note. The commission reviewed the data again to determine what the data revealed about this particular class of the prison population. He related, this is the fastest growing segment of the Alaska prison population, prisoners age 51 and older have more than doubled in the last 10-years, and they cost the state millions of dollars, especially in medical care. Studies performed nationally, including studies through the Alaska Judicial Council, show that these offenders are at the bottom of those likely to reoffend. When the commission recommended creating this elder parole valve it wanted to make sure that elder offenders, who no longer pose a threat to communities and having already spent a decade behind bars, are offered the opportunity to present their case to the Board of Parole. He said the Board of Parole hears the case, considers all of the evidence, considers the victims, and it makes the decision on who gets paroled. The commission's recommendation simply presents the opportunity to that elder class of offenders and, he pointed out, this amendment will so limit the effectiveness of the commission's recommendation as to simply make it useless, and that is how it should be considered in light of the commission's original recommendations, he remarked.

4:07:25 PM

REPRESENTATIVE CLAMAN referred to the statistics and data, and asked where it showed a significant drop off in reoffending as an age matter, and drop off in recidivism.

MR. RAZO responded that from the data the commission received from PEW Charitable Trust it was as early as age 45 when people aged out of the re-offense categories.

REPRESENTATIVE CLAMAN questioned why the commission picked age 55 if the data indicated people 45 years of age.

4:08:38 PM

MR. RAZO explained that when the commission offered these recommendations, it reviewed the data, went through a consensus based approach, and 55 was the consensus based approach in light of all of the evidence. He stated that the commission wanted to present to the legislature something the people from public safety across the board, the judges, and all, would agree was a useful number to pick. He commented that it was not a dart board approach, but rather the PEW Charitable Trust evidence was taken into consideration.

REPRESENTATIVE CLAMAN surmised that the PEW Charitable Trust evidence said the state could start this group at 45, and the commission determined that 45 would not pass the straight faced test, and that 55 is reasonable given the fact that the drop off is at 45.

MR. RAZO said, "You could say that I suppose, that's not (indisc.)."

REPRESENTATIVE CLAMAN noted that turning 55 does not guarantee someone gets out on parole because they have to go before the Board of Parole, make their case, and some will be released and some will not.

MR. RAZO said in Alaska, people that are parole eligible are not taking advantage of applying for parole because it is a complex process. The commission tried to make the consideration of parole easier for incarcerated people if they are doing all the right things or if there are extenuating circumstances in the elder situation. He opined that the elder situation is the extenuating circumstance in that if someone is sick it is unlikely they will reoffend, and it is at least something the Parole Board can consider because currently it cannot consider it, he explained.

4:10:41 PM

CHAIR LEDOUX stated she is not removing her objection to Amendment 20.

4:11:50 PM

A roll call vote was taken. Representative Lynn voted in favor of Amendment 20. Representatives Claman, Kreiss-Tomkins, Foster, Keller, and LeDoux voted against it. Therefore, Amendment 20 failed by a vote of 1-5.

4:12:40 PM

CHAIR LEDOUX returned the committee to discussion of Amendment 18.

4:12:54 PM

MS. WOLLENBERG offered clarification [with regard to Amendment 18] that what is primarily covered within the exclusions from the suspended entry of judgment statute are violent offenses. There are five categories of exclusions and these categories are taken directly from the existing suspended imposition of sentence statutes and carried over into the new proposal of suspended entry of judgment. The first category of offenses are violent offenses, anything from first and second degree murder, assaults in the first, second, and third degree, stalking in the first and second degree, kidnapping, human trafficking and sex trafficking, distribution and possession of child pornography, sex assaults, sexual abuse of a minor, robbery, extortion, coercion, those types of offenses. She referred to the lowest level of offenses against a person, and assault four and that reckless endangerment are not included in that group of exclusions as they are covered on page 39, line 16, subsection (4), which read:

> (4) is convicted of a violation of AS 11.41.230 - 11.41.250 or a felony ...

MS. WOLLENBERG said that if a person is convicted of assault four or reckless endangerment and have one or more prior convictions for a misdemeanor violation or a felony, they are excluded, although the person is not automatically excluded if they have the lowest level of assault or reckless endangerment. She reiterated there are other exclusions such as, using a firearm in the commission of the offense, convicted of a crime involving domestic violence, and previously granted a suspension of judgment, unless the court enters written findings by clear

and convincing evidence that the person's prospects for rehabilitation are high, and that suspending judgment adequately protects the victim of the offense. She opined that the bottom line is that a lot of what is primarily covered by the statute would be property offenses, drug offenses, and non-violent offenses.

4:15:27 PM

NANCY MEADE, General Counsel, Alaska Court System (ACS) advised that [Amendment 18] clarifies for the Alaska Court System and builds off of last year's House Bill 15 recently signed into law, requiring the court system to remove from CourtView any criminal case that ends in an acquittal or a dismissal of all charges. She advised that [Amendment 18, AS 22.35.030(b)] Sec. 83, being added to the bill would state that the Alaska Court System will publish, will not take off of CourtView, those cases that are processed under the suspended entry of judgment provision that Ms. Wollenburg explained. The reason for the amendment, she offered, is that the suspended entry of judgment cases do end up with the case being dismissed against the person "so perhaps the plain meaning of the statute that you just passed would be that the court system needs to remove those from CourtView because they are a criminal case that ends in a dismissal." The difference, she noted, is that with the suspended entry of judgment, the person must be found guilty, or plead guilty to even get into that realm. Therefore, it may not exactly comport with what the committee intended when it passed House Bill 15 because that was based upon the fact that a person, having been acquitted or their charges dismissed, was not guilty, and that subsection (b) would clarify that those would be kept on CourtView. She stated, "To be clear the court doesn't have a position as to whether they shall or shall not publish them on CourtView," as that is the committee's policy call. Although the court system does request clarity as to the legislature's intent, she said.

4:17:41 PM

CHAIR LEDOUX surmised that if the committee does not want them on CourtView, the court system is requesting another amendment to clarify that the committee does not want them on CourtView. Whereas, Representative's Lynn's amendment is clarifying it so that they are on CourtView, she pointed out.

MS. MEADE clarified that the Alaska Court System does seek clarity and did not request that this amendment say "they shall

be published on CourtView." She pointed out that the other body's bill added this wording, and either way is fine with the court system. She then reiterated that an amendment directing the court system "shall or shall not" would be helpful."

4:18:37 PM

REPRESENTATIVE CLAMAN surmised that there are suspended impositions of sentence, which is current law, and this amendment adds another option of suspended entry of judgment. He asked the procedure of suspended imposition of sentence on CourtView currently.

MS. MEADE responded that suspended imposition of sentence (SIS) will remain in the law because this bill does not remove that option, it adds a second option. Those do remain on CourtView, and they are not dismissed at the end of the case, she said.

4:19:26 PM

REPRESENTATIVE CLAMAN concluded that this amendment essentially treats a suspended entry of judgment the same as a "suspended imposition of judgment" as to what is listed on CourtView.

MS. MEADE responded in the affirmative.

REPRESENTATIVE CLAMAN verified that it is not necessary to "change the language on this at all to have that happen."

MS. MEADE answered that that is what this amendment would do.

4:19:51 PM

CHAIR LEDOUX stressed that if the committee does not want these people on CourtView, just as the Alaska Criminal Justice Commission does not want them on CourtView, then the committee would vote down [Amendment 18], and the court system would still like clarifying language regarding the intention of the committee.

MS. MEADE agreed, and said that the court system would be just as happy with adding the word "not." She reiterated that the court system only requests clarity. She opined that the Alaska Criminal Justice Commission did not specifically make a recommendation as to whether these would, or would not, be on CourtView.

CHAIR LEDOUX referred to Amendment 18, line 4, and asked whether adding the word "not" after "shall" would do the trick for the court system.

MS. MEADE said yes, either way.

4:20:59 PM

REPRESENTATIVE CLAMAN asked whether the [other body], in its proposed bill, said to put it on CourtView or not put it on CourtView.

MS. MEADE offered that the wording in SB 91 is as follows: "it shall be on CourtView." She explained that the wording of this amendment mirrors what currently appears in SB 91.

CHAIR LEDOUX commented, "We do things our own way."

REPRESENTATIVE CLAMAN agreed, and he noted it is helpful to know what they are doing on the other side of the building.

CHAIR LEDOUX agreed.

4:21:39 PM

REPRESENTATIVE KELLER extended that the commission spent many hours on this issue and, he acknowledged, he was won over because he values the suspended entry of judgment for the purpose of making it easier for people to reenter society and rehabilitate, and also give the court the option of keeping this off of CourtView. He advised he would be voting against Amendment 18, and believes there value by including the suspended entry of judgment process into the state's criminal system.

MS. MEADE referred to adding, or not adding, the word "not," and reiterated that the court system does not have an opinion either way, it wants to be told rather than leaving it to sometimes put it on and sometimes not put it on.

4:23:31 PM

REPRESENTATIVE CLAMAN surmised, for purposes of clarity, if the committee does not support Amendment 18 as written, the court system's request would be that the committee move to amend Amendment 18 to add the word "not."

REPRESENTATIVE KELLER interjected that the court system does not care, it just wants clarity.

CHAIR LEDOUX stressed that the Alaska Court System wants it to read either the language in Amendment 18, or [the word] "not" in it.

4:24:15 PM

REPRESENTATIVE CLAMAN moved to adopt Conceptual Amendment 1 to Amendment 18 to add the word "not" after the word "shall," page 1, line 4 of Amendment 18.

REPRESENTATIVE LYNN objected, and asked why the committee doesn't vote on Amendment 18 and if it passes to offer another amendment.

CHAIR LEDOUX explained that it would come to the same result either way and [Conceptual] Amendment 1 is a valid amendment to Amendment 18.

4:26:09 PM

A roll call vote was taken. Representatives Claman, Kreiss-Tomkins, Keller, and LeDoux voted in favor of [Conceptual] Amendment 1 to Amendment 18. Representative Lynn voted against it. Therefore, [Conceptual] Amendment 1 to Amendment 18 was adopted by a vote of 4-1.

4:26:07 PM

MS. MEADE explained that just adding the word "not" does not do the trick because when reading the entire sentence "shall publish with a notation indicating an SEJ and notwithstanding (a)."

4:26:46 PM

REPRESENTATIVE CLAMAN [withdrew] Conceptual Amendment 1 to Amendment 18.

4:27:02 PM

REPRESENTATIVE CLAMAN moved to adopt Conceptual Amendment 2 to Amendment 18 on page 1, line 4, to further refine as needed to insert the word "not" after the word "shall;" and on page 1, lines 6-7, delete the words "with a notation indicating a

suspended entry of judgment." The conceptual motion to include such further and technical and other corrections that are consistent with the intent of the amendment, he said.

CHAIR LEDOUX pointed out that the intent of the amendment is that the court system does not publish suspended entries of judgment on their web site.

REPRESENTATIVE LYNN objected.

4:28:22 PM

A roll call vote was taken. Representatives Claman, Kreiss-Tomkins, Keller, and LeDoux voted in favor of Conceptual Amendment 2 to Amendment 18. Representative Lynn voted against it. Therefore, Conceptual Amendment 2 to Amendment 18 was adopted by a vote of 4-1.

4:28:55 PM

CHAIR LEDOUX removed her objection to Amendment 18, as amended.

REPRESENTATIVE LYNN objected to Amendment 18, as amended.

4:29:17 PM

A roll call vote was taken. Representatives Keller, Claman, Kreiss-Tomkins, and LeDoux voted in favor of Amendment 18, as amended. Representative Lynn voted against it. Therefore, Amendment 18, as amended, was adopted by a vote of 4-1.

4:30:01 PM

REPRESENTATIVE LYNN moved to adopt Amendment 21, Version 29-LS0896\H.4, Martin/Gardner, 3/22/16, as follows:

Page 84, line 20:
Delete "**and**"

Page 84, line 23, following "**contractors**":
Insert "**; and**

(11) assist a prisoner in obtaining a valid state identification card or driver's license if the prisoner does not have a valid state identification card or driver's license before the prisoner's release; the department shall pay the application fee for the identification card or driver's license"

CHAIR LEDOUX objected for purposes of discussion.

4:30:17 PM

REPRESENTATIVE LYNN explained that the amendment ensures that prisoners receive their proper identification prior to release from the facility, and the fee "shall" be waived. The idea is, he related, to facilitate reentry of released individuals to obtain a job and take care of themselves because they will have proper identification.

CHAIR LEDOUX removed her objection. There being no objection, Amendment 21 was adopted.

4:31:06 PM

REPRESENTATIVE CLAMAN moved to adopt Amendment 22, Version 29-LS0896\H.44, Martin/Gardner, 3/30/16, as follows:

Page 60, line 14:
Delete "**and**"

Page 60, line 18, following "**probation**":
Insert "**; and**
(8) for each probationer who owes restitution and who is under the supervision of the officer, create a restitution payment schedule based on the probationer's income and ability to pay if the court has not already set a restitution payment schedule"

CHAIR LEDOUX objected for purposes of discussion.

4:31:13 PM

REPRESENTATIVE CLAMAN explained that Amendment 22 has to do with restitution obligations and the desire to have people make good faith efforts to pay that restitution. This amendment ensures that anyone owing restitution, if they do not already have a restitution payment schedule set by the court, that the probation officers will make sure there is a restitution payment schedule set up, and the person is required to follow the restitution schedule.

CHAIR LEDOUX removed her objection. There being no objection, Amendment 22 was adopted.

4:32:04 PM

REPRESENTATIVE CLAMAN moved to adopt Amendment 23, Version 29-LS0896\H.9, Gardner, 3/24/16, as follows:

Page 46, line 25, through page 47, line 13:
Delete all material and insert:
"*** Sec. 78.** AS 12.55.125(e) is amended to read:

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, **probation, with a suspended term of imprisonment of** zero to **18 months** [TWO YEARS; A DEFENDANT SENTENCED UNDER THIS PARAGRAPH MAY, IF THE COURT FINDS IT APPROPRIATE, BE GRANTED A SUSPENDED IMPOSITION OF SENTENCE UNDER AS 12.55.085,] and the court may, as a condition of probation under AS 12.55.086, require the defendant to serve an active term of imprisonment **of not more than 90 days** [WITHIN THE RANGE SPECIFIED IN THIS PARAGRAPH];

(2) if the offense is a second felony conviction, **one to three** [TWO TO FOUR] years;

(3) if the offense is a third felony conviction, **two** [THREE] to five years;

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one to two years."

CHAIR LEDOUX objected for purposes of discussion.

4:32:12 PM

REPRESENTATIVE CLAMAN offered this amendment because the recommended presumptive term for class C felonies under the bill would actually make it so that the presumptive sentence was always probation for a first-time felony offender. He said he is aware of the history that sometimes courts found it

appropriate to require a person to spend a limited period time in jail to show them that this is not a place they want to come back to. He explained the purpose is to not require that amount of jail time, but to give judges the option for a limited period of time. He asked that the commission provide input in moving forward.

4:33:18 PM

MR. RAZO explained that the commission looked closely at the research regarding the efficacy of prison and found that particularly for first-time low-level felony offenders, prison is not the best option. In fact, he stated, the research showed that housing these first-time low-level offenders alongside hardened criminal felons made them more likely to commit crimes. From a public safety point of view, housing these people who go to jail for the first time did not achieve the effect that "Representative Claman suggested the court wanted to show that it was a shock jail sentence." In fact, he stressed, in many cases it was shocking enough for these people to lose their jobs, their homes, and weaken their family ties. In this case, the consequence of having a prison sentence was completely counterproductive and, he reiterated this was not intuitive to the commission. The evidence was clear that sentencing the first-time low-level offender alongside hardened criminals makes them criminals, he said.

4:34:50 PM

REPRESENTATIVE CLAMAN asked whether the commission specifically looked at this concept that case law talks about anywhere from 30 days to 90 days to serve as part of a primarily probation sentence. He reiterated as to whether the commission reviewed that particular sentencing as a tool to improve results.

MR. RAZO replied absolutely, although, he said it was reviewed in the context of people on probation and violating a probation condition. The commission reviewed the Probation Accountability and Certain Enforcement (PACE) program which, he described is an effective immediate consequence for someone violating probation. He explained that these people made a mistake in judgment for the first-time and are low-level offenders. He then related conversations with people from the villages who advised that their son went to prison and came back as a harder man. Thereby, the revolving door started wherein a person learns more and more about how to be a better criminal. He offered that the commission does understand the value of shock jail time in the

context of probation violation, and that is where it is found in the commission's recommendation.

4:36:23 PM

REPRESENTATIVE CLAMAN said that in the typical felony sentencing with aggravators and mitigators, if there is an aggravating factor present the court can then go outside the presumptive range. For example, he offered, on a first offender that might have one aggravator present under the bill, the court [may impose] a probation sentence. Although, if there was one aggravating factor present the court would have flexibility, if it thought appropriate, to impose a short period of incarceration. He asked how often it occurs in an actual felony prosecution in which there are no aggravating factors present.

MR. RAZO deferred to someone in the practice of felony law, and noted that the commission did not consider the question.

4:37:32 PM

JOHN SKIDMORE, Director, Criminal Division, Department of Law (DOL), said he is available for questions.

REPRESENTATIVE CLAMAN asked Mr. Skidmore whether he had heard the question relating to the presence of aggravating factors in felony prosecutions.

MR. SKIDMORE advised that he does not have statistics regarding how frequently it occurs. However, he said, Representative Claman's assessment of the ramifications are correct in that if an aggravator was found, the court would have the ability to exceed the presumptive sentence.

REPRESENTATIVE CLAMAN asked that without the actual statistics and as director of the criminal division, whether Mr. Skidmore could offer a rough sense -- whether it is a rare case that doesn't have an aggravating factor. Representative Claman related he knows with the Department of Law, if there is a factor present it always files it even if the court may not give any weight to it.

MR. SKIDMORE argued that the division does not always file an aggravating factor when it believes the factor exists because the vast majority of cases are resolved through plea negotiations, and the plea negotiations often have that set sentence. He remarked it does file an aggravator after the

completion of a trial in all circumstances if it believes it existed. He noted he could not hazard to guess the number of times there are cases in which the division has taken a case to trial and there was no aggravating factor, although, he said it is frequent.

4:39:52 PM

REPRESENTATIVE KREISS-TOMKINS referred to the data the commission reviewed regarding low-level first-time offenders incarcerated and the efficacy of shock incarceration noting that at a certain point there is a criminogenic effect wherein the person would be more likely to become a criminal and a more hardened criminal. He opined that the intent of the amendment is a sense of justice in wanting to see someone in jail for committing a serious crime, and the second intent is shock incarceration. He asked whether there is a period of time where that criminogenic effect starts to become clear, whether it is one month or two weeks. Also, he asked whether there is any data or evidence that speaks to the psychological shock of someone in prison for the first time, and when that shock starts to erode.

4:41:21 PM

MR. STEINER responded that the data indicated that increased recidivism occurred after 24-hours. For example, he expressed, a low-risk person who spent 24-hours in jail was more likely to commit crimes in the future than someone who spent no time in jail. The commission did not specifically look at the psychological effect of shock jail, but rather looked at the data as jail recidivism. The discussion here is about 90-days for someone's first felony, and someone the state may consider "highly able to rehabilitate themselves." He stressed that they are looking at a suspended imposition of sentence, and 90-days for most people is enough to take away everything they have, such as home, job, and their children. He described it as a significant amount of jail time and the shock would likely have that effect. The data being that 24-hours increased recidivism, it is the basis of the commission's recommendation - which first-time individuals would be looking at probation. He remarked, under the statute, if an aggravator applies, that jail time could be imposed so there is some latitude even for the first felony conviction.

4:42:49 PM

REPRESENTATIVE KREISS-TOMKINS noted that his next question was directed to Public Defender Steiner and not Alaska Criminal Judicial Commission Commissioner Steiner. He asked, within his experience with a person that goes to jail for the first time, what he has seen, and how long the psychological impact stays with the person before they habituate and acculturate.

MR. STEINER advised the question is of a complexity that he could not answer because every individual client is different and the impact is different. The dramatic impact of jail was clear to the commission and, as Mr. Razo discussed, the shock value of jail worked well in a probation setting. In fact, he said, it is very short periods of time where even that works. For instance, Alaska has the PACE system where someone commits a probation violation and they spend one to four days in jail. Whereas, the Hawaii model, this was based upon, has come to learn that not even an entire day is necessary to have that effect. For example, he offered, a person is arrested in the morning and sits in a jail cell until evening, that has just as much effect as the person spending the night. He explained it is the momentary disruption, anything beyond the momentary disruption, from the data, loses its value and actually increases recidivism and reduces public safety. As to the psychological effect, he said he could not answer that question. He offered that there is some sense, anecdotally from clients, that once a person goes in, they are in, and there is a sense of giving up - they've already gone in. He expressed that that issue was certainly in his mind as he considered these policies.

4:45:19 PM

REPRESENTATIVE KREISS-TOMKINS said he would like to ask the same question of Commissioner Dean Williams given his background, and that he appreciated Mr. Steiner's disciplined evidentiary response and was certain that is what the data indicated.

4:46:10 PM

The committee took an at-ease from 4:46 to 4:47 p.m.

4:47:16 PM

REPRESENTATIVE KREISS-TOMKINS referred to the psychological impact and longevity of someone's first shock incarceration wherein someone ends up in jail, and he asked Commissioner Williams how long that psychological affect is seen in the

person before they start to habituate and acculturate, or the range he has seen in his career.

4:48:24 PM

DEAN WILLIAMS, Commissioner Designee, Department of Corrections, responded that the school of thought regarding a shock incarceration is one that his colleagues in the Department of Corrections (DOC) have been using under the PACE program. He noted there was a similar strategy in some juvenile areas about getting kids on a very short term basis to, sort of, make an impression. The difference of the quick incarceration under the PACE program is high-risk individuals, and quick incarceration is always limited by the fact the state does not want low-risk people in jail reoffending again. Therefore, he pointed out, who it applies to is almost as important as how it is being applied when reviewing the criminal intervention strategy of these kinds of programs. He noted that whether it works or not depends upon who it is used on, and what the stated purpose is. He referred to the PACE program, and said the goal of those high-risk offenders is to make sure that DOC watches what is going on and gets them in for minor violations. That goal is contra-indicated towards low-risk individuals. He added that the value of using that must be appropriately applied or it causes more damage than good.

4:50:33 PM

SUSANNE DiPETRO, Executive Director, Alaska Judicial Council advised that the Alaska Judicial Council staffs the Alaska Criminal Justice Commission.

REPRESENTATIVE CLAMAN asked whether the commission specifically looked at the narrow area of shock incarceration or of shock probation which is 30-day to 90-day sentences.

MS. DiPETRO replied that as Commissioner Razo previously explained, staff never researched the specific idea of shock incarceration of which Alaska has had in its jurisprudence for some time.

REPRESENTATIVE CLAMAN suggested that rather than moving forward on this amendment, the committee ask the commission to specifically look at shock incarceration as to whether it works or does not work given Alaska's history and the people given that sentence.

MS. DiPETRO agreed, and she said it may be a good thing for the commission to review. In response to Representative Claman, answered that in speaking as staff they would be happy to provide that information to the commission.

4:52:06 PM

REPRESENTATIVE CLAMAN withdrew his motion on Amendment 23 with the assurance the commission will review this question over the course of the next year. He offered that the prosecution has a lot of authority in a trial setting to add aggravators that would give the judge the authority to impose shock incarceration.

CHAIR LEDOUX pointed out to Representative Claman that the committee has used amendments to ask the Alaska Criminal Judicial Commission to specifically study various issues, and suggested that he prepare language prior to the committee meeting tomorrow.

REPRESENTATIVE KELLER offered that a memorandum may be better served because more information can be included in a memorandum than an amendment.

REPRESENTATIVE CLAMAN agreed, and he said he is happy to work with Representative Keller who serves on the commission.

[HB 205 was held over.]

4:53:43 PM

CHAIR LEDOUX noted that Mr. Doug Gardner, Legislative Legal and Research Services asked that Chair LeDoux put on the record that "Legal can make informing and technical changes when we order an amended bill."

AMENDMENTS

The following amendments to HB 205 were either discussed or adopted during the hearing. [Shorter amendments are provided within the main text only.]

AMENDMENT 9A [Conceptual]

Page 1, line 2, following "**sentencing;**":

Insert "**relating to treatment program credit for time spent toward service of a sentence of imprisonment;**"

Page 36, following line 14:
Insert a new bill section to read:
"*** Sec. 62.** AS 12.55.027 is amended by adding a new subsection to read:

(f) To qualify as a treatment program under this section, a program must

(1) be intended to address criminogenic traits or behaviors;

(2) provide measures of progress or completion; and

(3) require notification to **the court or probation officer of violations of conditions of bail release or probation.**"

Renumber the following bill sections accordingly.

Page 97, line 29:
Delete "sec. 66"
Insert "sec. 67"

Page 98, line 1:
Delete "sec. 66"
Insert "sec. 67"

Page 98, line 2:
Delete "sec. 67"
Insert "sec. 68"

Page 98, line 5:
Delete "sec. 81"
Insert "sec. 82"

Page 98, line 8:
Delete "sec. 99"
Insert "sec. 100"

Page 99, following line 10:
Insert a new paragraph to read:
"(26) AS 12.55.027(f), enacted by sec. 62 of this Act;"

Renumber the following paragraphs accordingly.

Page 99, line 11:
Delete "sec. 86"
Insert "sec. 87"

Page 99, line 12:
Delete "sec. 87"
Insert "sec. 88"

Page 99, line 13:
Delete "sec. 93"
Insert "sec. 94"

Page 99, line 14:
Delete "sec. 94"
Insert "sec. 95"

Page 99, line 15:
Delete "sec. 95"
Insert "sec. 96"

Page 99, line 16:
Delete "sec. 148"
Insert "sec. 149"

Page 99, line 31:
Delete "sec. 76"
Insert "sec. 77"

Page 100, line 1:
Delete "sec. 77"
Insert "sec. 78"

Page 100, line 2:
Delete "sec. 78"
Insert "sec. 79"

Page 100, line 3:
Delete "sec. 79"
Insert "sec. 80"

Page 100, line 4:
Delete "sec. 80"
Insert "sec. 81"

Page 100, line 5:
Delete "sec. 81"
Insert "sec. 82"

Page 100, line 6:
Delete "sec. 134"
Insert "sec. 135"

Page 100, line 7:
Delete "sec. 135"
Insert "sec. 136"

Page 100, line 12:
Delete "sec. 75"
Insert "sec. 76"

Page 100, line 13:
Delete "sec. 89"
Insert "sec. 90"

Page 100, line 14:
Delete "sec. 92"
Insert "sec. 93"

Page 100, line 15:
Delete "sec. 102"
Insert "sec. 103"

Page 100, line 16:
Delete "sec. 104"
Insert "sec. 105"

Page 100, line 17:
Delete "sec. 136"
Insert "sec. 137"

Page 100, line 24:
Delete "sec. 64"
Insert "sec. 65"

Page 100, line 25:
Delete "sec. 65"
Insert "sec. 66"

Page 100, line 26:
Delete "sec. 66"
Insert "sec. 67"

Page 100, line 27:
Delete "sec. 67"

Insert "sec. 68"

Page 100, line 29:
Delete "sec. 67"
Insert "sec. 68"

Page 101, line 1:
Delete "sec. 62"
Insert "sec. 63"

Page 101, line 2:
Delete "sec. 69"
Insert "sec. 70"

Page 101, line 5:
Delete "sec. 68"
Insert "sec. 69"

Page 101, line 6:
Delete "sec. 70"
Insert "sec. 71"

Page 101, line 7:
Delete "sec. 71"
Insert "sec. 72"

Page 101, line 8:
Delete "sec. 72"
Insert "sec. 73"

Page 101, line 9:
Delete "sec. 74"
Insert "sec. 75"

Page 101, line 10:
Delete "sec. 96"
Insert "sec. 97"

Page 101, line 11:
Delete "sec. 97"
Insert "sec. 98"

Page 101, line 15:
Delete "sec. 83"
Insert "sec. 84"

Page 101, line 16:

Delete "sec. 84"
Insert "sec. 85"

Page 101, line 17:
Delete "sec. 85"
Insert "sec. 86"

Page 101, line 18:
Delete "sec. 91"
Insert "sec. 92"

Page 101, line 21:
Delete "sec. 100"
Insert "sec. 101"

Page 101, line 22:
Delete "sec. 101"
Insert "sec. 102"

Page 101, line 23:
Delete "sec. 103"
Insert "sec. 104"

Page 101, line 24:
Delete "sec. 105"
Insert "sec. 106"

Page 101, line 25:
Delete "sec. 107"
Insert "sec. 108"

Page 101, line 26:
Delete "sec. 108"
Insert "sec. 109"

Page 101, line 27:
Delete "sec. 109"
Insert "sec. 110"

Page 101, line 28:
Delete "sec. 115"
Insert "sec. 116"

Page 101, line 29:
Delete "sec. 116"
Insert "sec. 117"

Page 101, line 30:
Delete "sec. 117"
Insert "sec. 118"

Page 101, line 31:
Delete "sec. 118"
Insert "sec. 119"

Page 102, line 1:
Delete "sec. 119"
Insert "sec. 120"

Page 102, line 2:
Delete "sec. 120"
Insert "sec. 121"

Page 102, line 3:
Delete "sec. 121"
Insert "sec. 122"

Page 102, line 4:
Delete "sec. 122"
Insert "sec. 123"

Page 102, line 5:
Delete "sec. 123"
Insert "sec. 124"

Page 102, line 6:
Delete "sec. 124"
Insert "sec. 125"

Page 102, line 7:
Delete "sec. 125"
Insert "sec. 126"

Page 102, line 8:
Delete "sec. 126"
Insert "sec. 127"

Page 102, line 9:
Delete "sec. 127"
Insert "sec. 128"

Page 102, line 10:
Delete "sec. 128"
Insert "sec. 129"

Page 102, line 11:
Delete "sec. 129"
Insert "sec. 130"

Page 102, line 12:
Delete "sec. 130"
Insert "sec. 131"

Page 102, line 13:
Delete "sec. 131"
Insert "sec. 132"

Page 102, line 14:
Delete "sec. 132"
Insert "sec. 133"

Page 102, line 15:
Delete "secs. 152 - 154"
Insert "secs. 153 - 155"

Page 102, line 16:
Delete "152 - 154"
Insert "153 - 155"

Page 102, line 31:
Delete "sec. 63"
Insert "sec. 64"

Page 103, line 1:
Delete "sec. 99"
Insert "sec. 100"

Page 103, line 2:
Delete "sec. 142"
Insert "sec. 143"

Page 103, line 6:
Delete "sec. 152"
Insert "sec. 153"

Page 103, line 8:
Delete "sec. 156(a)"
Insert "sec. 157(a)"

Page 103, line 11:
Delete "sec. 156(b)"

Insert "sec. 157(b)"

Page 103, line 14:
Delete "sec. 156(b)"
Insert "sec. 157(b)"

Page 103, line 17:
Delete "sec. 66"
Insert "sec. 67"
Delete "sec. 156(c)"
Insert "sec. 157(c)"

Page 103, line 20:
Delete "sec. 67"
Insert "sec. 68"
Delete "sec. 156(d)"
Insert "sec. 157(d)"

Page 103, line 23:
Delete "sec. 81"
Insert "sec. 82"
Delete "sec. 156(e)"
Insert "sec. 157(e)"

Page 103, line 26:
Delete "sec. 99"
Insert "sec. 100"
Delete "sec. 156(f)"
Insert "sec. 157(f)"

Page 103, lines 29 - 30:
Delete "65, 67, 69, 73, 76 - 88, 91, 93 - 95, 134, 135, 143 - 151, and 155"
Insert "63, 66, 68, 70, 74, 77 - 89, 92, 94 - 96, 135, 136, 144 - 152, and 156"

Page 103, line 31, through page 104, line 1:
Delete "66, 68, 70 - 72, 74, 75, 89, 90, 92, 96 - 98, 100 - 133, and 136 - 140"
Insert "67, 69, 71 - 73, 75, 76, 90, 91, 93, 97 - 99, 101 - 134, and 137 - 141"

Page 104, line 2:
Delete "sec. 152"
Insert "sec. 153"

Page 104, line 4:

Delete "63, 99, 142, 152 - 154, and 156(f)"
Insert "64, 100, 143, 153 - 155, and 157(f)"

AMENDMENT 10 [29-LS0896\H.69, Gardner, 4/6/16]

Page 36, lines 1 - 14:
Delete all material and insert:
"*** Sec. 61.** AS 12.55.025(k) is amended to read:

(k) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a [TREATMENT] program as a condition of bail in connection with an offense for which the defendant is being sentenced, the defendant shall file notice with the court and the prosecutor 10 days before the sentencing hearing. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except as provided in (*l*) of this section, except for good cause, a court may not consider a request for credit made under this subsection more than 90 days after the sentencing hearing.

*** Sec. 62.** AS 12.55.025(*l*) is amended to read:

(*l*) If a defendant intends to claim credit under AS 12.55.027 toward a sentence of imprisonment for time spent in a [TREATMENT] program as a condition of bail while pending appeal, the defendant shall file notice with the court and the prosecutor not later than 90 days after return of the case to the trial court following appeal. The notice shall include the number of days the defendant is claiming. The defendant must prove by a preponderance of evidence that the requirements of AS 12.55.027 are met before credit may be awarded. Except for good cause, the court may not consider a request for credit made under this subsection after the deadline.

*** Sec. 63.** AS 12.55.027(a) is amended to read:

(a) A court may grant a defendant credit toward a sentence of imprisonment for time spent in a [TREATMENT] program **that furthers the reformation and rehabilitation of the defendant if the court finds that the program places a substantial restriction on the defendant's freedom of movement and behavior and is consistent with** [OR UNDER ELECTRONIC MONITORING ONLY AS PROVIDED IN] this section.

*** Sec. 64.** AS 12.55.027(b) is amended to read:

(b) A court may **only** grant **credit under this section** [A DEFENDANT ONE DAY OF CREDIT TOWARD A SENTENCE OF IMPRISONMENT FOR EACH FULL DAY THE DEFENDANT RESIDED IN THE FACILITY OF A TREATMENT PROGRAM AND OBSERVED THE RULES OF THE TREATMENT PROGRAM AND THE FACILITY IF]

(1) **in the amount of one day of credit toward a sentence of imprisonment for each full day the defendant spent in a reformation and rehabilitation program; and** [THE COURT FINDS THAT THE TREATMENT PROGRAM MEETS THE STANDARDS DESCRIBED IN (c) OF THIS SECTION;]

(2) **if the court ordered** [BEFORE] the defendant [ENTERED THE TREATMENT PROGRAM, THE COURT ORDERED THE DEFENDANT] to [RESIDE IN THE FACILITY OF THE TREATMENT PROGRAM AND] participate in **and comply with the conditions of the reformation and rehabilitation** [THE TREATMENT] program **before the defendant entered the program** [AS A CONDITION OF BAIL RELEASE OR A CONDITION OF PROBATION; AND

(3) THE COURT HAS RECEIVED A WRITTEN REPORT FROM THE DIRECTOR OF THE PROGRAM THAT

(A) STATES THAT THE DEFENDANT HAS PARTICIPATED IN THE TREATMENT PLAN PRESCRIBED FOR THE DEFENDANT AND HAS COMPLIED WITH THE REQUIREMENTS OF THE PLAN; AND

(B) SETS OUT THE NUMBER OF FULL DAYS THE DEFENDANT RESIDED IN THE FACILITY OF THE TREATMENT PROGRAM AND OBSERVED THE RULES OF THE TREATMENT PROGRAM AND FACILITY].

*** Sec. 65.** AS 12.55.027(c) is repealed and reenacted to read:

(c) In granting credit toward a sentence of imprisonment for time spent in a reformation and rehabilitation program, a court shall consider the following factors:

(1) the restrictions on the defendant's freedom of movement and behavior;

(2) the circumstances under which the defendant was enrolled in the program;

(3) the residency requirements of the program;

(4) the physical custody and supervision of the defendant at the program;

(5) the circumstances under which the defendant is permitted to leave the program's facility;

(6) the rules of the program and the requirement that the defendant obey the orders of persons who have immediate custody or control over the defendant;

(7) the sanctions on the defendant for violating the program's rules or orders;

(8) whether the defendant is subject to arrest for leaving the program's facility without permission;

(9) the use of an electronic monitoring device;

(10) whether the program provides substance abuse treatment;

(11) the use of other technology that monitors or restricts the defendant's movement and behavior;

(12) other factors that support the court's finding that the program places a substantial restriction on the defendant's freedom of movement and behavior;

(13) other factors that support the court's finding that the program furthers the reformation and rehabilitation of the defendant."

Renumber the following bill sections accordingly.

Page 99, line 30:
Delete all material and insert:

"(1) AS 12.55.025(k), as amended by sec. 61 of this Act;
(2) AS 12.55.025(*l*), as amended by sec. 62 of this Act;
(3) AS 12.55.027(a), as amended by sec. 63 of this Act;
(4) AS 12.55.027(b), as amended by sec. 64 of this Act;
(5) AS 12.55.027(c), as repealed and reenacted by sec. 65 of this Act;"

Renumber the following paragraphs accordingly.

Page 97, line 29:
Delete "sec. 66"
Insert "sec. 70"

Page 98, line 1:
Delete "sec. 66"
Insert "sec. 70"

Page 98, line 2:
Delete "sec. 67"
Insert "sec. 71"

Page 98, line 5:
Delete "sec. 81"
Insert "sec. 85"

Page 98, line 8:
Delete "sec. 99"
Insert "sec. 103"

Page 99, line 11:
Delete "sec. 86"
Insert "sec. 90"

Page 99, line 12:
Delete "sec. 87"
Insert "sec. 91"

Page 99, line 13:
Delete "sec. 93"
Insert "sec. 97"

Page 99, line 14:
Delete "sec. 94"

Insert "sec. 98"

Page 99, line 15:
Delete "sec. 95"
Insert "sec. 99"

Page 99, line 16:
Delete "sec. 148"
Insert "sec. 152"

Page 99, line 31:
Delete "sec. 76"
Insert "sec. 80"

Page 100, line 1:
Delete "sec. 77"
Insert "sec. 81"

Page 100, line 2:
Delete "sec. 78"
Insert "sec. 82"

Page 100, line 3:
Delete "sec. 79"
Insert "sec. 83"

Page 100, line 4:
Delete "sec. 80"
Insert "sec. 84"

Page 100, line 5:
Delete "sec. 81"
Insert "sec. 85"

Page 100, line 6:
Delete "sec. 134"
Insert "sec. 138"

Page 100, line 7:
Delete "sec. 135"
Insert "sec. 139"

Page 100, line 12:
Delete "sec. 75"
Insert "sec. 79"

Page 100, line 13:

Delete "sec. 89"
Insert "sec. 93"

Page 100, line 14:
Delete "sec. 92"
Insert "sec. 96"

Page 100, line 15:
Delete "sec. 102"
Insert "sec. 106"

Page 100, line 16:
Delete "sec. 104"
Insert "sec. 108"

Page 100, line 17:
Delete "sec. 136"
Insert "sec. 140"

Page 100, line 24:
Delete "sec. 64"
Insert "sec. 68"

Page 100, line 25:
Delete "sec. 65"
Insert "sec. 69"

Page 100, line 26:
Delete "sec. 66"
Insert "sec. 70"

Page 100, line 27:
Delete "sec. 67"
Insert "sec. 71"

Page 100, line 29:
Delete "sec. 67"
Insert "sec. 71"

Page 101, line 1:
Delete "sec. 62"
Insert "sec. 66"

Page 101, line 2:
Delete "sec. 69"
Insert "sec. 73"

Page 101, line 5:
Delete "sec. 68"
Insert "sec. 72"

Page 101, line 6:
Delete "sec. 70"
Insert "sec. 74"

Page 101, line 7:
Delete "sec. 71"
Insert "sec. 75"

Page 101, line 8:
Delete "sec. 72"
Insert "sec. 76"

Page 101, line 9:
Delete "sec. 74"
Insert "sec. 78"

Page 101, line 10:
Delete "sec. 96"
Insert "sec. 100"

Page 101, line 11:
Delete "sec. 97"
Insert "sec. 101"

Page 101, line 15:
Delete "sec. 83"
Insert "sec. 87"

Page 101, line 16:
Delete "sec. 84"
Insert "sec. 88"

Page 101, line 17:
Delete "sec. 85"
Insert "sec. 89"

Page 101, line 18:
Delete "sec. 91"
Insert "sec. 95"

Page 101, line 21:
Delete "sec. 100"
Insert "sec. 104"

Page 101, line 22:
Delete "sec. 101"
Insert "sec. 105"

Page 101, line 23:
Delete "sec. 103"
Insert "sec. 107"

Page 101, line 24:
Delete "sec. 105"
Insert "sec. 109"

Page 101, line 25:
Delete "sec. 107"
Insert "sec. 111"

Page 101, line 26:
Delete "sec. 108"
Insert "sec. 112"

Page 101, line 27:
Delete "sec. 109"
Insert "sec. 113"

Page 101, line 28:
Delete "sec. 115"
Insert "sec. 119"

Page 101, line 29:
Delete "sec. 116"
Insert "sec. 120"

Page 101, line 30:
Delete "sec. 117"
Insert "sec. 121"

Page 101, line 31:
Delete "sec. 118"
Insert "sec. 122"

Page 102, line 1:
Delete "sec. 119"
Insert "sec. 123"

Page 102, line 2:
Delete "sec. 120"

Insert "sec. 124"

Page 102, line 3:
Delete "sec. 121"
Insert "sec. 125"

Page 102, line 4:
Delete "sec. 122"
Insert "sec. 126"

Page 102, line 5:
Delete "sec. 123"
Insert "sec. 127"

Page 102, line 6:
Delete "sec. 124"
Insert "sec. 128"

Page 102, line 7:
Delete "sec. 125"
Insert "sec. 129"

Page 102, line 8:
Delete "sec. 126"
Insert "sec. 130"

Page 102, line 9:
Delete "sec. 127"
Insert "sec. 131"

Page 102, line 10:
Delete "sec. 128"
Insert "sec. 132"

Page 102, line 11:
Delete "sec. 129"
Insert "sec. 133"

Page 102, line 12:
Delete "sec. 130"
Insert "sec. 134"

Page 102, line 13:
Delete "sec. 131"
Insert "sec. 135"

Page 102, line 14:

Delete "sec. 132"
Insert "sec. 136"

Page 102, line 15:
Delete "secs. 152 - 154"
Insert "secs. 156 - 158"

Page 102, line 16:
Delete "152 - 154"
Insert "156 - 158"

Page 102, line 31:
Delete "sec. 63"
Insert "sec. 67"

Page 103, line 1:
Delete "sec. 99"
Insert "sec. 103"

Page 103, line 2:
Delete "sec. 142"
Insert "sec. 146"

Page 103, line 6:
Delete "sec. 152"
Insert "sec. 156"

Page 103, line 8:
Delete "sec. 156(a)"
Insert "sec. 160(a)"

Page 103, line 11:
Delete "sec. 156(b)"
Insert "sec. 160(b)"

Page 103, line 14:
Delete "sec. 156(b)"
Insert "sec. 160(b)"

Page 103, line 17:
Delete "sec. 66"
Insert "sec. 70"
Delete "sec. 156(c)"
Insert "sec. 160(c)"

Page 103, line 20:
Delete "sec. 67"

Insert "sec. 71"
Delete "sec. 156(d)"
Insert "sec. 160(d)"

Page 103, line 23:
Delete "sec. 81"
Insert "sec. 85"
Delete "sec. 156(e)"
Insert "sec. 160(e)"

Page 103, line 26:
Delete "sec. 99"
Insert "sec. 103"
Delete "sec. 156(f)"
Insert "sec. 160(f)"

Page 103, lines 29 - 30:
Delete "62, 65, 67, 69, 73, 76 - 88, 91, 93 - 95, 134, 135, 143 - 151, and 155"
Insert "66, 69, 71, 73, 77, 80 - 92, 95, 97 - 99, 138, 139, 147 - 155, and 159"

Page 103, line 31, through page 104, line 1:
Delete "66, 68, 70 - 72, 74, 75, 89, 90, 92, 96 - 98, 100 - 133, and 136 - 140"
Insert "70, 72, 74 - 76, 78, 79, 93, 94, 96, 100 - 102, 104 - 137, and 140 - 144"

Page 104, line 2:
Delete "sec. 152"
Insert "sec. 156"

Page 104, line 4:
Delete "63, 99, 142, 152 - 154, and 156(f)"
Insert "67, 103, 146, 156 - 158, and 160(f)"

AMENDMENT 12 [29-LS0896\H.67, Martin/Gardner, 4/12/16]

Page 63, line 26:
Delete "; and"
Insert ";
(4) require that a defendant charged with an offense involving the use of alcohol or controlled substances comply with a program established under AS 47.38.020; and"

Renumber the following paragraph accordingly.

Page 76, line 11:
Delete "probation"
Insert "**parole** [PROBATION]"

Page 76, following line 17:
Insert a new bill section to read:
"*** Sec. 122.** AS 33.16.150 is amended by adding a new subsection to read:

(h) In addition to other conditions of parole imposed under this section, for a prisoner serving a sentence for an offense involving the use of alcohol or controlled substances, the board may impose, as a condition of special medical, administrative, discretionary, or mandatory parole, a requirement that the prisoner comply with a program established under AS 33.16.060(c) or AS 47.38.020. The board may require a prisoner serving a period of parole and complying with a program established under AS 33.16.060(c) or AS 47.38.020 to pay all or a portion of the costs associated with the program."

Renumber the following bill sections accordingly.

Page 99, line 16:
Delete "sec. 148"
Insert "sec. 149"

Page 100, line 6:
Delete "sec. 134"
Insert "sec. 135"

Page 100, line 7:
Delete "sec. 135"
Insert "sec. 136"

Page 100, line 17:
Delete "sec. 136"
Insert "sec. 137"

Page 102, following line 3:
Insert a new paragraph to read:
"(15) AS 33.16.150(h), enacted by sec. 122 of this Act;"

Renumber the following paragraphs accordingly.

Page 102, line 4:
Delete "sec. 122"
Insert "sec. 123"

Page 102, line 5:
Delete "sec. 123"
Insert "sec. 124"

Page 102, line 6:
Delete "sec. 124"
Insert "sec. 125"

Page 102, line 7:
Delete "sec. 125"
Insert "sec. 126"

Page 102, line 8:
Delete "sec. 126"
Insert "sec. 127"

Page 102, line 9:
Delete "sec. 127"
Insert "sec. 128"

Page 102, line 10:
Delete "sec. 128"
Insert "sec. 129"

Page 102, line 11:
Delete "sec. 129"
Insert "sec. 130"

Page 102, line 12:
Delete "sec. 130"
Insert "sec. 131"

Page 102, line 13:
Delete "sec. 131"
Insert "sec. 132"

Page 102, line 14:
Delete "sec. 132"
Insert "sec. 133"

Page 102, line 15:
Delete "secs. 152 - 154"

Insert "secs. 153 - 155"

Page 102, line 16:
Delete "152 - 154"
Insert "153 - 155"

Page 103, line 2:
Delete "sec. 142"
Insert "sec. 143"

Page 103, line 6:
Delete "sec. 152"
Insert "sec. 153"

Page 103, line 8:
Delete "sec. 156(a)"
Insert "sec. 157(a)"

Page 103, line 11:
Delete "sec. 156(b)"
Insert "sec. 157(b)"

Page 103, line 14:
Delete "sec. 156(b)"
Insert "sec. 157(b)"

Page 103, line 17:
Delete "sec. 156(c)"
Insert "sec. 157(c)"

Page 103, line 20:
Delete "sec. 156(d)"
Insert "sec. 157(d)"

Page 103, line 23:
Delete "sec. 156(e)"
Insert "sec. 157(e)"

Page 103, line 26:
Delete "sec. 156(f)"
Insert "sec. 157(f)"

Page 103, lines 29 - 30:
Delete "134, 135, 143 - 151, and 155"
Insert "135, 136, 144 - 152, and 157"

Page 103, line 31, through page 104, line 1:

Delete "100 - 133, and 136 - 140"
Insert "100 - 134, and 137 - 141"

Page 104, line 2:
Delete "sec. 152"
Insert "sec. 153"

Page 104, line 4:
Delete "142, 152 - 154, and 156(f)"
Insert "143, 153 - 155, and 157(f)"

AMENDMENT 16 [29-LS0896\H.16, Martin/Gardner, 3/25/16]

Page 34, following line 21:
Insert a new bill section to read:
"* Sec. 59. AS 12.55.011 is amended by adding a new subsection to read:
(b) At the time of sentencing, the court shall provide the victim with a form that
(1) provides information on
(A) whom the victim should contact if the victim has questions about the sentence or release of the offender;
(B) the potential for release of the offender on furlough, probation, or parole or for good time credit; and
(2) allows the victim to update the victim's contact information with the court, the Victim Information and Notification Everyday service, and with the Department of Corrections."

Renumber the following bill sections accordingly.

Page 77, line 4:
Delete "and"

Page 77, line 24, following "sanction":
Insert "; and
(10) within 30 days after sentencing of an offender, provide the victim of a crime information on the earliest dates the offender could be released on furlough, probation, or parole, including deductions or reductions for good time or other good conduct incentives and the process for release, including contact information for the decision-making bodies"

Page 97, line 29:
Delete "sec. 66"
Insert "sec. 67"

Page 98, line 1:
Delete "sec. 66"
Insert "sec. 67"

Page 98, line 2:
Delete "sec. 67"
Insert "sec. 68"

Page 98, line 5:
Delete "sec. 81"
Insert "sec. 82"

Page 98, line 8:
Delete "sec. 99"
Insert "sec. 100"

Page 99, line 11:
Delete "86"
Insert "87"

Page 99, line 12:
Delete "sec. 87"
Insert "sec. 88"

Page 99, line 13:
Delete "sec. 93"
Insert "sec. 94"

Page 99, line 14:
Delete "sec. 94"
Insert "sec. 95"

Page 99, line 15:
Delete "sec. 95"
Insert "sec. 96"

Page 99, line 16:
Delete "sec. 148"
Insert "sec. 149"

Page 99, line 30:
Delete "sec. 61"
Insert "sec. 62"

Page 99, line 31:
Delete "sec. 76"
Insert "sec. 77"

Page 100, line 1:
Delete "sec. 77"
Insert "sec. 78"

Page 100, line 2:
Delete "sec. 78"
Insert "sec. 79"

Page 100, line 3:
Delete "sec. 79"
Insert "sec. 80"

Page 100, line 4:
Delete "sec. 80"
Insert "sec. 81"

Page 100, line 5:
Delete "sec. 81"
Insert "sec. 82"

Page 100, line 6:
Delete "sec. 134"
Insert "sec. 135"

Page 100, line 7:
Delete "sec. 135"
Insert "sec. 136"

Page 100, line 10:
Delete "sec. 59"
Insert "sec. 60"

Page 100, line 11:
Delete "sec. 60"
Insert "sec. 61"

Page 100, line 12:
Delete "sec. 75"
Insert "sec. 76"

Page 100, line 13:
Delete "sec. 89"

Insert "sec. 90"

Page 100, line 14:
Delete "sec. 92"
Insert "sec. 93"

Page 100, line 15:
Delete "sec. 102"
Insert "sec. 103"

Page 100, line 16:
Delete "sec. 104"
Insert "sec. 105"

Page 100, line 17:
Delete "sec. 136"
Insert "sec. 137"

Page 100, line 24:
Delete "sec. 64"
Insert "sec. 65"

Page 100, line 25:
Delete "sec. 65"
Insert "sec. 66"

Page 100, line 26:
Delete "sec. 66"
Insert "sec. 67"

Page 100, line 27:
Delete "sec. 67"
Insert "sec. 68"

Page 100, line 29:
Delete "sec. 67"
Insert "sec. 68"

Page 101, line 1:
Delete "sec. 62"
Insert "sec. 63"

Page 101, line 2:
Delete "sec. 69"
Insert "sec. 70"

Page 101, line 5:

Delete "sec. 68"
Insert "sec. 69"

Page 101, line 6:
Delete "sec. 70"
Insert "sec. 71"

Page 101, line 7:
Delete "sec. 71"
Insert "sec. 72"

Page 101, line 8:
Delete "sec. 72"
Insert "sec. 73"

Page 101, line 9:
Delete "sec. 74"
Insert "sec. 75"

Page 101, line 10:
Delete "sec. 96"
Insert "sec. 97"

Page 101, line 11:
Delete "sec. 97"
Insert "sec. 98"

Page 101, line 15:
Delete "sec. 83"
Insert "sec. 84"

Page 101, line 16:
Delete "sec. 84"
Insert "sec. 85"

Page 101, line 17:
Delete "sec. 85"
Insert "sec. 86"

Page 101, line 18:
Delete "sec. 91"
Insert "sec. 92"

Page 101, line 21:
Delete "sec. 100"
Insert "sec. 101"

Page 101, line 22:
Delete "sec. 101"
Insert "sec. 102"

Page 101, line 23:
Delete "sec. 103"
Insert "sec. 104"

Page 101, line 24:
Delete "sec. 105"
Insert "sec. 106"

Page 101, line 25:
Delete "sec. 107"
Insert "sec. 108"

Page 101, line 26:
Delete "sec. 108"
Insert "sec. 109"

Page 101, line 27:
Delete "sec. 109"
Insert "sec. 110"

Page 101, line 28:
Delete "sec. 115"
Insert "sec. 116"

Page 101, line 29:
Delete "sec. 116"
Insert "sec. 117"

Page 101, line 30:
Delete "sec. 117"
Insert "sec. 118"

Page 101, line 31:
Delete "sec. 118"
Insert "sec. 119"

Page 102, line 1:
Delete "sec. 119"
Insert "sec. 120"

Page 102, line 2:
Delete "sec. 120"
Insert "sec. 121"

Page 102, line 3:
Delete "sec. 121"
Insert "sec. 122"

Page 102, line 4:
Delete "sec. 122"
Insert "sec. 123"

Page 102, line 5:
Delete "sec. 123"
Insert "sec. 124"

Page 102, line 6:
Delete "sec. 124"
Insert "sec. 125"

Page 102, line 7:
Delete "sec. 125"
Insert "sec. 126"

Page 102, line 8:
Delete "sec. 126"
Insert "sec. 127"

Page 102, line 9:
Delete "sec. 127"
Insert "sec. 128"

Page 102, line 10:
Delete "sec. 128"
Insert "sec. 129"

Page 102, line 11:
Delete "sec. 129"
Insert "sec. 130"

Page 102, line 12:
Delete "sec. 130"
Insert "sec. 131"

Page 102, line 13:
Delete "sec. 131"
Insert "sec. 132"

Page 102, line 14:
Delete "sec. 132"

Insert "sec. 133"

Page 102, line 15:
Delete "secs. 152 - 154"
Insert "secs. 153 - 155"

Page 102, line 16:
Delete "152 - 154"
Insert "153 - 155"

Page 102, line 31:
Delete "sec. 63"
Insert "sec. 64"

Page 103, line 1:
Delete "sec. 99"
Insert "sec. 100"

Page 103, line 2:
Delete "sec. 142"
Insert "sec. 143"

Page 103, line 6:
Delete "sec. 152"
Insert "sec. 153"

Page 103, line 8:
Delete "sec. 156(a)"
Insert "sec. 157(a)"

Page 103, line 11:
Delete "sec. 156(b)"
Insert "sec. 157(b)"

Page 103, line 14:
Delete "sec. 156(b)"
Insert "sec. 157(b) "

Page 103, line 17:
Delete "sec. 66"
Insert "sec. 67"
Delete "sec. 156(c)"
Insert "sec. 157(c)"

Page 103, line 20:
Delete "sec. 67"
Insert "sec. 68"

Delete "sec. 156(d)"
Insert "sec. 157(d)"

Page 103, line 23:
Delete "sec. 81"
Insert "sec. 82"
Delete "sec. 156(e)"
Insert "sec. 157(e)"

Page 103, line 26:
Delete "sec. 99"
Insert "sec. 100"
Delete "sec. 156(f)"
Insert "sec. 157(f)"

Page 103, lines 29 - 30:
Delete "61, 62, 65, 67, 69, 73, 76 - 88, 91, 93 - 95, 134, 135, 143 - 151, and 155"
Insert "62, 63, 66, 68, 70, 74, 77 - 89, 92, 94 - 96, 135, 136, 144 - 152, and 156"

Page 103, line 31, through page 104, line 1:
Delete "Sections 58 - 60, 66, 68, 70 - 72, 74, 75, 89, 90, 92, 96 - 98, 100 - 133, and 136 - 140"
Insert "Sections 58, 60, 61, 67, 69, 71 - 73, 75, 76, 90, 91, 93, 97 - 99, 101 - 134, 137 - 141"

Page 104, line 2:
Delete "sec. 152"
Insert "sec. 153"

Page 104, line 4:
Delete "63, 99, 142, 152 - 154, and 156(f)"
Insert "64, 100, 143, 153 - 155, and 157(f)"

AMENDMENT 18 [29-LS0896\H.17, Martin/Gardner, 3/25/16]

Page 50, following line 22:
Insert a new bill section to read:
"*** Sec. 83.** AS 22.35.030 is amended by adding a new subsection to read:
(b) Notwithstanding (a) of this section, the Alaska Court System shall publish the court record of a person who is granted a suspended entry of judgment under AS 12.55.078 on a publicly available website

with a notation indicating a suspended entry of judgment."

Renumber the following bill sections accordingly.

Page 98, line 8:
Delete "sec. 99"
Insert "sec. 100"

Page 99, line 11:
Delete "sec. 86"
Insert "sec. 87"

Page 99, line 12:
Delete "sec. 87"
Insert "sec. 88"

Page 99, line 13:
Delete "sec. 93"
Insert "sec. 94"

Page 99, line 14:
Delete "sec. 94"
Insert "sec. 95"

Page 99, line 15:
Delete "sec. 95"
Insert "sec. 96"

Page 99, line 16:
Delete "sec. 148"
Insert "sec. 149"

Page 100, line 6:
Delete "sec. 134"
Insert "sec. 135"

Page 100, line 7:
Delete "sec. 135"
Insert "sec. 136"

Page 100, line 13:
Delete "sec. 89"
Insert "sec. 90"

Page 100, line 14:
Delete "sec. 92"

Insert "sec. 93"

Page 100, line 15:
Delete "sec. 102"
Insert "sec. 103"

Page 100, line 16:
Delete "sec. 104"
Insert "sec. 105"

Page 100, line 17:
Delete "sec. 136"
Insert "sec. 137"

Page 101, line 10:
Delete "sec. 96"
Insert "sec. 97"

Page 101, line 11:
Delete "sec. 97"
Insert "sec. 98"

Page 101, line 15:
Delete "sec. 83"
Insert "sec. 84"

Page 101, line 16:
Delete "sec. 84"
Insert "sec. 85"

Page 101, line 17:
Delete "sec. 85"
Insert "sec. 86"

Page 101, line 18:
Delete "sec. 91"
Insert "sec. 92"

Page 101, line 21:
Delete "sec. 100"
Insert "sec. 101"

Page 101, line 22:
Delete "sec. 101"
Insert "sec. 102"

Page 101, line 23:

Delete "sec. 103"
Insert "sec. 104"

Page 101, line 24:
Delete "sec. 105"
Insert "sec. 106"

Page 101, line 25:
Delete "sec. 107"
Insert "sec. 108"

Page 101, line 26:
Delete "sec. 108"
Insert "sec. 109"

Page 101, line 27:
Delete "sec. 109"
Insert "sec. 110"

Page 101, line 28:
Delete "sec. 115"
Insert "sec. 116"

Page 101, line 29:
Delete "sec. 116"
Insert "sec. 117"

Page 101, line 30:
Delete "sec. 117"
Insert "sec. 118"

Page 101, line 31:
Delete "sec. 118"
Insert "sec. 119"

Page 102, line 1:
Delete "sec. 119"
Insert "sec. 120"

Page 102, line 2:
Delete "sec. 120"
Insert "sec. 121"

Page 102, line 3:
Delete "sec. 121"
Insert "sec. 122"

Page 102, line 4:
Delete "sec. 122"
Insert "sec. 123"

Page 102, line 5:
Delete "sec. 123"
Insert "sec. 124"

Page 102, line 6:
Delete "sec. 124"
Insert "sec. 125"

Page 102, line 7:
Delete "sec. 125"
Insert "sec. 126"

Page 102, line 8:
Delete "sec. 126"
Insert "sec. 127"

Page 102, line 9:
Delete "sec. 127"
Insert "sec. 128"

Page 102, line 10:
Delete "sec. 128"
Insert "sec. 129"

Page 102, line 11:
Delete "sec. 129"
Insert "sec. 130"

Page 102, line 12:
Delete "sec. 130"
Insert "sec. 131"

Page 102, line 13:
Delete "sec. 131"
Insert "sec. 132"

Page 102, line 14:
Delete "sec. 132"
Insert "sec. 133"

Page 102, line 15:
Delete "secs. 152 - 154"
Insert "secs. 153 - 155"

Page 102, line 16:
Delete "152 - 154"
Insert "153 - 155"

Page 103, line 1:
Delete "sec. 99"
Insert "sec. 100"

Page 103, line 2:
Delete "sec. 142"
Insert "sec. 143"

Page 103, line 6:
Delete "sec. 152"
Insert "sec. 153"

Page 103, line 8:
Delete "sec. 156(a)"
Insert "sec. 157(a)"

Page 103, line 11:
Delete "sec. 156(b)"
Insert "sec. 157(b)"

Page 103, line 14:
Delete "sec. 156(b)"
Insert "sec. 157(b) "

Page 103, line 17:
Delete "sec. 156(c)"
Insert "sec. 157(c)"

Page 103, line 20:
Delete "sec. 156(d)"
Insert "sec. 157(d)"

Page 103, line 23:
Delete "sec. 156(e)"
Insert "sec. 157(e)"

Page 103, line 26:
Delete "sec. 99"
Insert "sec. 100"
Delete "sec. 156(f)"
Insert "sec. 157(f)"

Page 103, lines 29 - 30:
Delete "76 - 88, 91, 93 - 95, 134, 135, 143 - 151, and 155"
Insert "77 - 82, 84 - 89, 92, 94 - 96, 135, 136, 144 - 152, and 156"

Page 103, following line 30:
Insert a new bill section to read:
"*** Sec. 161.** Section 83 of this Act takes effect October 1, 2016."

Renumber the following bill sections accordingly.

Page 103, line 31, through page 104, line 1:
Delete "89, 90, 92, 96 - 98, 100 - 133, and 136 - 140"
Insert "90, 91, 93, 97 - 99, 101 - 134, and 137 - 141"

Page 104, line 2:
Delete "sec. 152"
Insert "sec. 153"

Page 104, line 4:
Delete "99, 142, 152 - 154, and 156(f)"
Insert "100, 143, 153 - 155, and 157(f)"

AMENDMENT 19 [29-LSSS0896\H.66, Martin/Gardner, 4/1/16]

Page 3, line 28:
Delete "**$2,000**"
Insert "**$1,000**"

Page 4, line 5:
Delete "**$2,000**"
Insert "**$1,000**"

Page 4, line 21:
Delete "**$2,000**"
Insert "**$1,000**"

Page 5, line 5:
Delete "**$2,000**"
Insert "**$1,000**"

Page 5, line 7:

Delete "**$2,000**"
Insert "**$1,000**"

Page 5, line 18:
Delete "**$2,000**"
Insert "**$1,000**"

Page 5, line 30:
Delete "**$2,000**"
Insert "**$1,000**"

Page 6, line 2:
Delete "**$2,000**"
Insert "**$1,000**"

Page 6, line 10:
Delete "**$2,000**"
Insert "**$1,000**"

Page 6, line 13:
Delete "**$2,000**"
Insert "**$1,000**"

Page 6, line 21:
Delete "**$2,000**"
Insert "**$1,000**"

Page 6, line 24:
Delete "**$2,000**"
Insert "**$1,000**"

Page 7, line 2:
Delete "**$2,000**"
Insert "**$1,000**"

Page 7, line 5:
Delete "**$2,000**"
Insert "**$1,000**"

Page 7, line 28:
Delete "**$2,000**"
Insert "**$1,000**"

Page 8, line 1:
Delete "**$2,000**"
Insert "**$1,000**"

Page 9, line 1:
Delete "**$2,000**"
Insert "**$1,000**"

Page 9, line 18:
Delete "**$2,000**"
Insert "**$1,000**"

Page 10, line 14:
Delete "**$2,000**"
Insert "**$1,000**"

Page 10, line 18:
Delete "**$2,000**"
Insert "**$1,000**

Page 10, line 24:
Delete "**$2,000**"
Insert "**$1,000**

Page 10, line 26:
Delete "**$2,000**"
Insert "**$1,000**

Page 10, line 30:
Delete "**$2,000**"
Insert "**$1,000**

Page 11, line 3:
Delete "**$2,000**"
Insert "**$1,000**

4:54:16 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:54 p.m.