

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 16, 2016

1:42 p.m.

**MEMBERS PRESENT**

Senator Lesil McGuire, Chair  
Senator John Coghill, Vice Chair  
Senator Mia Costello  
Senator Bill Wielechowski

**MEMBERS ABSENT**

Senator Peter Micciche

**COMMITTEE CALENDAR**

SENATE BILL NO. 112

"An Act establishing procedures related to a petition for adoption of a child in state custody; adding a definition of 'proxy for a formal petition'; amending Rule 6(a), Alaska Adoption Rules; and providing for an effective date."

- HEARD & HELD

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 91

"An Act relating to criminal law and procedure; relating to controlled substances; relating to probation; relating to sentencing; establishing a pretrial services program with pretrial services officers in the Department of Corrections; relating to permanent fund dividends; relating to electronic monitoring; relating to penalties for violations of municipal ordinances; relating to parole; relating to correctional restitution centers; relating to community work service; relating to revocation, termination, suspension, cancellation, or restoration of a driver's license; relating to the disqualification of persons convicted of certain felony drug offenses from participation in the food stamp and temporary assistance programs; relating to the duties of the commissioner of corrections; amending Rules 6, 32, 32.1, 38, 41, and 43, Alaska Rules of Criminal Procedure, and repealing Rules 41(d) and (e), Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 112

SHORT TITLE: ADOPTION OF CHILD IN STATE CUSTODY

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/16/15	(S)	READ THE FIRST TIME - REFERRALS
04/16/15	(S)	HSS, JUD
01/25/16	(S)	HSS AT 1:30 PM BUTROVICH 205
01/25/16	(S)	Heard & Held
01/25/16	(S)	MINUTE(HSS)
02/22/16	(S)	HSS AT 1:30 PM BUTROVICH 205
02/22/16	(S)	Moved CSSB 112(HSS) Out of Committee
02/22/16	(S)	MINUTE(HSS)
02/24/16	(S)	HSS RPT CS 1DP 2DNP 2NR NEW TITLE
02/24/16	(S)	DP: ELLIS
02/24/16	(S)	DNP: KELLY, STOLTZE
02/24/16	(S)	NR: STEDMAN, GIESSEL
03/02/16	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/02/16	(S)	Scheduled but Not Heard
03/16/16	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 91

SHORT TITLE: OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS

SPONSOR(s): COGHILL

03/25/15	(S)	READ THE FIRST TIME - REFERRALS
03/25/15	(S)	STA, JUD, FIN
04/02/15	(S)	STA AT 9:00 AM BUTROVICH 205
04/02/15	(S)	Heard & Held
04/02/15	(S)	MINUTE(STA)
02/03/16	(S)	SPONSOR SUBSTITUTE INTRODUCED-REFERRALS
02/03/16	(S)	STA, JUD, FIN
02/13/16	(S)	STA AT 10:00 AM BUTROVICH 205
02/13/16	(S)	Heard & Held
02/13/16	(S)	MINUTE(STA)
02/18/16	(S)	STA AT 8:30 AM BUTROVICH 205
02/18/16	(S)	Heard & Held
02/18/16	(S)	MINUTE(STA)
02/25/16	(S)	STA AT 9:00 AM BUTROVICH 205
02/25/16	(S)	Heard & Held
02/25/16	(S)	MINUTE(STA)
03/01/16	(S)	STA AT 8:30 AM BUTROVICH 205
03/01/16	(S)	Heard & Held
03/01/16	(S)	MINUTE(STA)
03/03/16	(S)	STA AT 8:30 AM BUTROVICH 205

03/03/16 (S) Heard & Held  
 03/03/16 (S) MINUTE(STA)  
 03/08/16 (S) STA AT 9:00 AM BUTROVICH 205  
 03/08/16 (S) Moved CSSSSB 91(STA) Out of Committee  
 03/08/16 (S) MINUTE(STA)  
 03/08/16 (S) STA AT 5:00 PM BUTROVICH 205  
 03/08/16 (S) -- MEETING CANCELED --  
 03/09/16 (S) STA RPT CS 2DP 1DNP 1NR 1AM NEW TITLE  
 03/09/16 (S) DP: COGHILL, MCGUIRE  
 03/09/16 (S) DNP: STOLTZE  
 03/09/16 (S) NR: HUGGINS  
 03/09/16 (S) AM: WIELECHOWSKI  
 03/09/16 (S) JUD WAIVED PUBLIC HEARING NOTICE,RULE  
 23  
 03/09/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/09/16 (S) Heard & Held  
 03/09/16 (S) MINUTE(JUD)  
 03/11/16 (S) JUD AT 2:00 PM BELTZ 105 (TSBldg)  
 03/11/16 (S) Heard & Held  
 03/11/16 (S) MINUTE(JUD)  
 03/16/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

CHRISTY LAWTON, Director  
 Office of Children's Services  
 Department of Health and Social Services (DHSS)  
 Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 112 on behalf of the administration.

KATY LYBRAND, Assistant Attorney General  
 Civil Division  
 Department of Law  
 Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to SB 112.

RICHARD ALLEN, Director  
 Office of Public Advocacy (OPA)  
 Department of Administration  
 Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 112.

JORDAN SHILLING, Staff  
 Senator John Coghill  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** During the discussion of SB 91, presented the Alaska Criminal Justice Commission recommendations 5-11 related to sentencing.

JEFF EDWARDS, Executive Director  
Alaska Board of Parole  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to SB 91.

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

**POSITION STATEMENT:** Answered questions related to SB 91.

GREG RAZO, Chair  
Alaska Criminal Justice Commission  
Anchorage, Alaska

**POSITION STATEMENT:** During the discussion of SB 91, discussed the reasoning behind the Alaska Criminal Justice Commission sentencing recommendations.

#### **ACTION NARRATIVE**

[1:42:03 PM](#)

**VICE CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:42 p.m. Present at the call to order were Senators Costello, Wielechowski, and Vice Chair Coghill. Senator McGuire arrived soon thereafter.

#### **SB 112-ADOPTION OF CHILD IN STATE CUSTODY**

[1:42:42 PM](#)

**VICE CHAIR COGHILL** announced the consideration of SB 112. He noted that this was the first hearing and version P was in the packets. He listed the individuals who would present the bill and provide information.

[1:43:56 PM](#)

**CHRISTY LAWTON**, Director, Office of Children's Services (OCS), Department of Health and Social Services (DHSS), introduced SB 112 on behalf of the administration. She explained that cases from the Alaska Supreme Court and the U.S. Supreme Court were the impetus for the bill. The Alaska Supreme Court cases were Tununak I and Tununak II involving a non-Native, non-relative foster family seeking to adopt a Native child and the child's

biological grandmother who was also trying to adopt her. At the same time, the U.S. Supreme Court was hearing a similar case termed Baby Girl Veronica. It was a contested adoption from South Carolina between a non-Native, non-family member foster family and the biological father. The U.S. Supreme Court was first to rule and said a formal petition had to be filed for an individual to be recognized as a potential adoptive placement.

In the Tunanak case, the grandmother on more than one occasion had voiced interest in adopting her grandchild, but she didn't file a petition. It wasn't a requirement at the time. But the foster family had filed a petition and the Alaska Supreme Court decided in favor of the foster family. While that decision followed the rule of the land, it virtually disregarded the federal Indian Child Welfare Act (ICWA) that lays out adoption placement preferences starting with relatives, followed by other tribal members.

To address the procedural impediment of filing a petition, the notion of a proxy was created. A family member of a child subject to ICWA could use the proxy to articulate, in any form available, their interest in the immediate permanent placement of the relative child. The proxy would serve as a placeholder to preserve and apply the adoption preferences under ICWA. It does not discount the ability of anyone else to also file a petition for the court to consider. The Office of Children's Services (OCS) would then move through the typical process for Child in Need of Aid matters. OCS would make a recommendation about the placement and the court eventually would make the ruling. If a competing adoption petition were filed, both would be held in abeyance until the CINA case was ripe for an adoption determination.

MS. LAWTON highlighted the amendments to the bill that allow the idea of one judge one family under one roof. These provisions require that all the filings for an adoption proceeding, a guardianship proceeding, or a civil custody proceeding that is also connected to a Child in Need of Aid matter or a dependent of the state matter, must occur under the CINA proceeding. Typically, this is the same judge from the beginning to the end of the case. These petitions currently are heard in different courts and OCS believes this change would be beneficial for all families in Alaska. It will streamline the workload, reduce barriers for families, and create efficiencies so decisions could be made more quickly and allow more children to exit foster care in a more timely fashion. Under the current procedure, a judge who is hearing a CINA matter is reluctant to

release custody until the civil custody matter is resolved, and the civil custody judge often is reticent to make a ruling without first knowing which parent is most appropriate in the CINA case. She noted that provisions in the bill do allow a departure from the one judge one court notion if all the parties agree. This would accommodate parties that live in different judicial districts and can agree on the jurisdiction in which the adoption and final hearing would occur.

MS. LAWTON reported that OCS has worked with its partners at the Public Defender Agency, the Office of Public Advocacy, the Court System, and private adoption attorneys trying to make this workable for everyone.

[1:52:05 PM](#)

SENATOR COSTELLO asked if anyone could use a proxy, not just the biological family or relative.

MS. LAWTON replied the proxy is available to those individuals, Native or non-Native, who are related to the Indian or Alaska Native child, a tribal member of the child's tribe or the tribe to which the child is eligible to enroll, or a member of the tribe to which the parent is enrolled. The proxy is not available to someone who is a non-related entity such as a family friend or foster family. Those individuals would need to file a petition.

CHAIR COSTELLO asked how the proxy is documented, and if preference is given to the party that first files the proxy or petition.

MS. LAWTON acknowledged that OCS still has work to do on the specifics, but when someone says they want to use a proxy for immediate and permanent placement of the child, the caseworker will need to create a report on permanency that is provided to the court. OCS will be conveying in writing through that report that the individual initiated the use of the proxy and stated their intent. OCS then goes through its evaluation process and reports that to the court. The department doesn't envision the need to fill out a form initially, but that does not negate the need to file a petition eventually if the individual or family is selected. The petition is a legal document and is part of the process.

She deferred to Ms. Lybrand to respond to the second question.

CHAIR COSTELLO restated the question asking if preference is given to the person who files the first proxy or petition.

1:55:10 PM

KATY LYBRAND, Assistant Attorney General, Civil Division, Department of Law, answered no, that is just a placeholder.

VICE CHAIR COGHILL asked if someone could articulate their proxy if they live in a different jurisdiction than the CINA case.

MS. LAWSON said yes, provided they're related to the child. Responding to a further question, she confirmed that the work would then be done in the jurisdiction of the CINA matter.

VICE CHAIR COGHILL asked if any other state has used a proxy like this.

MS. LAWTON said she wasn't aware of any.

MS. LYBRAND said she wasn't aware of any states that have enacted similar legislation, but the Baby Girl Veronica ruling only came out in 2013.

VICE CHAIR COGHILL offered his understanding of the way that ICWA works in Alaska and commented that it makes Alaska very unique.

1:58:18 PM

RICK ALLEN, Director, Office of Public Advocacy (OPA), said OPA supports SB 112 as it will add efficiency to the system. He expressed appreciation for the work that OCS and DOL did in communicating and taking OPA's suggestions into account.

SENATOR COSTELLO asked if he sees any opportunity for abuse. For example, an OCS worker might assert a proxy was requested when it wasn't.

MS. LAWTON said she doesn't envision that scenario. The proxy request is for immediate placement so the caseworker would be required to go evaluate the person, which includes a background check. That information is compiled into the permanency report that is given to the court.

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VICE CHAIR COGHILL stated he would hold SB 112 in committee for future consideration.

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At ease

[2:06:17 PM](#)

CHAIR MCGUIRE reconvened the meeting and asked for a motion to adopt the work draft CS for SB 112.

[2:06:31 PM](#)

SENATOR COGHILL moved to adopt the CS for SB 112, labeled 29-GS1262\P, as the working document.

CHAIR MCGUIRE found no objection and version P was adopted as the working document. She held SB 112 in committee.

**SB 91-OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS**

[2:07:01 PM](#)

CHAIR MCGUIRE announced the consideration of SSSB 91. She noted the discussion today would relate to sentencing.

SENATOR COGHILL said that today his staff would present the Alaska Criminal Justice Commission recommendations 5-11 related to sentencing for: misdemeanors, controlled substances, felony theft threshold, presumptive ranges, discretionary parole/administrative parole, geriatric parole, and sex offender treatment. He committed Mr. Shilling to visit members' offices to address any concerns or misunderstandings with the bill.

CHAIR MCGUIRE suggested interest groups contact Mr. Shilling and her staff, Dianne Blumer, directly to express concerns or ask clarifying questions about the bill.

[2:09:32 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, sponsor of SB 91, presented the Alaska Criminal Justice Commission recommendations 5 - 11 related to sentencing.

**Recommendation 5: Limit the use of prison for lower-level misdemeanor offenders.**

He highlighted that the vast majority of admissions to prison are misdemeanants who have committed nonviolent crimes. To stem this flow to prison, the commission recommended a variety of changes to misdemeanor sentencing. He described a few recommendations and noted that others are found in the Alaska Criminal Justice Commission report.

- Reduce low-level class B misdemeanors to violations.

- Change the way driving while license suspended ("DWLS") offenses are addressed to differentiate between a revocation for driving under the influence ("DUI") and a revocation related to points or insurance.
- Reducing disorderly conduct to a maximum 24-hour hold.
- Mandatory electronic monitoring for first-time DUI offenders.
- A new presumptive range of 0-30 days for class A misdemeanors, but allowing the courts to go outside that range upon proof of aggravators. These include very serious conduct or past criminal convictions.

SENATOR COGHILL noted that the consideration of aggravators would be a new concept for misdemeanor sentencing.

**Recommendation 6: Revise drug penalties to focus the most severe punishments on higher-level drug offenders.**

MR. SHILLING said that post-conviction admissions to prison for drug offenses have grown by 35 percent over the past 10 years. Length of stay has also increased despite research that says this does not reduce recidivism. Some of the research the commission relied on shows that the chances of a typical street-level drug transaction being detected are about 1 in 15,000. This demonstrates the limited deterrent value in lengthier sentences for these non-violent drug offenses. Research also shows that severe punishment for drug offenders specifically can have criminogenic effects.

The commission recommended revising drug penalties to focus the most severe punishments on higher-level drug offenders. Existing law does not differentiate between a low-level drug dealer and a high-level drug trafficker. For several substances the penalty is the same for drug dealing in any amount and any weight.

SB 91 creates a tiered commercial drug statute where offenses involving more than 2.5 grams of heroin, methamphetamine, and cocaine would be a more serious felony, whereas under 2.5 grams would be a lower-level felony.

MR. SHILLING noted the growth in drug offenders entering prison and suggested the state might consider redirecting some of the money spent on prison beds to things that work like substance abuse treatment.

CHAIR MCGUIRE asked if the bill provides for that.

MR. SHILLING replied the bill currently contains no reinvestment language, but it's something the committee could consider before it moves to Senate Finance.

SENATOR COGHILL related that he is working on reinvestment language to bring to the committee.

[2:15:12 PM](#)

CHAIR MCGUIRE expressed her desire for the bill to leave the committee with reinvestment language.

**Recommendation 7: Utilize inflation-adjusted property thresholds.**

MR. SHILLING said the felony property offense threshold, which was originally set at \$500 in 1978, was raised to \$750 in 2014. If inflation were factored in, the equivalent value would be about \$1800. In the last decade 23 states have raised their felony thresholds and research shows that has not had a negative impact on property crime rates. In fact, property crime and larceny rates fell slightly more in the 23 states that adjusted their thresholds compared to the 27 states that did not.

[2:17:42 PM](#)

**Recommendation 8. Align non-sex felony presumptive ranges with prior presumptive terms.**

MR. SHILLING said the research demonstrates that increased sentence lengths do not translate to reduced recidivism rates. In response to the 2005 Blakely vs. Washington ruling, Alaska moved from a presumptive term system to a presumptive range system. In designing the new ranges, the legislature used the former presumptive term as the floor of the new presumptive range. Despite legislative intent to not increase sentence lengths, they had nowhere to go but up. Class A felonies have grown 80 percent, class B felonies 8 percent, and class C felonies 17 percent. The research says this is not an effective intervention and it clearly is not leading to the desired outcomes.

SENATOR COGHILL highlighted that SB 91 provides that the current floor would become the mid of the new range.

[2:19:49 PM](#)

**Recommendation 9. Expand and streamline the use of discretionary parole.**

MR. SHILLING said the first part of this recommendation expands the eligibility for discretionary parole to all offenders except class A or unclassified sex offenders with prior felony convictions. SB 91 makes eligible those mid-level felony offenders who currently are not eligible for discretionary parole. He noted that the bill also expands the eligibility for discretionary parole to certain sex offenders that are not repeat sex offenders.

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CHAIR MCGUIRE asked if the commission analyzed why only the high and low felony categories were targeted for discretionary parole, but not the midlevel.

MR. SHILLING said he didn't know the history.

SENATOR COSTELLO asked if the bill addresses expanding the Parole Board since their work would expand.

MR. SHILLING said he believes the Department of Corrections' fiscal note allocates resources to the board to accommodate the additional hearings.

SENATOR COGHILL noted that the commission recommended structural changes to probation and parole, and that will change the workload.

CHAIR MCGUIRE described a proposal she intends to offer to implement a three judge panel to alleviate constitutional concerns about expungement in certain categories. She acknowledged this would add some work for the Parole Board.

SENATOR COGHILL said he's open to that discussion.

CHAIR MCGUIRE said there's been concern that only the elite have access to the notion of pardoning when there may be other cases that are more ripe for consideration of expungement.

[2:23:54 PM](#)

MR. SHILLING continued the discussion of Recommendation 9. The commission discussed how to address sex offenders and decided to leave it to the discretion of the Parole Board rather than shift all sex offender sentences down.

CHAIR MCGUIRE commented that this is a category of offender that is a real challenge in rehabilitation.

MR. SHILLING said the second aspect of the recommendation does away with the application process for discretionary parole. Instead, immediately upon reaching eligibility, the board will have a hearing for the individual. This addresses the perplexing problem of the many inmates who are eligible for a discretionary parole hearing but don't apply.

The final piece of the recommendation is to establish an administrative parole provision that presumptively grants parole to first time class B and class C felons by restricting hearings to those who have not complied with their case plan, haven't obeyed the rules of the institution, or in cases where the victim requests a hearing. Otherwise, the inmate would be paroled at the earliest eligibility rate, which currently is at the one-fourth point of the sentence. That was selected because it's generally the same time someone becomes eligible for discretionary parole.

[2:26:43 PM](#)

SENATOR WIELECHOWSKI asked what percentage of inmates that apply for parole are actually granted paroled.

MR. SHILLING offered to follow up with the information.

SENATOR WIELECHOWSKI asked if there will be a disparity in treatment based on eligibility before and after the effective date of the bill.

MR. SHILLING said the discretionary parole policy is not retroactive; it will apply only to sentences that occur on or after the effective date.

SENATOR WIELECHOWSKI asked if someone who is arrested prior to June 1 would go under the new parole guidelines.

MR. SHILLING said it's more about when the sentencing occurs.

SENATOR WIELECHOWSKI asked if parole would be applied differently for someone sentenced May 31 versus someone sentenced June 2.

MR. SHILLING deferred to the executive director of the Parole Board.

SENATOR WIELECHOWSKI restated the question.

[2:30:08 PM](#)

JEFF EDWARDS, Executive Director, Parole Board, said his instinct is that those sentenced on or after the effective date would be affected, but it should be explored with the Department of Law.

SENATOR COGHILL said he's generally reluctant to make a law retroactive.

SENATOR WIELECHOWSKI said the same question of potential disparity could apply when some crimes change from a misdemeanor to a violation.

CHAIR MCGUIRE asked Mr. Skidmore to comment.

[2:31:57 PM](#)

JOHN SKIDMORE, Director, Criminal Division, Department of Law, said the question about parole is addressed on page 89, line 12. Subsection (j) provides that it is the date the individual is eligible for parole that will control whether the provisions of this bill apply, not the time they committed the offense or were sentenced. Addressing the second question, he said he didn't believe the intent was to make those violations retroactive. He noted that only class B misdemeanors are being decriminalized, and between now and when the bill is enacted in July there would be very few class B misdemeanants to which this would apply.

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SENATOR COSTELLO asked what the recidivism rate is for parolees.

MR. SHILLING offered to provide the information. He continued the presentation.

[2:34:22 PM](#)

**Recommendation 10: Implement a specialty parole option for long-term, geriatric inmates.**

MR. SHILLING said the commission recommended a special type of discretionary parole for geriatric offenders who have served at least 10 years of their sentence. This group of offenders is growing faster than any other, largely because of the increased sentence lengths. He noted that Alaska doesn't have special parole options for this cohort even though the data shows they are least likely to recidivate. Nationwide data shows they cost 2-3 times more than the average inmate, largely due to higher health care costs. The commission recommended discretionary geriatric parole for inmates 55 years of age who have served at

least 10 years of their sentence. The State Affairs Committee increased the threshold to 60 years.

SENATOR WIELECHOWSKI requested information on the magnitude of the crimes committed by geriatric inmates.

MR. SHILLING said the most recent statistics he'd seen indicate that over the age of 60, the most common offense is DUI. He agreed to provide the information.

SENATOR COSTELLO asked the dollar amount that Alaska pays for health care for geriatric inmates.

MR. SHILLING said the commission looked at nationwide research, but he would ask the Department of Corrections (DOC) if they can measure those costs.

[2:37:05 PM](#)

**Recommendation 11. Incentivize completion of treatment for sex offenders with an earned time policy.**

MR. SHILLING said the commission recommended implementing an earned credit, whereby offenders would be able to earn up to one-third off their sentence if they complete in-prison sex offender treatment. He reviewed the program DOC currently offers and noted that evidence demonstrates that sex offender treatment is successful and the recidivism rate is the lowest of any cohort of offender. Also, cost-benefit analyses from other states show that there is a high return on money spend on sex offender treatment.

SENATOR COGHILL indicated he was open to discussion about whether or not one-third was the right number for earned credit. He explained that part of the reinvestment is to ensure that beds are available so that sex offender treatment can be moved back inside DOC. The Parole Board will then be able to do a fairly good risk assessment. Providing an incentive to complete sex offender treatment was also discussed.

CHAIR MCGUIRE asked Mr. Skidmore if he had additional testimony.

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MR. SKIDMORE stated that the Department of Law is very supportive of several of the recommendations of the commission that are embodied in SB 91. He listed the carrot and stick approach as it relates to probation and parole, rewards for inmates who complete sex offender treatment, and the concept

that prisons should be reserved for those truly in need of incarceration. He agreed that it's an appropriate policy to suggest judges limit sentences imposed on certain misdemeanors, and suggested that some technical adjustments are needed.

In Section 70, he discussed the unintended consequences of requiring the term to be more than 30 days instead of 30 days or more. He pointed out that subparagraph (B) is consistent with the U.S. Supreme Court case, Blakely vs. Washington, but the exception in subparagraph (C) doesn't fall within the constraints of that case. He speculated that the exception in subparagraph (D) was carved out because assault in the fourth degree is likely to bring sentences of greater than 30 days, even on a first offense.

MR. SKIDMORE noted that Section 71 amends the maximum sentence for class B misdemeanors from 90 days to 10 days, which is consistent with the commission recommendation to try to limit incarceration to those cases where it is most needed.

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SENATOR COGHILL indicated his staff would work with Mr. Skidmore.

MR. SKIDMORE pointed out a potential drafting error in Section 72, paragraph (l), page 45, lines 4-8. That subsection specifies theft in the fourth degree which is appropriate, but subsections (m) through (q) separate felonies and misdemeanors. As currently drafted, it says that even if those various offenses are felonies, the first and second offenses should result in no jail time. If that's not what was intended, it's important to specify the subsection within each of those statutes that specifically addresses misdemeanors.

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MR. SKIDMORE discussed geriatric parole and pointed out that it will only apply to class A felonies. It won't apply to misdemeanors, class C felonies that don't have a maximum of more than 10 years, and class B felonies that don't have a maximum of more than 10 years. It also would not apply to unclassified felonies and sex felonies.

He said the bill reduces simple possession of a controlled substance to a misdemeanor, regardless of the schedule or amount in possession. If it is found that there is an intent to distribute, it could be a felony. The bill also combines misconduct involving a controlled substance in the second degree

with misconduct involving a controlled substance in the third degree. Schedule IA is grouped with Schedule II and Schedule III A and there is a differentiation of the weight. Above 2.5 grams is a class B felony and below that would be a class C felony. Despite other considerations, that is what the commission recommended.

MR. SKIDMORE concluded that the Department of Law is overall supportive of the goals of SB 91.

3:04:35 PM

GREG RAZO, Chair, Alaska Criminal Justice Commission, discussed the commission's thought process for each of the sentencing recommendations. He explained that the commission made a conscious decision to put aside preconceived beliefs and focus on the data and research. The debate on each issue was lengthy and the commission ultimately came to a full consensus. The transmittal letter for the report shows that every commissioner signed off on every recommendations.

The first sentencing recommendation was to limit the use of prison for lower-level misdemeanor offences. The commission was stunned by the large number of misdemeanor offenders, mostly nonviolent, that cycle in and out of prison. The first belief the commission was forced to confront and set aside was the notion that jail is always the best sanction. To address this, the commission adopted a number of evidence-based strategies to safely divert certain misdemeanor offenders to prison alternatives. This included reclassifying certain low-level misdemeanor offenses as violations, diverting first and second time theft of under \$250 from prison, requiring first time misdemeanor DUI offenders to serve their sentences on electronic monitoring in the community. Additionally, the commission recommended placing a 0-day presumptive cap on all class A misdemeanors. Prosecutors still have the option to sentence someone outside that cap if they could prove an aggravating circumstance.

The second sentencing recommendation was to revise drug penalties to focus on the most severe punishments on higher-level offenders. A growing body of research shows that prison for low-level drug crimes may have a criminogenic effect.

SENATOR MCGUIRE asked if he knows why there's a criminogenic effect.

MR. RAZO said he didn't know why but it is the case.

SENATOR MCGUIRE posited that there may be a criminogenic effect on anyone who is incarcerated longer than 24 hours. She noted that a disproportionate number of drug and alcohol offenders are in Alaska prisons.

MR. RAZO offered his opinion that an addicted population is going into a setting where their addiction isn't addressed, but they do learn about crime.

He discussed the heroin epidemic in Alaska and pointed out that existing long sentences for heroin sale and use is not working. He highlighted that the bill reduces certain heroin penalties and urged the committee to embrace this evidence-based drug reform as a crucial part of reinvestment. The commission recommended reclassifying simple possession of a drug as a misdemeanor and limiting the maximum penalty for first and second time offenses to one month and six months suspended sentences. This ensures that low-level possession offenders are not incarcerated alongside serious offenders. It also provides judges needed tools to incentivize participation and treatment. He noted that incorporating the notion of incentives is new in the criminal justice system. The commission also recommended differentiating high-level drug dealers from lower-level street dealers who are often dealing to support their own drug addiction. The commission also recommended aligning heroin penalties with those for other serious controlled substances, such as cocaine and methamphetamine.

[3:15:04 PM](#)

The third sentencing recommendation was to utilize inflation-adjusted property thresholds. He noted that the concerns articulated by business organizations that this will increase theft aren't borne out by the research. Between 2001 and 2011, 23 states raised their felony theft thresholds and that had no impact on the states' overall property crime rate. He requested the committee keep in mind the cost of things in rural Alaska when it considers the felony theft threshold. What would be a misdemeanor theft in the city would be a felony theft in a rural village because of the difference in cost.

The commission's fourth sentencing recommendation was to align non-sex felony presumptive ranges with prior presumptive terms. The commission believes that since 2005 the significant increase in the length of stay for felony offenses must be related to the legislation that passed as a result of Blakely. This

recommendation will have a significant effect on reducing the prison population.

The commission's fifth sentencing recommendation was to expand and streamline the use of discretionary parole. For certain offenses, someone who has demonstrated they are a good candidate for parole should be granted parole administratively without having to go through the Parole Board.

The sixth sentencing recommendation was to implement a specialty parole option for long-term, geriatric inmates. The commission wanted a way for these offenders to present their case before the Parole Board, no matter their underlying crime.

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The seventh sentencing recommendation was to incentivize completion of treatment for sex offenders with an earned time policy. The commission was forced to suspend the commonly held belief that sex offenders always recidivate. Longer sentences haven't worked and research shows that treatment in prison is effective.

MR. RAZO urged the committee to make sure the bill leaves the committee with reinvestment measures. It is key to ending the state's sexual assault epidemic and to providing greater support for victim services and reentry services.

CHAIR MCGUIRE held SB 91 in committee.

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There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 3:22 p.m.