

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

March 3, 2016

8:32 a.m.

**MEMBERS PRESENT**

Senator Bill Stoltze, Chair  
Senator John Coghill, Vice Chair  
Senator Charlie Huggins  
Senator Bill Wielechowski

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

**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 91

SHORT TITLE: OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS

SPONSOR(S): SENATOR(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

**WITNESS REGISTER**

DANIEL GEORGE, Staff  
 Senator Stoltze  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Provided an overview of the CS for SB 91.

JORDAN SCHILLING, Staff  
 Senator Coghill  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Addressed the CS for SB 91.

JOHN B. SKIDMORE, Director  
 Criminal Division  
 Alaska Department of Law  
 Juneau, Alaska

**POSITION STATEMENT:** Addressed the CS for SB 91.

DEAN WILLIAMS, Commissioner  
 Alaska Department of Corrections  
 Anchorage, Alaska

**POSITION STATEMENT:** Commented on the CS for SB 91.

MONICA WINDOM, Chief of Policy and Program Development

Division of Public Assistance  
Alaska Department of Health and Social Services  
Juneau, Alaska  
**POSITION STATEMENT:** Commented on the CS for SB 91.

**ACTION NARRATIVE**

[8:32:53 AM](#)

**CHAIR BILL STOLTZE** called the Senate State Affairs Standing Committee meeting to order at 8:32 a.m. Present at the call to order were Senators Coghill, Huggins, and Chair Stoltze.

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

[8:33:29 AM](#)

**CHAIR STOLTZE** announced the consideration of SB 91. He stated that Senator Coghill would address the committee substitute (CS).

**SENATOR COGHILL** moved to adopt as the working document the CS for sponsor substitute (SS) for SB 91, version: P.

**CHAIR STOLTZE** announced that no objection was heard.

**SENATOR COGHILL** noted that many changes to the bill came from both amendments as well as collaborating with Chair Stoltze.

[8:35:34 AM](#)

**DANIEL GEORGE**, Staff, Senator Stoltze, Alaska State Legislature, Juneau, Alaska, noted that version: P replaced version: N. He noted that version: N was the sponsor substitute version that was introduced earlier in the year.

He announced that he would review the CS and highlight the substantive changes as well as point out recommendations that came from places like the Office of Victims' Rights or whether the changes were in an amendment that was previously before the committee.

He explained change: 1 from the CS as follows:

There are two new sections in the bill, sections number 1 and 2 appear now; this is because we amend various statutes reflecting Misconduct Involving a Controlled Substance. There was a renumbering of

statutes which is why we see Murder in the Second Degree and Murder of an Unborn Child now appearing in the bill.

[8:36:57 AM](#)

SENATOR WIELECHOWSKI joined the committee meeting.

MR. GEORGE explained changes: 2 and 3 from the CS as follows:

Criminal Trespass in the Second Degree, Criminal Mischief in the Fifth Degree, and Harassment in the Second Degree are replaced as class-B misdemeanors rather than offenses; this is reflected in the removal of former sections: 8, 13 and 26.

The CS removes the section which would increase the felony property threshold for Vehicle Theft in the First Degree, that section had proposed increasing the threshold from \$750 to \$2000. We removed former section 9. As a note, the felony threshold was raised in SB 64 two years ago from \$500 to \$750.

SENATOR COGHILL said the third change addressed an issue regarding victims who had felt violated by auto theft. He noted that the change was generated out of the committee.

MR. GEORGE explained change: 4 from the CS as follows:

The CS reduces the Fraudulent Use of an Access Device threshold from a class-C felony to \$50; this is seen in Section 9. The crime was reclassified from a class-A misdemeanor to a class-C felony in 2005 by the Legislature; that bill passed unanimously and lowered the threshold for that felony from \$500 to \$50. In working with the sponsor of the bill and law enforcement stakeholders, it was brought to the committee's attention that in SB 64, the threshold had been increased from \$50 to \$750 and would have risen to \$2000 under the bill, a 40-times increase; this replaces it at what the bill in 2005 had set that threshold at as the bill goes forward to Judiciary.

CHAIR STOLTZE revealed that he had worked on the bill that Mr. George referenced. He detailed that he collaborated with the departments of Law and Public Safety regarding the theft of certain devices that primarily addressed credit cards, an act

that was unprosecuted prior to the bill passing. He noted that elder Alaskan groups were involved in the legislation.

SENATOR COGHILL added that he appreciated the catch and noted that the committee has worked on both privacy rights and privacy protections. He remarked that the credit card access devices have far-reaching effects where the devices' face-value might be \$50, but the intent could take a person's whole identity.

[8:39:58 AM](#)

MR. GEORGE explained changes: 5, 6, and 7 from the CS as follows:

We removed the former section 17 from the bill, it would have imposed an annual inflation adjustment for the value of property that distinguishes between a misdemeanor and a felony offense.

We reestablished the Failure to Appear as a misdemeanor rather than an offense, this retains bill language clarifying that a prosecution for Failure to Appear is not a defense that the defendant was not provided or did not receive notice or a reminder from the court, this is seen in section 16.

Sections 17 and 73 respectively, this requires that a person convicted of a violation of a condition of release shall have that record published on CourtView as a Violation of Condition of Release under SB 91, it is reduced from a crime to an offense so it was important to note this.

SENATOR COGHILL pointed out that the requirement for the record to be published on CourtView came from Chair Stoltze. He opined that the change was just one of the ways that the committee was trying to show that people should have knowledge for their own safety.

MR. GEORGE explained changes: 8 and 9 from the CS as follows:

We returned Disorderly Conduct to a class B misdemeanor while retaining the bill's reduction from 10 days down to 24 hours for the maximum term of imprisonment, this is seen in Section 20.

Sections 25 and 35 respectively, the CS reestablishes delivery of any amount of a Schedule IA, IIA, or IIIA

controlled substance to a person under the age of 19 who is at least 3 years younger than the person delivering the substance as Misconduct Involving a Controlled Substance (MICS)-1, which is an unclassified felony, rather than MICS-2, which is a class A felony as was in the previous version; this reestablishes also the conduct related to the manufacture of methamphetamine around children as MICS-1 rather than MICS-2 and reestablishes this within the existing felony sentencing presumptive range.

SENATOR COGHILL added that the changes to Sections 25 and 35 came to the committee's attention mostly through the police officers.

MR. GEORGE explained change: 10 from the CS as follows:

Sections 25 and 26, the CS elevates the position in any amount of a schedule IA or IIA controlled substance around school grounds, youth recreation centers, and school buses for MICS-3 to MICS-2; however, we decrease the MICS-2 penalty from a class-A felony to a class-B felony.

[8:42:53 AM](#)

JORDAN SCHILLING, Staff, Senator John Coghill, Alaska State Legislature, Juneau, Alaska, explained the changes to the MICS statutes as follows:

The statutes were changed to address some of the concerns we heard from the Office of Victims' Rights last week. The Criminal Justice Commission recommended reducing the felony presumptive ranges and that included reducing some of these enhanced ranges and so in response to some of the things we heard from Ms. Winston, we have chosen to leave that type of conduct at its existing penalty.

MR. GEORGE explained changes: 11, 12, and 13 from the CS as follows:

The CS aligns the manufacture of methamphetamine and possession of methamphetamine precursors with the manufacture of other scheduled substances in MICS-2.

Section 33, the CS adds several more exceptions to the presumption of citation by an officer stopping or contacting a person, by including property offenses; Theft in the Second Degree, which is a felony; sexual offenses, Escape, Unlawful Evasion, and Unlawful Contact. We did hear from some officers who were here in town recently about this section in particular and so additionally, the CS, the existing exceptions are broadened for when an officer may arrest by deleting the word "significant" from the danger required or the flight-risk provisions. Also, the CS allows an arrest for criminal trespass in the second degree or criminal mischief, and no longer requires that a person be held for no more than 24 hours.

Section 34, the CS establishes total immunity for civil action for damages for failure to comply with the provisions of Section 33 regarding when an officer may cite or arrest if an improper arrest is made.

SENATOR COGHILL revealed that the new sections 33 and 34 were requested by the police. He asserted that police have to make quick judgements and the changes would allow for a lot more liberty and the courts probably would settle out any issues. He provided additional detail as follows:

We put in Section 33 a complicated range of things that there's a presumption to citation, but there's a whole range of issues that are exceptions to that and so this is both something that the police wanted, but it's the best we can do right now in statute to delineate it.

[8:45:45 AM](#)

MR. SCHILLING added that the language was requested by several law enforcement agencies and associations. He said the change was the same language used in the mandatory domestic-violence (DV) statutes.

MR. GEORGE noted that the Chair's office reached out to all committee members for their input in drafting the CS.

He explained change: 14 from the CS as follows:

Section 37 limits the number of bail review hearings that a defendant is entitled to due to new information now that a person's inability to post required bail

can be taken into account under SB 91; there was some concern with this provision that was brought to us by the court system and we worked with the sponsor's office to try and correct that. I think that the drafting may not reflect entirely the intent of the committee, there's an existing statute that allows for multiple bail-review hearings; however, in our attempt to restrict the number of new review hearings for inability to pay, we inadvertently, in the drafting, limited to one review hearing for any reason. So there is an amendment forth coming which corrects this and clarify this. The court system should be able to talk about this as well, their input concurs with this.

CHAIR STOLTZE stated that a final CS would probably be introduced, especially to address technical mistakes.

8:48:03 AM

MR. GEORGE explained change: 15 from the CS as follows:

Section 41 authorizes the court to require a secured appearance bond or performance bond for several new types of defenses, including Terroristic Threatening, Possession of Child Pornography, Escape in the Third Degree, Unlawful Evasion, Unlawful Contact in the First Degree, Misconduct Involving Weapons in the First, Second, and Third degrees, and all sex offenses.

He explained that there was a grid-of-presumption as far as letting a defendant out on their own recognizance or requiring forms of bond or bail that appeared in the Criminal Justice Commission Report. He explained that Section 41 would move some of the noted offenses into the grid-of-presumption's "other category."

SENATOR COGHILL remarked that the Criminal Justice Commission had a high-level-view and Section 41 shows how more dangerous things could be better categorized.

MR. GEORGE revealed that the Criminal Justice Commission Report was given to the Legislature pursuant to SB 64 and did not contain draft language for SB 91. He detailed that the Legislative Legal Services Division had done their best to implement the Criminal Justice Commission's recommendations and the changes were needed to carry out the report's intent or clarify certain things.

[8:49:35 AM](#)

MR. GEORGE explained change: 16 from the CS as follows:

Sections 57 and 73, the CS ensures the Suspended Entry of Judgement provision in the bill does not provide for record confidentiality under the recently passed HB 11. Individuals who plead guilty or who are convicted would now under the CS have their cases remain on CourtView with notation of Suspended Entry of Judgement. The Suspended Entry of Judgement now also excludes persons convicted of a crime involving domestic violence from eligibility for this provision.

SENATOR COGHILL specified that the change in the new section 57 and 73 were reflective of a dynamic process on CourtView regarding what should or should not be on CourtView. He noted that the change came for the Chair's office. He opined that the change to the Suspended Entry of Judgement was a new concept and the committee continue to review.

MR. GEORGE explained change: 17 from the CS as follows:

Section 59, the CS increases the maximum term of probation from 5 years to 10 years for unclassified felonies or sex felony offenses, current statute is 25 years. The CS increases the maximum term of probation from 3 years to 5 years, currently 10 years, for all other felonies except for domestic violence, and the CS increases to 4 years for all other domestic violence offenses.

SENATOR COGHILL said the new Section 59 resets the probation to a more moderate level. He set forth that proven practices has demonstrated that the best results don't always come from the longest time. He summarized that Section 59 falls within the Criminal Justice Commission's recommendations range.

[8:52:06 AM](#)

MR. GEORGE explained change: 18 from the CS as follows:

Section 61, the CS removes language from the existing statute, AS 12.55.090(h), limiting the number of victims who may give sworn testimony at a hearing to reduce or terminate probation and discharge a defendant before the period of probation, before the

offense has been completed; this was a request of the Office of Victims' Rights.

MR. GEORGE revealed that the language limiting victim testimony may appear in two other places in the statutes. He added that the State Affairs and Judiciary committees may wish to further explore language that limits victim testimony.

CHAIR STOLTZE asserted that every bit of victims' right has been fought for over the last 20 years and the committee did not want to inadvertently affect that.

MR. GEORGE stated that the committee had worked closely with the Office of Victims' Rights and the change exemplifies the improvements that were made to the existing statutes.

He addressed changes: 19 and 20 from the CS as follows:

Section 67 reestablishes the existing statutory presumptive range of imprisonment of 2 to 4 years for criminally negligent homicide where the victim is under the age of 16.

Section 69 removes Assault in the Fourth Degree from the 0 to 30 day presumptive range for class A misdemeanors and replaces it back up to 1 year.

SENATOR COGHILL added that the 0 to 30 day presumptive range was too light and going back to 1 year was a balanced and appropriate penalty.

[8:54:42 AM](#)

MR. GEORGE explained the twenty-first change made from the CS as follows:

Under duties of a prosecuting attorney, the CS now requires the prosecutor to confer with the victims of any felony offense or domestic violence offense concerning a proposed plea agreement prior to entering into such an agreement; this broadens the requirement to confer with victims of all felonies, not just victims of domestic violence. This was added at the request of the Office of Victims' Rights.

SENATOR COGHILL specified that the change was new to the bill and was consistent with the committee's intent to make sure victims were included all of the way. He remarked that not

including the language was probably an omission in the state's law for quite some time.

MR. GEORGE explained changes: 22 and 23 from the CS as follows:

Section 88, this changes the earned compliance credit to be applied every 30 days upon 30 days of compliance rather than each day for single-day credit; this was going to be a significant accounting challenge for time accounting and also this CS comports more closely with the recommendations of the Criminal Justice Commission. This section also clarifies that no proration of month shall be allowed, so failure to complete the entire month would result in no award of a month.

Section 96, this excludes persons convicted of a sexual felony from eligibility for administrative parole, which is offered under the bill to prisoners convicted of a class B or C felony.

SENATOR COGHILL explained that Section 96 was primarily in response to the Office of Victims' Rights.

[8:56:27 AM](#)

MR. GEORGE explained change: 24 from the CS as follows:

Section 97 excludes persons convicted of a sexual or an unclassified felony from eligibility for geriatric parole, a concept new in this bill; this increases the age of eligibility for geriatric parole to 60 years of age from 55 years of age in the previous version, and continues to require that at least 10 years of a sentence for 1 or more crimes in a single judgement have been served as a prerequisite. A point to note, the Criminal Justice Commission Report recommended a range between 55 and 60 years, so this falls within the recommendation of the Criminal Justice Commission.

SENATOR COGHILL revealed that several people contacted the committee specifically on the offense that Section 97 addressed. He summarized that the previous parameters were too low and the change dictates that an individual must serve at least 10 years of their sentence for geriatric-parole eligibility. He detailed as follows:

We had several people contacting us in this particular issue. First of all, that was way too low, but the real problem was the amount of time served. So this actually is an enforcement for those that have to serve at least 10 years of that sentence. There was some language that allowed for earned-goodtime credit under those 10 years and this is just saying that if there is going to be any knowledge of this, they have to serve at least 10 years of their sentence before they can apply.

CHAIR STOLTZE noted that Legislative Legal Services provided commentary on Section 97. He asked Mr. Schilling for an explanation.

MR. SCHILLING explained that Legislative Legal Services had a concern that the geriatric-parole provision might not be constitutional because two similar offender cohorts were treated differently due to age and no other reason. He noted that case law and constitutionality would be evaluated from states that have geriatric-parole provisions.

CHAIR STOLTZE admitted that the committee would not be able vet everything. He noted that the bill was assigned to two more committees.

SENATOR COGHILL asserted that he would continue to address Section 97 in the next committee of assignment.

CHAIR STOLTZE opined that some people never shake their propensity for child molestation with many occurring at an older age. He said he trusted Senator Coghill's commitment to address Section 91.

[8:59:27 AM](#)

MR. GEORGE explained changes: 25, 26, 27, and 28 from the CS as follows:

Section 117 is a change of a "shall" to a "may," and this changes from "compulsory" to "discretionary" the Board of Parole's unconditional discharge of a parolee upon their completion of one year of parole while in compliance and having completed all treatment programs. This adds an exclusion in the CS for persons convicted of unclassified felony offense, a sexual felony, or a crime involving domestic violence from

eligibility of early unconditional discharge from parole.

Section 118 corrects a reference to violators of parole rather than probation.

Section 129 corrects a drafting error, clarifies regarding who the section applies to as to the defenders.

Section 134 establishes a new test. This is from one of the four amendments that we had before committee. This establishes a testing program within the Department of Health and Social Services to determine eligibility for public assistance for persons convicted of drug offenses within the previous five years. Testing is required quarterly, upon renewal of benefits, and on a random basis for the use of illegal controlled substances. A person is disqualified from receiving public assistance for six months if tested positive for the illegal use of controlled substances.

SENATOR COGHILL added that Section 134 was a new concept that would hold people accountable and encourage program participation. He said the section was outside of the recommendations, but was something that the Legislature had been thinking about for some time. He opined that some of SB 91's best language was in Section 134.

CHAIR STOLTZE remarked that Section 134 was narrowly focused. He said drug testing had been criticized, but the section was focused, tied to past behavior, and tied to a benefit that an individual was not getting.

SENATOR COGHILL added that Section 134 would apply to people that had been convicted of a drug-related crime.

CHAIR STOLTZE opined that his constituents would agree that the section would apply to people with high probable cause.

MR. GEORGE specified that the drug-related lookback was not lifetime and only applied to individuals convicted in the last five years. He added that the section would apply to individuals convicted of illegal use and not the legal use of a controlled substance.

[9:02:25 AM](#)

MR. GEORGE explained changes 29, 30, and 31 from the CS as follows:

Section 135 is an exception to the disqualification from receiving temporary assistance or food stamps, it is created for those persons in compliance with the testing program established in Section 134.

Section 142 is a new section, it establishes severability clause that should the testing requirement established under Section 134 or the application of it to any person or circumstance be held invalid by a court of competent jurisdiction, the remainder of this act and the application to other persons or circumstances are not affected. It is important to note that at this time that the committee requested for the CS that should Section 134 regarding testing be found invalid, that the exemption offered in Section 135 from the state pay on temporary assistance or food stamps for convicted drug felons, would be removed, reinstating the ban as it exists presently in statute. An amendment has been requested to correct this oversight in drafting.

Section 141, this is an item that was discussed, we've had some testimony from folks, including Office of Victims' Rights; it removes the retroactive application of administrative, geriatric, and discretionary parole provisions. They shall now apply to persons sentenced on or after the effective date of those sections or conduct occurring before, on or after those effective dates.

SENATOR COGHILL addressed Section 141 regarding parole and said part of the issue was whether people who had been previously convicted could be treated. He remarked that parole was kind of an after-the-fact issue, but starting with the "discretionary, geriatric, and administrative" paroles was wise.

CHAIR STOLTZE announced that further testimony would be provided from individuals representing various state agencies. He noted that representatives from the Department of Health and Social Services, Division of Probation and Parole, and the Parole Board were in attendance. He pointed out that a fiscal analyst from the Division of Legislative Finance was at the meeting to address the bill's potential fiscal savings.

[9:05:59 AM](#)

SENATOR COGHILL commended Chair Stoltze's staff as well as Jordan Schilling for their tireless work on SB 91. He noted that Mr. Schilling had been in contact with the Office of Victims' Rights, the Department of Law, the court system, police officers, and the corrections facilities to understand what would actually work while staying as close to the Criminal Justice Commission's recommendations as possible. He admitted that the Criminal Justice Commission quite often had very high-level suggestions that needed some changes.

He asserted that both public safety and accountability were paramount, but some places required to be ironed out. He pointed out that the violation-misdemeanor sections needed to be ironed out due to a huge list of exceptions-to-the-rule.

[9:09:55 AM](#)

JOHN B. SKIDMORE, Director, Criminal Division, Alaska Department of Law, Juneau, Alaska, specified that he managed and supervised the state's prosecutors. He revealed that he has served for the Department of Law in a prosecutorial capacity for the last 18 years.

He stated that work done by the Criminal Justice Commission and legislators had been a balanced approach in order to ensure public safety was maintained while addressing ways to improve for less money. He specified that improvement would generally be thought of as ways to reduce recidivism within the system.

He opined that the changes made by the CS seemed to address concerns brought up by the Office of Victims' Rights as well as police officers. He remarked that many issues would continue to be looked at by the Legislature in order to strike a correct balance.

[9:13:27 AM](#)

He said the only provision that was not addressed in the CS was in Section 69 regarding his department's request to address the Supreme Court case called "Blakely v. United States," which dealt with the way aggravators were addressed at a sentencing level. He specified that his department requested that the language be consistent in the way aggravators were handled in felony cases. He detailed that some aggravators must be presented beyond a reasonable doubt to a jury, others did not need to be presented to a jury beyond a reasonable doubt and were based on previous convictions.

CHAIR STOLTZE noted that he had referenced the Blakely decision when he added a 99-year sentence provision for child molesters and murderers to a major revision in 2006.

SENATOR COGHILL admitted that he would go back and address the new concept in the CS regarding the Suspended Entry of Judgement provision in the new sections 57 and 73. He asked Mr. Skidmore to review the Suspended Entry of Judgement concept.

[9:16:51 AM](#)

MR. SKIDMORE answered that the Criminal Justice Commission heard testimony about the current statute that Alaska has called the Suspended Imposition of Sentence. He specified that the Criminal Justice Commission was concerned that the original intent of a Suspended Imposition of Sentence was not meeting its goal where a conviction would not follow an individual after a probationary period was completed. He specified that a conviction that followed a person made them ineligible for certain jobs and benefits that included housing and food stamps. He stated that the Suspended Imposition of Judgement was a change so that the conviction itself would not follow people. He noted that though a conviction would not be entered against a person who successfully completed probation, Section 73 from the CS specified that a Suspended Imposition of Judgement would still be available in public record on CourtView and in the court records themselves.

SENATOR COGHILL admitted that he was still learning about the whole idea of the Suspended Imposition of Judgement. He conceded that he would have to deal with the issue of an individual completing something so that their conviction may not appear, but their conviction would be on CourtView. He asked Mr. Skidmore to clarify that the Suspended Imposition of Sentence meant that an individual has to plead guilty, but under the Suspended Imposition of Judgement that may not be true.

[9:20:11 AM](#)

MR. SKIDMORE replied that he was not sure Senator Coghill's statement was accurate because pleading guilty was generally a required step in instituting conditions of probation. He said he would want to go back and review Senator Coghill's scenario more carefully to determine whether the person had pleaded guilty or not. He detailed that the concept originally looked at by the Criminal Justice Commission was whether or not the judge would accept the guilty plea and enter it, and whether or not the conditions would end up being conditions of probation versus a condition of release that was for an extended period of time. He

summarized that a Suspended Imposition of Judgement was similar to a diversionary program, only it was done later in the case rather than at the time of charging.

SENATOR COGHILL remarked that he misunderstood. He said he thought he remembered some of the Criminal Justice Commission's discussion that the judgement did not have to be applied at that point, nor did the guilty plea have to be entered.

MR. SKIDMORE referenced Section 57, page 35, lines 5 and 6 as follows:

Except as provided in (f) of this section, if a person is found guilty or pleads guilty to a crime, the court may, with the consent of the defendant and the prosecution and without imposing or entering a judgment of guilt, defer further proceedings and place the person on probation.

He detailed that the previous sentence expressly indicated that there is a plea where the person has been found guilty by some other means, presumably by a jury trial or a court trial. He opined that Section 57 attempts to follow along with the original intent of the Suspended Imposition of Sentence which is to avoid the conviction on the person's record. He summarized that the case would ultimately be dismissed despite the entry of the guilty plea or the finding of guilt.

CHAIR STOLTZE addressed Section 118 regarding technical violations of parole and asked for Mr. Skidmore to comment on the ranges were proportional to the violation.

[9:23:27 AM](#)

MR. SKIDMORE replied that Section 118 attempts to set a cap for technical violations for parole. He explained that the Criminal Justice Commission found that incarceration by the Department of Corrections had increased in three areas: pretrial; result of sentencing; and post-conviction, which addressed parole and probations. He detailed that the Criminal Justice Commission was concerned that the post-conviction incarceration included people for technical violations.

MR. SKIDMORE explained that a technical violation was defined as anything other than the commission of a new offense. He pointed out that Ms. Winston, [Director for the Office of Victims' Rights], previously testified that she was concerned about technical violations where an individual convicted of Sexual

Abuse of a Minor with a probation or parole provision for not being in the presence of a child under a certain age, could be in the presence of that child and only charged with a technical violation, not a new crime. He specified that as a technical violation, the courts under the current system would have to decide how much the violation was worth and what sort of sanction should be imposed. He said the Criminal Justice Commission recommended capping technical violations at 3 days for the first offense, 5 days for the second, and 10 days for the third. He stated that Section 118 was consistent with the Criminal Justice Commission's recommendation. He noted that prosecutors had expressed some concerns about whether or not Section 118 was appropriate because of the wide range of technical violations that exist.

[9:25:55 AM](#)

CHAIR STOLTZE remarked that a technical violation could include getting kicked out or walking away from sex-offender treatment of which there's a reliance.

MR. SKIDMORE agreed that Chair Stoltze's example would be a technical violation. He noted that technical violations could also be simply missing an appointment with a probation officer.

CHAIR STOLTZE pointed out that a technical violation could also be for not reregistering one's address.

MR. SKIDMORE agreed and noted that not advising a change in employment would also be a technical violation.

CHAIR STOLTZE affirmed that technical violations were widely different. He conceded that uncertainty existed during post-incarceration where an individual might not know where they were going to live the next day, as opposed to a child molester getting kicked out of or walking away from a sex-offender treatment.

MR. SKIDMORE remarked that the section fails to take into consideration the underlying offense, the type of violation that occurred, and the number of violations that may have occurred in a particular petition to revoke probation or a particular parole violation. He summarized that the policy question for the Legislature was whether or not the section was an appropriate restriction on the discretion of judges in terms of sanctions to be imposed.

[9:27:53 AM](#)

CHAIR STOLTZE expressed that a person in jail for drug and alcohol offenses could be let out under the premise that the individual goes to treatment or abstains from alcohol or drugs; that person might be great except when they do drugs or alcohol, but the Legislature puts a cap on how much of a penalty can be imposed. He opined that external penalties are placing a lot of trust in parole and probation while putting some real handcuffs on the system instead of on the criminals.

MR. SKIDMORE noted that he was concerned with capping a probation violation at 3 days for a first offense along with other provisions in SB 91 where a person would be released from jail prior to adjudication to decide whether or not the individual actually committed the offense. He contended that the provisions were very different from the Department of Correction's Probation Accountability with Certain Enforcement (PACE) model to be swift, certain, and proportional. He remarked that the provisions in SB 91 would be swift and certain, but he questioned the proportionality. He remarked that determining policy was not his place to say what it should be.

9:30:00 AM

CHAIR STOLTZE asserted that Mr. Skidmore's place was determining policy due to his background. He remarked that he did not want the departments of Law, Corrections, and Public Safety to merge with Fish and Game and develop a catch-and-release program.

MR. SKIDMORE revealed that an indeterminate fiscal note from the Department of Law was submitted primarily due to Section 118. He asserted that Section 118 would increase the number of contested adjudications which the Criminal Division has to prove up.

SENATOR WIELECHOWSKI stated that the committee relies on Mr. Skidmore's expertise. He pointed out that the state's recidivism rate was 60 to 66 percent and asked Mr. Skidmore how he would handle technical violations.

MR. SKIDMORE asserted that any system like the criminal justice system should be continually monitored and evaluated by its practitioners as well as the Legislature. He admitted that the current criminal justice system works on some days and in some cases it does not. He revealed that the Department of Law has changed a number of its policies due to the Criminal Justice Commission's review. He specified that the Criminal Division had implemented changes in the way probation violations were evaluated. Anchorage and probation officers throughout the state were given direction on probation violations; for example,

different sanction and tools would be used for missed appointments rather than sending an individual back to jail. He noted that different sanctions would be used for an individual that does respond or has not reported for weeks or months. He asserted that the PACE model for swift and certain sanctions was appropriate because people are encouraged to accept responsibility for what they have done with sanctions that are proportional. He summarized that technical sanctions can be reduced, SB 91 does attempt to reduce technical sanctions, but the bill restricts judges in a way that may have unhealthy consequences.

[9:34:33 AM](#)

SENATOR WIELECHOWSKI asked how the restriction of judges should be addressed.

MR. SKIDMORE suggested that the Legislature follow the Criminal Justice Commission's recommendations for reducing the time people spend for technical violations, but balancing still had to be addressed. He asserted that humans and not mechanical mechanisms were required to balance various things. He stated that he would be willing to suggest ideas; for example, create a presumption for the 3, 5, and 10 days, but allow judges the discretion to maintain balance.

CHAIR STOLTZE asked if an individual released on probation for Sexual Abuse of a Minor with a no-contact provision showed up at restaurant party with children would have committed a technical or another violation.

MR. SKIDMORE answered that the person would have committed a violation due to the no-contact provision. He noted that there could be additional provisions where another adult has to be present. He added that language where an individual cannot come within 50 feet of any child would be unreasonable because of unavoidable circumstances. He reiterated that Chair Stoltze's example would depend on specific provisional language.

SENATOR HUGGINS addressed section 9 and noted that the monetary amount for theft was changed from \$750 to \$2000. He asked how the non-monetary value of something like a vehicle would be taken into account.

[9:38:56 AM](#)

MR. SKIDMORE specified that prosecutors look at a vehicle's resale value. He agreed that a vehicle with a low resale value may have a higher value to an individual due to sentimentality,

getting to appointments, or going to and from work. He noted that the intent was to change the monetary amount for theft back to \$750.

CHAIR STOLTZE concurred that putting the value on an only vehicle was hard.

SENATOR HUGGINS opined that the provision "permissively" created a bigger loop-in-the-fishnet where an individual pays \$5 to go home rather than go to jail.

[9:41:38 AM](#)

MR. SKIDMORE noted that despite the fact that crime rates had fallen over the past decade, the Criminal Justice Commission addressed the state's rising incarceration rate in order to avoid having to build new prisons. He added that the Criminal Justice Commission looked at a significant amount of research in order to address the state's high recidivism rate as well. He remarked that sending people to jail for every offense and increasing sentences was not always the right way to reduce recidivism. He asserted that the Criminal Justice Commission and SB 91 are trying to address the balance that was needed between individuals that do and do not require jail to change behavior. He conceded that finding the balance was difficult, but recommended that the focus be placed on monitoring what works and does not work rather than just on the changes being made. He summarized that balance required monitoring with appropriate changes.

SENATOR COGHILL commented that reduction of crime was another way to say reducing recidivism. He set forth that reducing return meant less crime. He conceded that focusing on technical violations was complex, but adding a discretionary tool to address the proportional part was needed. He noted that not doing sex-offender treatment under SB 91 was not a technical violation.

MR. SKIDMORE pointed out that sex-offender treatment was pulled out as a technical violation due to SB 91.

[9:45:24 AM](#)

CHAIR STOLTZE asked if the premise that less crime was due to putting certain people away for longer times was valid.

MR. SKIDMORE agreed that Chair Stoltze's theory was one that has been argued.

CHAIR STOLTZE said he did not attend the Criminal Justice Commission meetings and did not know how much time was spent on addressing his theory. He opined that an individual who committed sexual abuse of minor offenses tended not to be a one-time occurrence. He added that somebody that was caught for a property theft for fueling a drug habit usually committed the offense multiple times and putting the individual away longer would likely reduce crime in an area.

MR. SKIDMORE recounted that the Criminal Justice Commission also heard evidence to suggest that a low-risk individual's chances of committing another crime increased when the individual was placed in jail. He reiterated that the basic principle was trying to find a balance.

CHAIR STOLTZE remarked that the key was people management to make sure the right people were picked for rehabilitation.

MR. SKIDMORE replied that he agreed.

[9:47:39 AM](#)

SENATOR COGHILL commented that the state being tougher on crime over the last decades had a positive impact on serious crimes. He noted that the serious-crime population in jails has decreased, but the misdemeanor population has literally exploded. He asserted that SB 91 addresses the misdemeanor population, but serious crimes would be treated as seriously as possible.

CHAIR STOLTZE agreed that incarcerating the wrong people was not doing society any favors. He noted that he had spoken with Commissioner Williams that corrections officers should be a part of the parole and probation process. He asserted that the corrections officers know prisoners better than anybody else.

[9:49:12 AM](#)

DEAN WILLIAMS, Commissioner, Alaska Department of Corrections, Anchorage, Alaska, agreed with Mr. Skidmore and the committee that getting the changes right involved a balancing act. He said SB 91 was a process of change and vetting to make sure everyone was moving in the right direction. He asserted that getting SB 91 right was critical for dealing with a department that was overstressed and understaffed. He set forth that progress must be made to keep people out of jail that should be out of jail and keeping the people that scare us in jail.

COMMISSIONER WILLIAMS revealed that he started to look at the issue SB 91 was addressing back in his prior career in juvenile justice in order to focus on crowded juvenile facilities. He agreed with findings from "Right on Crime" and the "Pew Foundation" that getting one thing right in tackling prison populations was understanding what other states had done. He asserted that statistics have shown that crime goes down without compromising safety if reform was done right. He remarked that if crime goes up, then something was done significantly wrong. He concurred with Mr. Skidmore that making reform work would require the state to act on experiences from other states along with close monitoring. He disclosed that the Parole Board was getting technical assistance from the National Institute of Corrections (NIC) in order to simplify parole conditions and avoid legalese. He said the Department of Corrections has made progress and a number of reform items have been instituted.

[9:52:53 AM](#)

CHAIR STOLTZE commented that the committee would continue to work on SB 91. He opined that the bill addressed a more substantive issue that affects people's everyday life more than some of the governor's bills. He noted that he had discussions with Commissioner Williams on the mechanics of creating a formalized review process for correctional officers. He remarked that correctional officers have a better understanding of the prisoners based on their everyday actions.

COMMISSIONER WILLIAMS noted that he had discussed formalized reviews with his staff. He said he did not know if a formalized review process would be done through statutes or amendments.

CHAIR STOLTZE replied that correctional officers have a lot to offer and have an important role to play. He requested that correctional officers' involvement be formalized in the process.

COMMISSIONER WILLIAMS agreed that Chair Stoltze's concept was valid and he would find the vehicle to move the idea down the road.

CHAIR STOLTZE pointed out that during the previous year there were talks that SB 91 would furlough up to 1200 prisoners. He asked what the status was on the possibility of furloughing prisoners.

[9:55:29 AM](#)

COMMISSIONER WILLIAMS answered that he was first awaiting the passage of SB 91. He asserted that he wanted a good plan and

good strategy for what DOC would do in terms of furloughing if necessary.

CHAIR STOLTZE asked if the furlough concept has been suspended.

COMMISSIONER WILLIAMS replied that he had no plans of releasing people in mass without a complete process of understanding with counsel from inside and outside of his department. He set forth that he was not doing anything without a clear vetting and a clear plan to present to the Legislature.

CHAIR STOLTZE stated that he would like to see placeholder language in the bill for correction professionals having a role.

COMMISSIONER WILLIAMS replied that reform decisions involve a lot of people and especially correction officers who were involved with running the facilities.

[9:58:32 AM](#)

MONICA WINDOM, Chief of Policy and Program Development, Division of Public Assistance, Alaska Department of Health and Social Services, Juneau, Alaska, revealed that some states have found that drug testing has not been cost effective; however, the drug testing in SB 91 would be more targeted.

MS. WINDOM noted that she had questions about points of clarification and possible technical changes as follows:

Section 134 does address a penalty for failing a drug test, but it does not address any penalty for refusal to test.

Section 135 talks about folks that are on temporary assistance and food stamps, it specifically calls out the statute at AS 47.25 which does not house temporary assistance, temporary assistance is in AS 45.27.

She revealed that Section 135 calls out temporary assistance and food stamps, then the new provision in Section 134 addresses all of the programs that were listed in AS 45.25 which include adult public assistance. She pointed out that temporary assistance was not specifically called out in Section 134.

CHAIR STOLTZE replied that the committee was aware of the language in Section 134. He asked if the department had a position on the CS.

MS. WINDOM replied that the department did not have a chance to review the CS that was distributed this morning.

CHAIR STOLTZE asked if Ms. Windom had any general philosophical positions from the division and the department.

MS. WINDOM answered that she did not.

[10:01:36 AM](#)

CHAIR STOLTZE announced that SB 91 would be held in committee.

SENATOR COGHILL noted that his intent was to work through the bill's issue one-by-one with committee members.

CHAIR STOLTZE asserted that the public was with the committee regarding the provision that the committee addressed with the Division of Public Assistance. He said he hoped that the provision does not get swallowed up through the bicameral process and spit out. He added that should the Administration not like the provision, he hoped that there would be an explanation as to why they desire additional welfare benefits for criminals.

[SB 91 was held in committee.]

[10:02:56 AM](#)

There being no further business to come before the committee, Chair Stoltze adjourned the Senate State Affairs Committee at 10:02 a.m.