

**ALASKA STATE LEGISLATURE  
JOINT MEETING  
HOUSE JUDICIARY STANDING COMMITTEE  
SENATE JUDICIARY STANDING COMMITTEE**

January 25, 2016

1:33 p.m.

**MEMBERS PRESENT**

HOUSE JUDICIARY

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

SENATE JUDICIARY

Senator John Coghill, Vice Chair  
Senator Mia Costello  
Senator Peter Micciche  
Senator Bill Wielechowski

**MEMBERS ABSENT**

HOUSE JUDICIARY

Representative Neal Foster  
Representative Kurt Olson (alternate)

SENATE JUDICIARY

Senator Lesil McGuire, Chair

**COMMITTEE CALENDAR**

OVERVIEW: TITLE IX AND UNIVERSITY POLICY

- HEARD

OVERVIEW: DEPARTMENT OF CORRECTIONS ADMINISTRATIVE REPORT

- HEARD

**PREVIOUS COMMITTEE ACTION**

No previous action to record

**WITNESS REGISTER**

MICHAEL O'BRIEN, Associate General Counsel  
University of Alaska System  
Fairbanks, Alaska

**POSITION STATEMENT:** Discussed Title IX, sexual assault, and the accountability of the University of Alaska, Fairbanks.

WALT MONEGAN  
Interim Commissioner  
Department of Corrections  
Juneau, Alaska

**POSITION STATEMENT:** Presented an overview of the Department of Corrections Administrative Review Report.

DIANE CASTO, Deputy Commissioner  
Department of Corrections  
Juneau, Alaska

**POSITION STATEMENT:** During the presentation clarified an issue regarding juveniles.

**ACTION NARRATIVE**

[1:32:42 PM](#)

**CHAIR GABRIELLE LEDOUX** called the joint meeting of the House and Senate Judiciary Standing Committees to order at 1:32 p.m. Representatives Keller, Lynn, Claman, LeDoux and Senators Coghill, Costello, and Wielechowski were present at the call to order. Representatives Millett and Gruenberg and Senator Micciche arrived as the meeting was in progress.

**PRESENTATION: Overview of Title IX and University Policy**

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CHAIR LEDOUX announced that the first order of business would be an overview of Title IX and University Policy by Mike O'Brien.

CHAIR LEDOUX advised that Mr. O'Brien would speak to the University of Alaska's Title IX compliance pursuant to reports of issues handling sexual assault cases on the University of Alaska campuses.

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MICHAEL O'BRIEN, Associate General Counsel, University of Alaska System, offered a background on Title IX and sexual assault regulation across the United States at universities and colleges, discussed specific UAF problems and how they have been addressed, and how the university is handling and accountable for compliance for sexual assault on the campuses moving forward. Sexual assault is a serious problem in Alaska, he said, and at all universities, including: Yale, West Point, Brigham Young University, and University of California, Berkley, because it does not matter how a school is administered, its ideology, or how the students are organized, sexual assault is a problem across the country. He pointed out that the University of Alaska, Fairbanks (UAF) came forward to actively discuss problems on its campus involving several mishandled cases in its student discipline process of sexual assault.

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CHAIR LEDOUX asked whether his use of the term "sexual assault" means the same as written in statute, or a broader definition as far as the University of Alaska is concerned.

MR. O'BRIEN said he guessed both because sexual assault at its most basic term is rape. Title IX is interested in sexual harassment and, he noted, the federal government regulates sexual assault or rape as a form of sexual harassment which, he commented, appears counter-intuitive, but that is how the university is regulated to think of sexual harassment. Sexual harassment can have many meanings, such as verbal, quid pro quo in a workplace environment, and sexual assault. He advised the University of Alaska (UA) uses the term "sexual misconduct" in a "soup to nuts" approach of anything inappropriate involving gender or sexual identify discrimination. He clarified that when he says "sexual assault" he is talking about "rape."

MR. O'BRIEN reiterated that UAF came forward proactively to discuss problems involving sexual assault and/or rape on its campus in the past. He offered background on Title IX and how universities are where they are currently, and so laser-focused on sexual misconduct on campuses. President Richard Nixon signed Title IX into law in 1972, which was considered women's inclusion into sports that literally leveled the playing field for women on campuses and funding for women's sports. He explained that that is what Title IX was for 25 years and then

at the turn of this century that Title IX legally changed to schools looking not just at access to educational programs like sports, but actually getting involved with harassment on campuses.

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CHAIR LEDOUX inquired as to whether Congress changed the law or the federal government changed due to interpreting Title IX in a different manner than previously.

MR. O'BRIEN responded both. Under Davis v. Monroe County Board of Education, (97-843) 526 U.S. 629 (1999) 120 F.3d 1390, the U.S. Supreme Court decided that persistent and insidious harassment in the educational environment fell under Title IX, so the law actually changed. He explained that Title IX exists in federal law, but the vast majority of his discussion is guidance the University of Alaska receives through the organization that gives universities the lion's share of their funding, he explained. It is very persuasive guidance, he characterized, and the Department of Education followed Davis by advising schools, universities and colleges that it is now their business to look into harassment and deal with harassment on their campuses.

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SENATOR COGHILL asked for a high level view of the group giving the University of Alaska its guidance.

MR. O'BRIEN replied that the Board of Education, Office of Civil Rights has been issuing the guidance that has been a tectonic shift in how universities handle sexual misconduct on their campuses.

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REPRESENTATIVE LYNN inquired as to when simple flirtation turns into harassment.

MR. O'BRIEN responded that when it becomes so extreme and pervasive that it causes the recipient to leave the educational environment.

REPRESENTATIVE LYNN questioned whether they have to leave the school because a flirtation exceeded what it would normally be.

MR. O'BRIEN explained that the recipient doesn't have to leave, but, in essence, a reasonable person would want to leave at that point. He further explained that the goal of Title IX is to not deny students educational opportunities due to some sort of sexual or gender discrimination. Flirtation will not violate Title IX, but flirtation can get to the point that the object of that flirtation is so repelled that they would rather drop the class, or drop out, than continue to see the person, he said. Clearly, that is a situation where the university is tasked with taking action, he noted.

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CHAIR LEDOUX asked whether it is the reasonable person test or is it as in a tort, wherein "you take victim as you find them." She further asked how it works if someone is particularly sensitive.

MR. O'BRIEN responded that, obviously, people are not viewing their own lives through the lens of a reasonable person because people view their lives through the lens of their own experiences. For example, he noted, what is harassing to one person is simply something that another doesn't agree with. Universities are the market place of ideas, and uncomfortable ideas, and ideas that others object to, and ideas that offend other people, but that doesn't per se make it harassment, he said. Universities must look at the spectrum to determine whether the action is so pervasive that someone is being pushed out of the educational environment, he related.

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REPRESENTATIVE KELLER referred to the guidance received from the Office of Civil Rights (OCR) and asked whether it changes the role of the university, and whether the guidance includes enforcement. He then referred to the handout "Title IX FAQs" and the comment, "A complaint is by the preponderance of the evidence" which puts the University of Alaska in a spot where it can take some sort of enforcement action, and he asked whether the court is involved or who decides the preponderance of the evidence.

MR. O'BRIEN replied that new guidance from OCR came out in 2011, which clearly stated that universities no longer have the discretion to identify sexual assault as a police matter. He explained, currently, universities, through their student conduct process, must look at an event and determine by a

preponderance of the evidence, which is different from the criminal process, whether that person has violated the student code of conduct. He pointed out that the power of the University of Alaska is limited to its boundaries, letting someone be a student, and the terms of being a student. By a preponderance of the evidence, for example, sexual assault, through the Board of Regents' process there is a due process hearing and a person can be removed from the University of Alaska's community. The University of Alaska is in a place of investigating and then adjudicating whether a person can remain within the university environment for the most extreme, he said. He then said if someone flirted with a harassing effect the same sort of investigation would occur but it is unlikely that person would be suspended or expelled.

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REPRESENTATIVE KELLER commented that he was surprised with the answer because it appears the role of the university is being changed, and asked whether this has resulted in lawsuits.

MR. O'BRIEN said he was not sure of lawsuits, but lawyers have been involved. He explained that previously it was somewhat rare that lawyers were involved with the student discipline process, and it is now very common.

REPRESENTATIVE KELLER asked whether it was common in Alaska.

MR. O'BRIEN opined that it is nationwide, and that is his experience in Alaska. He explained that the 2011 guidance made the process formal which likely attracts lawyers.

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REPRESENTATIVE CLAMAN referred to an incident involving Duke University Lacrosse players involving allegations of sexual assault/rape and that case was in criminal court with one defendant being acquitted. He surmised that in a similar scenario at UAF a student accused of raping another student could face both an administration hearing within the university, and if the university concluded the student had raped another student, the offender would be expelled from the university, even if found not guilty in a criminal trial.

MR. O'BRIEN commented that Representative Claman was exactly correct. He described it as being akin to the Division of Motor Vehicles (DMV) in that if a person harms someone in a car

accident DMV decides administratively who has a driver's license. He added that the person may be criminally acquitted but those are "unhinged" processes because DMV comes to an immediate conclusion whether the person should have a license right now.

REPRESENTATIVE CLAMAN asked what that does in terms of university resources because, in theory, the university is there to provide education. Yet, he said, it appears a huge investigative duty is put upon the university that 10-15 years ago wasn't there.

MR. O'BRIEN agreed, and he said that even four years ago it didn't have the investigative duty, and now every university and college must have a Title IX coordinator, Title IX investigators, and other support staff.

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CHAIR LEDOUX referred to a discussion she had with Mr. O'Brien earlier regarding due process, and offered her understanding from Mr. O'Brien that the university's due process hearing it gives to those accused of sexual assault or sexual behavior doesn't allow the accused to cross-examine the accuser. She stressed that the process does not sound like due process, and asked whether the federal government is requiring universities to not allow people to cross-examine their accusers.

MR. O'BRIEN explained that previously, one of the problems on college campuses was that within a case of sexual assault, universities were completely deferential to the criminal process, often to the point an alleged victim would have to sit next to the alleged perpetrator in class because the university didn't want to take any action against that person or separate them out of the dorms.

Therefore, he noted, women in particular left colleges with debt and scholarships unused so there was a problem with over deference as seen by the federal government.

Contained within the 2011 guidance was a requirement of universities to have a tectonic shift, to give victims participation in the administrative process, to lower the burden of proof to preponderance of the evidence, to make the process more formal so there wasn't the ability to ignore the problem until one of the students went away. Along with that guidance

was an effort to remove barriers to participation for alleged victim's barriers. Previously, universities had allowed victims to be cross-examined and that mediation must happen first, he said. From the federal government's perspective and the guidance, those requirements had a chilling effect on women on college campuses that prevented them from coming forward and prosecuting the matter, he explained.

MR. O'BRIEN explained that the Alaska Supreme Court established standards for the University of Alaska that does not require a court-like atmosphere, doesn't require cross-examination, or any of the hallmarks of a criminal or civil trial before the university takes action to protect the university community.

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CHAIR LEDOUX referred to Mr. O'Brien's use of the term "guidance" coming from a huge funder and asked the definition of "guidance."

MR. O'BRIEN answered that it is, obviously, very persuasive guidance and the guidance effects on people's interest in attending school. He offered that this issue is being litigated, not in Alaska, but it is unclear exactly how closely universities have to follow it. He further offered that there is a movement to not follow it at all, but the federal government's perspective is very clear and there is an expectation universities follow this guidance.

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CHAIR LEDOUX expressed that she finds it "kind of scary" that a young man at the beginning of his life could be accused of some sort of misconduct and without the ability to cross-examine his accuser could be thrown out of school. She expressed concern because it could destroy someone.

MR. O'BRIEN responded that there is process in place and there are several opportunities for a person accused of something like this to state their case. He added that universities are told not to have a trial and or a cross-examination environment, he said.

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SENATOR COGHILL asked for examples of how this has worked in Alaska.

MR. O'BRIEN said he would briefly touch on what exactly was disclosed at UAF, the problem there, and how it has been dealt with. In 2011, the rules of the game changed and the very things being discussed in this committee came into effect and the university started looking at how it was handling sexual misconduct on their campuses. He referred to the book Missoula: Rape and the Justice System in a College Town by Jon Krakauer and how the University of Montana did not follow the guidance given and had significant problems resulting in the Office of Civil Rights and the Department of Justice coming onto its campus and taking over the district attorney's office as well.

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MR. O'BRIEN said the case regarding the University of Montana was indicative that many schools were not closely reading the 2011 guidance.

In 2014, a list of the best universities in the United States, accused of violating their students' civil rights regarding sexual assault, was published by the Office of Civil Rights, which included: Harvard; Harvard Law; University of California, Berkeley; Princeton; University of Michigan; University of Virginia. He advised that the University of Alaska was added to the list for review of its handling of sexual misconduct. As a result of that review, he said, the University of Alaska produced 12,000 pages of documents, with the lion's share being a retrospective look of how it had handled Title IX, sexual misconduct and harassment cases, since 2011. Due to the University of Alaska having the data from the review, it audited UAF and found that out of 44 sexual harassment cases, there were 5 were sexual assault cases. He pointed out that, UAF had done many things right for the alleged victims, such as class changes, escorts, changing dorm rooms, and trespass orders. Although, they hadn't carried through with the final bit of due process to decide whether this person should be in the UAF community, meaning it had not initiated the "major sanction process" to suspend or expel the alleged perpetrator.

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CHAIR LEDOUX asked what had happened in the criminal cases.

MR. O'BRIEN said that some had and some had not. Some of the people are in jail, some charges were pressed but the district attorney did not move forward because there was a beyond a

reasonable doubt standard versus a preponderance of the evidence standard, and in some cases no charges were ever pressed. He reiterated that there were five cases wherein the final stage of due process hadn't been fully gone through.

CHAIR LEDOUX related that she considers due process as the rights of the accused, and surmised that Mr. O'Brien does not mean that the rights of the accused haven't been considered, rather that of the procedure.

MR. O'BRIEN responded both. He explained that under how "we view things," the victim has a right to go through that process as well and in essence prosecute the person he/she is accusing and he clarified that the student process had not gotten to its end result in either direction. Subsequent to finding these five cases, UA performed an audit of its entire system and found technical paperwork handling issues at UAA and UAS, but not at the level of UAF where the process stopped without any kind of fruition. He advised that UAF has re-initiated the process in the five cases and to its credit, UAF is the only school in the entire United States that has pro-actively come forward and discussed deficiencies to begin the healing process. It is unknown when the Office of Civil Rights (OCR) will published its report, he said.

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SENATOR COGHILL acknowledged that all of the campuses in Alaska are interested in making them a safe and better place. He referred to Mr. O'Brien's comments and said the assumption is peer-to-peer classmates, but there are upper and lower classmen which is not peer-to-peer from the perspective of institutional wisdom, and there are employee-student relations. He asked how UA in being proactive has dealt with those two issues.

MR. O'BRIEN responded that Title IX applies to the entire educational environment and the boundary of the campus includes faculty-on-faculty problems, faculty-on-student problems, student-on-student problems, third-party coming onto campus and assaulting or discriminating against a student. An important point of being proactive is training and it has cost a lot of money but over 90 percent of the faculty and staff are trained in how to handle problems, he offered.

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SENATOR COGHILL asked the filtering process in Title IX or how UA has handled it through its proactive measures in creating either mean spirited or frivolous accusations so UA does not destabilize the whole population.

MR. O'BRIEN answered that the answer is training and students are trained as soon as they walk in the door with the goal to talk to them about harassment and discrimination in a manner that does not offend freedom of speech. People should be careful of their words but not so much so that it is no longer the marketplace of ideas which is a foreign concept to a lot of students. The university found that students entering as freshmen do not necessarily know what consent is and that incapacitation is not consent, and a considerable amount of time has been spent teaching that especially right off the bat. Studies show that the first semester of a student's college career is called the "red zone" meaning it is a time of increased vulnerability so UA needs to get to students as soon as possible.

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SENATOR COGHILL referred to "political correctness times" or normal shifts in this society and pointed out that there is the assumption that it is male versus female but there is also same sex pressure on campuses as much as any place in the world. He asked whether it is an open discussion or throttled back.

MR. O'BRIEN replied that it is an open discussion and that the only thing that causes rape is a rapist. "By-stander awareness," and the "green dot program" is empowering to students and allows students to feel comfortable stepping forward to encourage students to look out for each other, he said.

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CHAIR LEDOUX referred to lack of consent due to incapacitation due to alcohol and asked whether that means they are actually unconscious or possibly making a decision to say yes when drunk that they may not have said when sober.

MR. O'BRIEN responded that it is a problem that haunts many cases and stated only a rapist commits rape. The university will not say that when a person is drunk that anything following is consent, which would wildly be inappropriate, he related. He offered that when looking at a controlled campus environment

such as West Point or Brigham Young University they also have sexual assault problems with no alcohol being allowed. The focus and training is on the people in UA's community and not understanding proper boundaries and consent, he offered.

CHAIR LEDOUX explained that her question was due to "incapacitation" and asked the exact definition for purposes of Title IX.

MR. O'BRIEN replied that as part of this process and guidance UA updated its university regulations, defined consent, and provides students a written policy right up front. He said it is the ability to say yes or no, and also whether someone is able to perceive. For example, if a person says yes in a state of heightened drunkenness that is not true consent.

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CHAIR LEDOUX asked the definition of "heightened drunkenness" because half the sex in college would be viewed as under heightened drunkenness.

MR. O'BRIEN related that obviously there is a spectrum and often UA finds, when determining whether an act is appropriate or not, itself having to make that exact determination. Under UA regulations, he explained, it is at the point that a person loses control of their limbs, can't stop vomiting, talk, or stay awake.

CHAIR LEDOUX said "absolutely appropriate."

MR. O'BRIEN further explained that often people regret sex when they are intoxicated but that doesn't ipso facto make it sexual assault. Finding the gap in between can be a hurdle in determining what happens in these cases, and often anyone at the scene has been drinking, he said.

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SENATOR COGHILL surmised that from 2011-2014 the education process of awareness began, and from 2014 to present it has been taken to a new level in the UA system. He asked whether the atmosphere of the campuses are tense or relaxed due to these rules. Inadvertently, he commented, [the fear factor could be such that students may not want to attend].

MR. O'BRIEN responded that this issue is in their face the moment they walk onto campus and there is no question that UA is taking it very seriously and that the response has been positive. On the issue of sexual assault and whether this is worth it and a good thing, he advised, because people did not want to report it because it is horrific, humiliating, and many situations where the victim may not be taken seriously. Student safety is where the rubber meets the road, he said. The University of Alaska has seen the number of reports of people coming in and talking about this have gone up 300-400 percent in a year or two, he advised which means students feel UA is taking this seriously and that someone will do something about it.

SENATOR COGHILL advised that is the conversation he will have with the student leaders.

2:16:08 PM

REPRESENTATIVE KELLER noted that when he saw the agenda today, asked himself "Why? This is the year of the budget" and he wanted to follow the money. He also asked himself how much it cost the UA to produce 12,000 pages in response to the OCR, with no findings. In response to Representative Keller's question of "Why are you here?" Mr. O'Brien responded that the legislature requested him.

REPRESENTATIVE KELLER asked whether any federal money goes to the UA to respond to this.

MR. O'BRIEN advised that it is an unfunded mandate in dealing with OCR. Although, he noted, there are grants "and things like that" that are competitive, but OCR does not offer the money to comply. He added that UA has taken people from other areas and tasked them with [the project].

2:17:21 PM

MR. O'BRIEN transitioned his presentation to "accountability" and noted that the proof is in the students coming forward and UA being able to link those students with counseling, shifting classes, and keeping them within the educational environment. Although there has been criticism of Title IX, he described it as a good thing because school students are coming forward and UA is able to keep them at school.

CHAIR LEDOUX asked whether the 400 percent increase of complaints are regarding rape, or other forms of sexual harassment.

MR. O'BRIEN replied that it is harassment in general, but the number of sexual assault ... that component of it has gone up proportionally.

MR. O'BRIEN responded to Chair LeDoux's question of the number of sexual assault allegations on the various UA campuses were reported last year, and advised that this semester at UAF there were 15 sexual harassment complaints and 8 were sexual assault allegations. He added that at UAS there were 4 allegations and 1 was sexual assault, and at UAA there were 59 allegations and 4 were sexual assault.

[2:19:30 PM](#)

REPRESENTATIVE CLAMAN used the example of 59 sexual harassment complaints and 4 allegations of sexual assault at UAA and asked how many of the sexual assault allegations were reported to the police.

MR. O'BRIEN explained that reporting to the police is up to the alleged victim because there is no requirement that the allegations be reported to the police.

REPRESENTATIVE CLAMAN surmised that with regard to sexual assault the UA does not have an obligation to report to the police.

MR. O'BRIEN answered that is correct.

REPRESENTATIVE CLAMAN further surmised that it is strictly for the student to decide whether or not to report this to the police.

MR. O'BRIEN answered that is correct.

REPRESENTATIVE CLAMAN noted a critique he has heard, via the national media, is frustration with students going to universities, being accused of rape, given "kind of" a one year leave of absence from the university, and a year later they are back on campus with the perception that the university did nothing in allowing an alleged criminal back on campus. He quiered how UA squares those criticisms and the issue of the

victim not reporting it to the police and the accused allowed back on campus.

MR. O'BRIEN expressed that it is a difficult balancing act and UA has been put in that position through the guidance. For example, he noted, at the federal level he urged to either mandate reporting to the police, or a safe harbor. This illustrates why UA must perform an investigation itself because if someone is sexually assaulted and won't go to the police, UA must perform a serious investigation and if the allegations are found to be accurate would most likely expel the perpetrator.

REPRESENTATIVE CLAMAN offered the example of an honor roll couple happily dating for two years with great careers ahead, break up and one of them accuses the other of sexual assault and as a result the alleged perpetrator is not only expelled and essentially their promising career is over. He also noted the example of the sexual assault truly happening and the student being allowed to remain at school.

MR. O'BRIEN stated that UA is in that exact position and being a millimeter off in either direction can have serious ramifications, and UA takes that very seriously.

[2:24:56 PM](#)

CHAIR LEDOUX pointed out that the criminal system has rape kits, forensic experts, and trained investigators, and asked how UA performs its investigation.

MR. O'BRIEN stated that it "rarely on our own" have access to that sort of criminal investigatory tools. The University of Alaska, Anchorage has its own police force with training, and UAS has the Juneau Police Department on campus.

CHAIR LEDOUX asked whether there is a 24-hour hot-line for students to report in case something happens late in the evening, and if someone is reporting a rape whether the rape kit can be used. In the event someone does not want to report the alleged rape to the police, she asked whether those tools are available and whether that type of investigation is performed.

MR. O'BRIEN answered that he spent many years as a criminal defense attorney and has many of the same concerns. One of the main goals of the guidance ...

CHAIR LEDOUX interjected that it sounded almost Orwellian.

MR. O'BRIEN continued that victims have tremendous control over what happens in their case. Hypothetically, he offered, if a victim calls and says they were sexually assault at 3:00 a.m. at a party, clearly UA will perform a risk assessment, although, there are instances the victim may say "do nothing, I just want someone to know, I just want counseling." The University of Alaska is never mandated to call the police but if the victim wants to prosecute, UA will advise the victim that the best thing to do is get a rape kit and go to the police. The goal of UA is to provide the alleged victim with a large menu of options and not take unmandated control by calling the police.

MR. O'BRIEN advised that UA cannot order the rape kit and does not have staff people to do it and, therefore, won't have the rape kit [for its investigation].

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SENATOR COGHILL offered appreciation for explaining the conundrum to the committee because it is important that legislators know whether the students feel safe and how the system works. Alaska legislators, he noted, live under an arcane ethics system and yet if accused of something at least there is a committee that will take the accusation under confidential advisement until the facts are shown to be credible. He asked for an explanation of the procedure when there is an accusation and whether it is confidential until found credible.

MR. O'BRIEN explained that at the highest level in terms of suspension and expulsion under Alaska State Statute only the president of the university, or only the chancellor by delegation, can suspend or expel someone. He further explained the following: an allegation is made and the alleged victim is contacted by Title IX investigators who are people trained in speaking with alleged victims about "this sort of" conduct. An investigation is performed and found by a preponderance of the evidence that a violation of UA's student code of conduct in Title IX is supported or not supported. In the event the allegation is against a faculty member, the report may be forwarded to HR; if against another student will go to UA's dean of students. More investigation will be performed and come to a conclusion that is forwarded to the accused and victim. All parties have an opportunity to present witnesses to the investigators as to what individuals to speak with and questions to ask the other side because there is no hearing, but there is

scrutiny of the facts and the ability to present countervailing evidence. With regard to sexual misconduct, it is then forwarded to the vice-chancellor level who offers students an opportunity to weigh-in, listens to the conclusion of UA regarding discipline, and that recommendation is forwarded to the chancellor. Depending upon the number of people involved that review can take quite a while, and the guidance says it should take 60 days to arrive at a final conclusion. He acknowledged that often UA takes longer by erring on the side of quickly assisting the alleged victim and performing due process slowly to obtain the most accurate possible outcome. He offered that once the chancellor determines suspension or expulsion, the student is banned from all UA property through the life of the suspension or life if it is expulsion.

[2:32:53 PM](#)

MR. O'BRIEN continued his presentation and said in terms of accountability and being in compliance moving forward, this is an area the Board of Regents has taken on and are closely reviewing Title IX. He noted that the Board of Regents tasked President Johnson with reports twice a year regarding compliance and more frequent updates on specific problems, and that President Johnson is receiving updates monthly from chancellors. He reiterated that students responding is the ultimate accountability because they are UA's constituents and their safety is its number one concern.

REPRESENTATIVE GRUENBERG asked whether there is a statute or framework in dealing with these issues.

MR. O'BRIEN responded that much of the guidance he referred to has not gone through rule making and is not a federal regulation. He explained that the guidance arrives in the form of a letter and he used the example that one of the most controversial areas was universities lowering the standard of proof in some cases to a preponderance of the evidence. He noted that Congress did not weigh in and the Department of Education did not have hearings on that as it came in the form of a letter from the Department of Education to UA.

REPRESENTATIVE GRUENBERG interjected a question as to whether it is state or federal

MR. O'BRIEN responded federal. He continued that other areas clearly codified as part of Title IX and there are areas in the Code of Federal Regulations. The vast majority of the guidance

arrives within UA's "Dear Colleague" letters which is an informal manner of requesting universities to follow certain Department of Education guidelines. He offered that sexual assault and these issues have always been prohibited at UA and it has had a processes in place for a long time, which is located it its Board of Regents policy.

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REPRESENTATIVE GRUENBERG asked whether something formal would be published on this issue or whether the legislature should consider an action such as with House Bill 6, many years prior.

MR. O'BRIEN responded that UA is leading on this subject and has changed its Board of Regents policy as quickly as possible and is getting into compliance with Title IX's federal mandate without offending state law and the requirements students in Alaska have by virtue of being residents.

REPRESENTATIVE GRUENBERG said he would like to be informed.

**OVERVIEW: Department of Corrections Administrative Report**

[2:38:55 PM](#)

CHAIR LEDOUX announced that the final order of business would be an overview regarding the Department of Corrections Administration Report.

[1:34:24]

[CHAIR LEDOUX announced that Acting Commissioner Walt Monegan, Department of Corrections, began his new role just prior to the House Judiciary Standing Committee's interim hearing on the Department of Corrections Administrative Report and has been invited back for an update. Chair LeDoux advised that today is invited testimony only and that she intends to schedule another meeting to hear the perspectives and recommendations of the Correctional Officers Association regarding this report.]

[2:39:17 PM](#)

WALT MONEGAN, Interim Commissioner, Department of Corrections, pointed out that he has been the Interim Commissioner for approximately two months and the report before the committee is a bulleted overview of actions taken since his arrival. He referred to the report released by Governor Bill Walker's office

pointing out many issues the Department of Corrections (DOC) struggles with and he said they attempted to follow the items in the order they found them. With regard to the policy and review updates, he advised, there were many that had not been addressed and he hired a DOC policy coordinator who works directly for Commissioner Monegan and, notably, has completed 10 policy and procedures (P&Ps) under review, including the death of an inmate. He advised that DOC is working with the State of Washington and Oregon Departments of Corrections because they have germane information.

COMMISSIONER MONEGAN referred to the organization structure of facilities and said that he is providing clear direction regarding responsibilities for DOC. He then referred to a concern mentioned in the report and said that there were many lines of communication that were not open because it is a very closed organization and had been for quite some time, and currently those are being opened. Any organization within itself that becomes siloed is doomed to the failures listed in the report.

[2:42:24 PM](#)

SENATOR COGHILL requested an example of the "lines of communication" gaps he is trying to close.

COMMISSIONER MONEGAN replied that there was not a clear communication within the institution between the medical staff and correctional staff so he brought the two directors into a closer relationship and directed that everyone else communicate within. Quite honestly, he offered, when directors of various divisions are not talking there is a problem. He advised they are discussing possible restructures to see whether DOC can become more efficient and effective in the most cost effective manner.

COMMISSIONER MONEGAN referred to solitary confinement and said the National Institution of Corrections offers training and he is sending people for training and the National Institution of Corrections will pick up the costs. The policy review coordinator researched quite a bit and the people being sent to training will be as up-to-speed as possible and he hopes to learn a lot more on this issue, he advised.

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SENATOR COGHILL expressed that solitary confinement can be one of the more inhuman ways of keeping people incarcerated because they are cut off from everyone and their time is very limited. He asked whether Commissioner Monegan is finding space limitations or segregation issues for the most part.

COMMISSIONER MONEGAN offered the example of Goose Creek Correctional Center where there had been a sexual offenders' mod called "Kilo Mod" that was separate from the general population as they are not welcome within the general population. However, due to the layout of that particular institution in order to move one of the inmates from Kilo Mod to medical or see an attorney, the entire yard must be literally cleared of approximately 300 individuals at any one time and locked back up. For that reason, Kilo Mod was disbanded and DOC put those individuals into segregation for their own protection and safety, he explained. Unfortunately, he pointed out, there are limitations on what they can have because it is not just their segregation it is segregation including others. One inmate cannot be allowed to have more property in the same segregation area as another and DOC was receiving complaints, he said. The Department of Corrections (DOC) wants to be certain everyone is safe, that no one is preyed upon or victimized, and at the same time look at the efficiencies of running the institution. He noted it is a matter of space and cost effectiveness.

SENATOR COGHILL advised he wanted to highlight the issue because he has heard some complaints.

[2:46:57 PM](#)

REPRESENTATIVE GRUENBERG referred to the public integrity unit in the Department of Law (DOL) and "you" one of three units Governor Bill Walker has focused this unit's attention upon. He asked Commissioner Monegan what he envisions his relationship being with that agency, or is it similar to an internal investigation within the police department. He asked for a list of prioritization of changes.

COMMISSIONER MONEGAN referred to the issue of the Public Integrity Unit and said he envisions the role of the Department of Public Safety (DPS) or DOC is providing a liaison with knowledge of policy and procedures to assist the Public Integrity Unit in determining why DOC does things as they do, accessing necessary documents, or bringing interviews to bear. He offered that DOC is in a supporting or compliance role.

COMMISSIONER MONEGAN advised that he is considering establishing a professional standards officer to interface with the Public Integrity Unit to assist facilities with the duties he described.

COMMISSIONER MONEGAN referred to prioritization and said everything mentioned in the report goes to a central theme of changing the culture within DOC and everything they are doing is trying to create the environment to effect that change. He stated that it begins with policy and procedures, training, screening, supervision, discipline, and interactions with other agencies and DOC is trying to work with everyone else to effect that change. He noted that change can be enforced but it will not be as permanent and sincere as when the change comes from within. The changes must be throughout the entire department but, he commented, it is not well delineated in the review of the governor's office is that the vast majority of people at DOC are actually on top of their game and doing the right things. He reminded the committee that the department is asked to supervise close to 11,000 people when including probation, parole, and institutions with approximately 1,500 employees. He said he suspects there are literally thousands of contacts every day between a staff member and a future returning citizen, and he suspects that the interaction between the two is proper, professional, and compassionate. Unfortunately, he stated, there will be future deaths in the facilities as DOC takes on a population with issues involved in substance abuse or other types of neglecting lifestyles that basically shorten people's lives, and said it is more geography than anything else. The people that are identifiable and can be interceded upon to change their outcome are the ones DOC must work on, he said.

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SENATOR COSTELLO asked of the division directors and his position, how many are currently in an acting capacity.

COMMISSIONER MONEGAN identified himself, one acting director of institutions and a medical deputy director.

SENATOR COSTELLO asked "for all acting?"

COMMISSIONER MONEGAN responded "kind of" as the director for institutions definitely is acting, the mental health and medical deputy director heads it so he believes just three positions.

SENATOR COSTELLO surmised that those are positions not considered permanent. She pointed out that Commissioner Monegan is being considered for the commissioner position and that the governor has a lot of faith in him; however, the governor is also perhaps looking. She questioned whether there is plan to make those positions permanent as it appears with the types of issues DOC is looking at that it would be in the state's best interest to have permanent leadership.

COMMISSIONER MONEGAN answered absolutely yes. He described his role as interim commissioner is one to address the issues as hard as he can, as fast as he can, for as long as he can. The governor makes the final decision and he can pick anyone he so chooses, but he wants to move the department forward to address the issues that have been brought up while still in the acting capacity, he advised. The other acting individual has 37 years with the Department of Corrections and Commissioner Monegan is watching and guiding him into a more conducive behavior regarding interaction with everyone and noted he is seeing results. He said when completely lopping off the head of any organization and losing the upper tier, along with that is the loss of a lot of experience which makes everyone else nervous. Therefore, he pointed out whatever has to be done should be performed precisely and with a lot of thought while trying to develop the best possible management team with the least amount of disruption.

[2:56:02 PM](#)

SENATOR COSTELLO referred to solitary confinement and juveniles that spent 11 months in solitary confinement and asked whether there are national or industry guidelines in terms of the amount of time an individual should be in solitary confinement.

COMMISSIONER MONEGAN replied that the issue is being explored and reiterated that he is sending people to the National Institution of Corrections, as well as reviewing research online, and agreed that solitary confinement should be used in a more sparing disbursement rather than wholesale. He explained that some people are in solitary confinement or segregation for protection against other inmates. With regard to juveniles, he said, there are many studies that report it is not healthy for juveniles to be there for long, especially in their developmental ages, and that it is his hope to learn how they can more properly be addressed. He stated that DOC should work closely with the Department of Health & Social Services (DHSS) to receive its input because DHSS normally runs juvenile issues.

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REPRESENTATIVE CLAMAN, continuing on the topic of solitary confinement and Commissioner Monegan's description of what had been done at the Goose Creek Correctional Center's Kilo Mod stated that putting inmates into solitary confinement when they had not requested it appeared harsh and more than what was needed. He said that while he understood the management problems, inmates in segregation should be the minimum number necessary and opined that Commissioner Monegan is not doing that.

COMMISSIONER MONEGAN responded that when Kilo Mod was shut down all of the inmates were offered segregation or general population and the vast majority chose segregation. Commissioner Monegan described it as a temporary solution and that it would make more sense to review all of the facilities and consider breaking individuals into more compatible areas and yet be as effective and efficient as possible. He said that DOC has a large geriatric population and it would behoove that population and DOC to be closer to medical services should they need it and there has been a discussion to dedicate one institution primarily for geriatric inmates. Hiland Mountain Correctional Center, for example he noted, is all female but it doesn't have all the services other facilities have in the way of medical support, et cetra, due to lack of room size within the confines of the institution. He offered that there has been a discussion of the geriatric population possibly moving to Hiland and being fairly close to medical providers, and the females moving to the Palmer Correctional Center with more room and "things they do out there," and there would not be all the internal restrictions on a co-ed institution. He advised there is an active dialogue in attempting to fit DOC's population in a manner that support them as well as what DOC is trying to accomplish overall.

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SENATOR MICCICHE said his comments are not meant to impugn any DOC employees as they have a challenging job. He then referred to the report and noted that it discusses several outdated policies and procedures. He continued that all Alaskans saw the videos and he described them as disturbing at best and heartbreaking at worst.

COMMISSIONER MONEGAN agreed.

SENATOR MICCICHE asked whether the solitary confinement policies are facility specific or whether there are statewide policies and procedures governing the entire system.

COMMISSIONER MONEGAN explained that policies are meant to be statewide and what DOC does on the topic of procedures is actually dependent upon the availability of other resources. He said that having the ability to utilize community assets would be larger in Fairbanks, Juneau, and Anchorage than in Nome, and even though DOC mandates these policies there are standard operating procedures for every institution dependent upon the availability of community assets that can be tapped into.

SENATOR MICCICHE asked that Commissioner Monegan share with the committee the existing policies and what sort of acute policy changes have occurred since the report. He said that information could be shared with Chair LeDoux later, but he would like to learn what DOC has done to ensure that it has dramatically lowered the probability of a recurrence.

COMMISSIONER MONEGAN shared that he did not bring the information with him but will provide the information.

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REPRESENTATIVE MILLETT asked the ratio of the segregated population and general population, and how many inmates are voluntarily segregated and how many are mandated.

COMMISSIONER MONEGAN responded that he does not have that information but will provide the information to the committee.

COMMISSIONER MONEGAN responded to Representative Millett that a generalized number would be a guess on his part.

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REPRESENTATIVE CLAMAN described the choice given to prisoners in the Kilo Mod is somewhat like a "Hobson's choice" because they could either go into general population where people convicted of sexual assault against children tend to be treated very poorly by their fellow prisoners, or go into segregation. He said that choosing segregation does not appear to be a voluntary choice either and he is curious to see how many are protection issues partly driven by the lack of other options to feel safe.

COMMISSIONER MONEGAN answered that he asked that question and can provide the information, but basically the number desiring general population was very few and some inmates changed to segregation. He opined that the final solution is to determine how to restructure the facilities and accomplish what needs to be accomplished without extraordinary events, or giving inmates the choice of solitary or general population. He offered that Kilo Mod offered support and a place for training, but the location was a poor choice.

REPRESENTATIVE CLAMAN commented that sex offenders are a significant portion of DOC's long-term prison population. He expressed frustration in the amount of money recently spent designing and building Goose Creek Correctional Center and hearing the need to go back and redesign the facility.

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CHAIR LEDOUX surmised that all sex offenders were housed in Kilo Mod with no one in solitary confinement.

COMMISSIONER MONEGAN advised that within the mods, if there is a lockdown everyone goes back into their cells and they are locked. Otherwise, he related, during a significant percent of time the doors are open and prisoners can play cards, checkers or watch television. He described segregation as a locked down area where the prisoners are inside behind closed doors, and are brought out for showers and exercise but only a couple of hours a day. It is not healthy and they will address the issue, he expressed.

CHAIR LEDOUX restated her question that when the sex offenders were at Kilo Mod, were they in solitary confinement or were all of the sex offenders grouped together.

COMMISSIONER MONEGAN explained that the module is like one block and all of the cells are inside. [Within the Kilo Mod with the sex offenders] the inside doors were open most of the time and they could relax and feel safe enjoying comfortable liberties such as their own MP3 players because they do not play well with the general population.

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CHAIR LEDOUX surmised that this model has not worked.

COMMISSIONER MONEGAN reiterated that for the staff to move one inmate [in and out of Kilo Mod] it required the yard being cleared in order to walk the inmate across the yard to go into a medical situation, speak with an attorney, or a visitor. He said it could perhaps be resurrected if they reallocate the availabilities within the institution and all institutions, but it will take time.

CHAIR LEDOUX asked whether juveniles are still being put into solitary confinement.

COMMISSIONER MONEGAN answered yes, they are required not to be with the general population. He stressed that DOC does not want juveniles victimized and for their protection they are in segregation, and that area needs to be explored more readily than others. He said that the report points out that there is a strong correlation between individuals, especially in their formative years, being handicapped when returned to society. He stated that something needs to be done with regard to youth and they will work with the Department of Health & Social Services (DHSS) and its expertise.

CHAIR LEDOUX questioned whether youth were housed at McLaughlin Youth Center rather than the [adult] prison system.

COMMISSIONER MONEGAN opined that years ago when a 14-year old was convicted of homicide, for example, they would stay at McLaughlin Youth Center until a certain age and if they still had time to serve would move into an adult situation. He stated he is uncertain why that was changed ... and "I could be totally wrong on that."

CHAIR LEDOUX asked whether there would be any impediment to convicting someone of an adult crime as [a juvenile], and when DOC determines where would be placed, rather than placing them in solitary confinement at an adult prison, placing them into the McLaughlin Youth Center.

COMMISSIONER MONEGAN said that it needs to be explored and he will continue to look into that because there needs to be some middle ground and where they are now "I personally feel is not a good place."

CHAIR LEDOUX stressed "not if they are in solitary confinement."

COMMISSIONER MONEGAN agreed.

CHAIR LEDOUX offered an example of someone being convicted as an adult at 14 years of age sentenced to four years and asked whether that juvenile would spend it in solitary confinement.

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DIANE CASTO, Deputy Commissioner, Department of Corrections, said that there are statutes requiring that once a youth is convicted as an adult they are placed into an adult facility. When placed within an adult facility, some juveniles are placed in segregation but most of the juveniles are grouped into an area of juveniles as opposed to being in general population. For example, at the Anchorage Correctional Complex there is a certain area where people under 18 live, having schooling, and certain activities, and are kept separate from the general population, she clarified.

REPRESENTATIVE CLAMAN said with regard to those juveniles, asked whether there is a distinction between those held pre-trial and waived into criminal court for adult purposes are housed in the McLaughlin Youth Center.

MS. CASTO opined that if they've been convicted as an adult they go into the adult system, whereas if they have not been fully convicted and sentenced there could be some movement between the McLaughlin Youth Center and DOC facilities. She further opined that the majority of juveniles convicted are within DOC's facilities.

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REPRESENTATIVE GRUENBERG commented that when a juvenile is waived to be tried as an adult and convicted, they are put in the custody of the commissioner of DOC, and if convicted as a juvenile are put in the custody of the commissioner of DHSS which is an entirely different treatment program.

MS. COSTO agreed and said if they are in the custody of DHSS they would be within one of the Division of Juvenile Justice (DJJ) facilities, and if convicted as an adult would be in care of the commissioner and within a DOC facility.

COMMISSIONER MONEGAN referred to administrative and criminal investigations and said that since the report good things actually came out that were almost spontaneous. He advised that he was notified by the Department of Public Safety (DPS) that when an inmate's death occurs within a DOC facility, DPS will

assign the Alaska Bureau of Investigations to handle the criminal aspect of the investigation, which is "fabulous really." Previously, the Alaska State Troopers would send whoever was on patrol to the facility and perform an investigation, and now there are individuals specifically geared to look for critical information and evidence and perform all of the right things in determining what happened for a criminal case. He explained that when there is a death in a facility, the Alaska Bureau of Investigation (ABI) from the Alaska State Troopers will respond and DOC will also send a team to handle the administrative aspects and review what DOC has done in reference to the policies and procedures and training. He said that it will be independent of the criminal investigation because DOC is not involved in the criminal aspects of it, and DOC's involvement is to ascertain that whatever was done, was done properly, or if not properly what must be done to address and fix it.

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COMMISSIONER MONEGAN responded to Chair LeDoux that the Alaska Bureau of Investigations is a unit within the Alaska State Troopers.

COMMISSIONER MONEGAN referred to the report and noted surprise that there is not a centralized manner in looking at all of the complaints that came in. He said that when he was with the Anchorage Police Department, it invested in a commercial product off the shelf that did not have to be tweaked and personalized, that captured all of the complaints and the subsequent investigations into one particular program. He said he believes it was called "Tarnish Madge." In fact, he noted, it worked so well that the Alaska State Troopers adopted it as well. He advised that DOC would like to be the third organization to choose the same program with the idea for standardization and uniformity. He said that it can be made available for viewing from the sergeant level on up and not only did it include whoever handled a similar-type complaint but the managerial aspect gave the police department an opportunity to see who the active investigators were. For example, he said, if he had a sergeant who had been working for two years and a complaint had never been documented by that particular sergeant, it was a red flag to speak with that sergeant. He noted that this program has been adopted by many correctional institutions across the country and DOC is looking for something that will give the ready answer when asked.

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COMMISSIONER MONEGAN referred to coordination of other agencies and reiterated that initially the department was siloed and shuttered and it didn't want to play nice with anyone including itself which he described as a breeding ground of distrust and suspicion. By opening the dialogue with the other agencies listed helps to undo that and enforces the department in becoming more open and transparent and cooperatively working together, he said.

COMMISSIONER MONEGAN mentioned leadership challenges and that his job is to manage a cultural change which includes everything in the report from things like training, supervision and discipline and right down to uniform changes putting everyone in the same colored uniform. In saving money and unifying people, all will wear dark blue uniforms and he pointed out it is similar to coaches on sports teams to help start the cultural change they want to see in their team.

COMMISSIONER MONEGAN said he wants to normalize and open up dialogues with all of the unions and the other agencies. He said that DOC has a contractual agreement with a labor and management committee of one particular union and DOC will work with them because good ideas can come from anywhere.

[3:27:01 PM](#)

COMMISSIONER MONEGAN referred to Title 47, protective custody, and stated that with DOC being part of the Alaska Criminal Justice Commission it will receive a "big boost" by some of items on the agenda. Immediately, he stated, DOC can try to work with the communities and law enforcements where DOC's facilities are located and develop open communications. He related that a success story occurred in Juneau at a meeting between Bartlett Hospital, the Juneau Police Department, and other community assets to examine the correct usage of Title 47 and that the actual commitments have dropped by half, he opined.

REPRESENTATIVE MILLETT referred to bullet point "Normalization of unions and other agencies" and asked the specific issues in this regard.

COMMISSIONER MONEGAN answered that within the prior administration, the relationship between management and union management deteriorated to the point there was actually a vote of no confidence for one of the commissioners, and due to the

adversarial relationship a lot of energy and emotion was spent fighting the wrong fight. He said, with regard to his past experiences, he wants to implement the same type of communications and relationship building. For example, when he became the chief at the Anchorage Police Department he inherited 44 union grievances and when he left the position there were only four grievances. In normalizing relationships with labor unions, his goal is to take the issue of animosity off the table and work with everyone, open communications and build trust, he said.

[3:30:38 PM](#)

SENATOR COGHILL asked Commissioner Monegan to offer a top level definition of Title 47.

COMMISSIONER MONEGAN explained that Title 47 is regarding individuals who the community, usually law enforcement, finds is a danger to themselves due to intoxication, substance abuse, or demonstrates mental illness to the point they are suicidal or very aggressive. Under Title 47, peace officers or doctors are allowed to remove the individual to a place of safety and treatment, he explained, and in the vast majority of DOC's cases it is more the issue of intoxication by alcohol or drugs. In the event of a pressing medical issue, the individual is taken to the hospital for evaluation to ascertain their mental and physical state, but hospitals cannot hold onto them and the next available safe place is jail. With regard to the intoxicated, they are held for a maximum of 12 hours but if they become coherent in less than 12 hours they should be cut free because they did nothing to violate the law and should not be in jail. Jail is a place of safety for a while. An individual suffering from mental health issues needs to be examined by [the hospital] and receive subsequent treatment if necessary and is just a holding place until the next availability comes through, he said.

SENATOR COGHILL explained that the civil liberties discussion of throughout the making of this law was "when can you detain somebody for their own safety and when is that civil liberty under this civil law able to be used." He pointed out that the issue has been hotly debated within the legislature so that the state is not just detaining people because there must be good reason for the detention.

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COMMISSIONER MONEGAN continued his presentation and said that training and evaluations are currently being implemented. He referred to an unfortunate situation that was narrated again in the report and, as a former law enforcement officer, he said it was either a condition called "excited delirium or positional asphyxiation." He assured that that is heavily hit within the academy and DOC provided in-service training to bring all staff up-to-speed.

COMMISSIONER MONEGAN advised that the Alaska Police Standards Council allows DOC to hire a correctional officer or police officer, whether or not they've attended the academy, and put them to work with a modicum of training up to 14 months. Currently, when an individual graduates from the academy the individual will spend 2 weeks with the medical staff at the hospital to better understand what it is up against, and as a team will open communication and develop relationships to forestall some of the issues the report highlights. He related that this is a process and not a project.

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CHAIR LEDOUX stated that she has heard rumors that the Anchorage Correctional Complex gets so crowded that people are actually sleeping in an outdoor enclosure without a roof. She asked whether there is substance to the rumors.

COMMISSIONER MONEGAN asked whether the incident Chair LeDoux mentioned stemmed from the Fairbanks Four.

CHAIR LEDOUX said she did not mention anything about the Fairbanks Four.

COMMISSIONER MONEGAN responded that there was a concern that individuals were being housed outside and he was assured that the area "they" were temporarily housed was all enclosed but lacked the heat the rest of the institution had. He said that once that was (indisc.) everyone was relocated.

CHAIR LEDOUX confirmed that the area had a roof over it with no heat and asked "even in the winter?" Commissioner Monegan answered "correct" and Chair LeDoux noted that it must have been "really cold."

COMMISSIONER MONEGAN opined that the temperature was in the mid-50s, which is still too cold and once it came to his attention

it was addressed. He pointed out that this is part of the training culture he is trying to address.

[3:38:23 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the Joint House and Senate Judiciary Standing Committee was adjourned at 3:38 p.m.