

HOUSE FINANCE COMMITTEE
October 31, 2017
1:04 p.m.

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CALL TO ORDER

Co-Chair Seaton called the House Finance Committee meeting to order at 1:04 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Paul Seaton, Co-Chair
Representative Les Gara, Vice-Chair
Representative Jason Grenn
Representative David Guttenberg
Representative Scott Kawasaki
Representative Dan Ortiz
Representative Lance Pruitt
Representative Steve Thompson
Representative Cathy Tilton
Representative Tammie

MEMBERS ABSENT

None

ALSO PRESENT

Randall Burns, Director, Division of Behavioral Health, Department of Health and Social Services; Quinlan Steiner, Director, Public Defender Agency, Department of Administration; Jahna Lindemuth, Attorney General, Department of Law; John Skidmore, Division Director, Criminal Division, Department of Law; Representative Bryce Edgmon; Representative Zack Fansler; Representative Andy Josephson; Representative Ivy Spohnholz; Representative Sam Kito; Representative Harriet Drummond.

PRESENT VIA TELECONFERENCE

Brad Myrstol PhD, Associate Professor and Interim Director, UAA Justice Center; Tony Piper, Manager, Alcohol Safety Action Program, Department of Health and Social Services.

SUMMARY

SB 54 CRIME AND SENTENCING

SB 54 was HEARD and HELD in committee for further consideration.

PRESENTATION: DEPARTMENT OF LAW

PRESENTATION: CRIMES KNOWN TO POLICE (ALASKA): STATEWIDE RATES, BY MONTH: 2014-2016 - UAA JUSTICE CENTER

PRESENTATION: ALCOHOL SAFETY ACTION PROGRAM

#sb54

CS FOR SENATE BILL NO. 54(FIN)

"An Act relating to crime and criminal law; relating to violation of condition of release; relating to sex trafficking; relating to sentencing; relating to imprisonment; relating to parole; relating to probation; relating to driving without a license; relating to the pretrial services program; and providing for an effective date."

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Co-Chair Foster reviewed the agenda for the day and indicated that amendments for SB 54 were due by 5:00 p.m. the following day. He recognized Representatives Bryce Edgmon, Zack Fansler, and Andy Josephson in the audience.

^PRESENTATION: DEPARTMENT OF LAW

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JAHNA LINDEMUTH, ATTORNEY GENERAL, DEPARTMENT OF LAW, introduced the PowerPoint Presentation: "Department of Law: House Finance Committee" (copy on file). She remarked that much of what the legislature was doing at present was trying to figure out the impacts of SB 91 [justice reform legislation passed in 2015] on crime versus other issues including budget cuts and other causes of crime. She would be discussing the Department of Law's (DOL) budget and the impacts of safety.

Attorney General Lindemuth provided background on the genesis of SB 54. She referenced comments that the bill had been recommended by the Alaska Criminal Justice Commission (ACJC), which was true; however, 90 percent of the contents of the bill as passed by the Senate were ideas or concepts brought to the commission by DOL and the Department of Public Safety (DPS). She detailed that one year earlier the commission had heard substantial testimony from law enforcement, prosecutors, and the public about the impacts of crime (especially shop lifting and property crimes). She furthered that DOL had invited its line prosecutors to testify to the commission. Additionally, law enforcement including the Anchorage Police Department (APD) had testified as well. Subsequently, she had worked with Walt Monegan, Commissioner, Department of Public Safety and John Skidmore, Division Director, Criminal Division, Department of Law to identify changes they believed were necessary to address the unintended consequences of SB 91. She highlighted three primary issues having unintended consequences: 1) probation only for a Class C felony [no jail time]; 2) recidivist theft; and 3) violations of conditions of release.

Attorney General Lindemuth shared that DOL had compiled a memorandum (in January 2017, which was included in House Judiciary Committee materials) to the commission that outlined its recommended changes. She acknowledged there had been other changes outside of those recommended by DOL and DPS. She believed it was important to recognize that the department had identified the items as changes that were needed. She offered that the administration supported the version of SB 54 passed by the Senate. The department believed it provided the legislative fix needed. She clarified that it did not mean SB 54 provided the only fix to SB 91 that would be needed.

Attorney General Lindemuth commented that she was committed to the process of bringing everyone (i.e. law enforcement, DPS, the Court System, and other) to the table with their ideas. She remarked that she was also a member of ACJC. She referenced a number of ideas brought forward in the House Judiciary Committee the previous week. She believed many of the ideas were worth debating and bringing to the commission for vetting before they came back to the legislature for implementation. She furthered that from the public's perspective it was easy to see that criminal justice reform had taken place and there had been public

outcry laying blame on SB 91. She continued that some of the blame had resulted in SB 54 changes, but much of the blame was based on uninformed public perception.

Attorney General Lindemuth relayed that budget effects on DOL had impacted its ability to provide core services including the prosecution of crime and the protection of children. For example, the department had heard significant outcry about vehicle theft. The department believed SB 54 fixed the legislative piece and gave courts the discretion to provide some jailtime if appropriate for vehicle theft. She elaborated that vehicle theft was a Class C felony with a sentence of 0 to 1 year. Due to budget cuts the district attorneys had to prioritize crimes. She furthered that violent crimes or a person offense took higher priority than property crimes. She shared that former district attorney Clint Campion had mentioned in talks to community councils that the Anchorage DAs were not able to prioritize vehicle thefts at present given the record number of homicides the community had experienced in the past two years (in addition to other violent crimes taking place).

Attorney General Lindemuth believed everyone agreed there had to be a consequence to crime in order to avoid incentivizing criminals. The department would like to do more with vehicle theft - even under the 0 to 18-month scheme under SB 91, those crimes were not getting as much attention as they would have if the department had sufficient prosecutors. She addressed the presentation and relayed that except for one slide, it was from the past February and March when it had been given to the House Finance subcommittee chaired by Representative Grenn. She noted that the presentation had also been given to the House Judiciary Committee several weeks back.

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Attorney General Lindemuth turned to slide 2: "Department of Law's Share of Total Agency Operations (GF Only)." The slide included Civil and Criminal Divisions. Out of the department's \$49 million undesignated general fund (UGF) budget for FY 18, approximately \$27 million went to the Criminal Division and \$19 million went to the Civil Division. The Civil Division was half funded with general funds and the remainder was funded with interagency receipts. Overall, in FY 13 (one of the higher years shown on the chart) the department had up to 541 people; as of

the past March, the number of employees was down to 455. There were approximately 130 civil attorneys and 106 criminal attorneys. Beginning in FY 12 there had been a significant reduction in the department's budget and number of employees. She pointed to a horizontal black line showing the department's FY 18 budget was at FY 08 level adjusted for inflation. She detailed DOL was down 43 positions compared to FY 08.

Co-Chair Foster acknowledged Representatives Ivy Spohnholz and Sam Kito in the audience.

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Representative Wilson asked for the breakdown of civil and criminal attorneys. Attorney General Lindemuth responded that as of March 2017 there were 130 civil attorneys and 106 criminal attorneys.

Representative Wilson asked where the 454 number had come from. Attorney General Lindemuth replied the 455 figure included staff and paralegals.

Attorney General Lindemuth reviewed slide 3: "Change in GF Budget FY14-FY18." She shared that the Civil Division budget had decreased 32 percent from FY 14 to FY 18 and the Criminal Division budget had decreased by 10.3 percent during the same period. She specified the number included one prosecutor position added by the legislature in 2017. She added she was comfortable using March numbers because the department's budget had been flat except for the addition of one additional prosecutor. Overall, there was a 21 percent decrease from FY 14 including both divisions. Additionally, the department was down 80 positions since FY 14.

Attorney General Lindemuth discussed slide 4: "FY14-FY17 Criminal Budget." There had been 128 attorneys in the Criminal Division; the number was currently 106. She specified that 42 positions had been lost in the Criminal Division between FY 14 and FY 17.

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Attorney General Lindemuth reviewed the graphs on slide 5. She had communicated to the legislative budget subcommittee the prior session that too much had been cut from the

department's budget. The slide contained graphs based on a Uniform Crime Report (UCR) statistics report. She shared that every dollar cut impacted the services the department was able to provide. She explained that at the same time as budget cuts had occurred, crime statistics in Alaska had skyrocketed. There had been an increase over the years, but the FY 15 and FY 16 numbers were significantly higher. She noted the trend was especially true for violent crime. She mentioned the department had submitted the first 30 pages of the UCR to the committee ("Crime in Alaska"). The excerpt was a summary of the 580-page report on crime statistics in recent years.

Attorney General Lindemuth reiterated that crime had been increasing over the past two years - beginning prior to the passage of SB 91. She detailed that most of the components of SB 91 had gone into effect in July 2016. She reasoned that for 2015 and the first half of 2016 it was obvious the increases in crime were unrelated to SB 91. She believed the opioid crisis had a major impact on the increase in crime. She referenced a high number of deaths and significant increases in the number of child protection cases over the last two years. Due to budget cuts and an increase in crime in recent years the department was faced with prioritizing crime; therefore, violent and more serious crimes received the most attention. She explained that the department was faced with declining more cases that would have otherwise been prosecuted due to a lack in resources.

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Vice-Chair Gara referred to slide 5. He asked about the 2016 statistics and wondered if there was any way to determine which part of the year the crimes occurred.

Attorney General Lindemuth reported that the charts showed summary data, but the 30-page UCR summary included a month-by-month analysis.

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Attorney General Lindemuth continued to slide 6: "Three main buckets for general fund spending." She reported that there were three main buckets for General Fund spending at DOL including, prosecuting crime, protecting children, and statehood and revenue protection. Cuts to the department's

budget impacted the three areas. She detailed that the statehood and revenue protection component brought revenue into the state. She specified that one-third of the Civil Division budget went towards protecting children. She explained that the Criminal Division budget and a significant portion of the Civil Division budget went to public safety.

Attorney General Lindemuth advanced to slide 7 titled "Protecting Children," showing the number of child abuse reports received annually. The process began with the Office of Children's Services (OCS), but a DOL attorney became involved in the court process if a child needed to be removed from a home (a judge was required to make the decision). She highlighted slide 8: "Impacts of Budget Cuts on Services." She reported there had been significant increases in child protection cases over the past two years. She communicated that currently the department had 104 child protection cases per attorney. The recommended number was 60 per attorney.

Attorney General Lindemuth scrolled to slide 9: "Criminal Division." She pointed out that Anchorage and Juneau had municipal attorneys to prosecute misdemeanors; however, the department was responsible for prosecution of crimes in all other locations statewide. The department was also responsible for the prosecution of felonies statewide including Juneau and Anchorage.

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Attorney General Lindemuth turned to slide 10: "Impacts of Budget Cuts on Services." She explained that the slide addressed capacity to prosecute. The department had done a comparison between the number of felony and misdemeanor cases in 2013 and 2016. In 2013 the department had the ability to prosecute a higher number of cases due to its number of attorneys. As positions had been lost and the department was faced with prioritizing felony crimes over misdemeanors, the capacity to prosecute misdemeanors was down significantly. She noted that the department had only cut felony prosecutions by 3 percent. She explained that the past spring she had struggled with determining whether crime was at a level where the department would do the prosecutions if it had the same level of staff as in 2013. The UCR showed that with crime increases in 2015 and 2016, current crime was at a higher level than in 2013. She

surmised there were good cases that the department would prosecute if it had staffing levels comparable to 2013.

Attorney General Lindemuth reported on the types of cases DOL was prosecuting. She referenced a statement made the previous day that felony drug cases had decreased from FY 14 to FY 17, which she believed made sense with criminal justice reform. She furthered that those declining cases had been backfilled by other more serious felonies. The homicide cases filed FY 17 were double the amount filed in FY 14. The number of felony assaults had increased by 26 percent since FY 14 and robbery cases had increased by 25 percent. She elaborated that sexual assault cases felony property cases had also increased. More and more serious crime was being prosecuted at the expense of the lower-level nonviolent and/or misdemeanor cases. She continued that the department was prosecuting the same or slightly fewer cases than in the past, but the crimes involved more serious offenders. Consequently, more people would be put in jail for longer periods of time. She explained that the dynamic may not result in the types of savings or reduction in prison bed usage given that the more serious offenses were running through the criminal justice system. She spoke to the importance of understanding how budget cuts had impacted crime.

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Representative Kawasaki referred to the LFD 10-year overview on slide 2. He mentioned having been a member of the House Resources Committee and he pointed out that during the high budget years of FY 11 through FY 14 the state had been spending substantial funds on statehood defense and on Endangered Species Act (ESA) defense. He asked if that was where the cut was reflected.

Attorney General Lindemuth did not have the number of those types of cases currently compared to 2013. The department was still conducting a significant number of ESA and statehood defense-type cases. Overall the cuts from FY 14 to FY 18 had impacted the Civil Division by 32 percent, which impacted those kinds of cases. She offered to follow up with additional numbers regarding the Civil Division. She cited the significant decrease to the department's Consumer Protection Division as an example.

Representative Kawasaki referenced testimony that the Civil Division was useful for Child in Need of Aid (CINA) cases and other. He requested a breakdown of the numbers. He referenced the \$19 million budget for the Civil Division versus \$27 million for the Criminal Division. He observed there were more attorneys in the Civil Division. He asked if it was because prosecutions were more costly.

Attorney General Lindemuth responded that slide 2 showed General Fund only. She explained that a significant portion of the department's budget came from interagency receipts. She detailed there could be more attorneys in the Civil Division funded by sources other than UGF.

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Representative Kawasaki asked who made the decisions about how to allocate the money between the two divisions. He asked how the department decided to allocate more money to the Criminal Division specifically for felony prosecutions.

Attorney General Lindemuth answered that the legislature allocated funding that was divided between the two divisions. The department gave a presentation annually that addressed the needs in different locations. She could not personally move money between the divisions. She could move funds within a division.

Representative Kawasaki clarified that the department annually made a request to the governor indicating where funds were needed. The legislature appropriated the funds. He asked if his explanation was accurate.

Attorney General Lindemuth answered that she had only been through one budget cycle. She had recommended holding the budget flat until a fiscal plan was developed, at which point she would request additional funding.

Representative Grenn remarked that criminal caseloads far exceeded the recommended ethical number. He believed it was good for the public to hear what high caseloads did to an attorney's effectiveness and how it impacted each case. He noted there were more open homicide cases than the number of prosecutors. He had the opportunity to sit in to see what it took to build a case and how much attention was required. He was interested in what high caseloads did to retention.

Attorney General Lindemuth deferred to a colleague.

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JOHN SKIDMORE, DIVISION DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, responded that the department did not have a hard and fast ethical number of caseloads, but it had generally estimated that an attorney could handle 400 misdemeanors or about 100 felonies per year. He emphasized that currently caseloads in multiple offices across the state were exceeding that number of open cases. He explained that it did not matter how many cases were resolved because new cases came in and the department had already tapped out at where the number should be for the entire year. He spoke to the impact component of Representative Grenn's question. He reflected on the number of conversations he had with supervisors across the state regarding health issues facing a number of the department's employees. He could not definitively say the health problems would not exist if the employees had less work, but it caused him concern. He mentioned individuals with heart problems and other general health issues. He characterized the issue as very problematic.

Mr. Skidmore referenced his testimony from the previous day regarding recruiting. He shared that when the department attempted to recruit from the Lower 48, individuals had applied and had decided to remain where they were after talking with DOL. He explained caseloads had presented challenges for the department related to recruiting. The department was continuing to recruit and fill positions, but the situation made it more difficult to recruit and more difficult to recruit individuals with experience instead of individuals new to the field. He reported that it took between two to five years for a new prosecutor to be trained, get comfortable with Alaska laws and the rules of evidence, and trial skills to really be effective. Individuals who had been with the department in the five to ten-year range were truly effective and could handle the caseloads.

Mr. Skidmore stated that the seriousness of the crime had increased in cases accepted by the department. The department had double the number of accepted homicide cases at present compared to four years earlier. There had also been an increase in felony assault and robbery cases.

Handling one of the more serious cases took much more time, energy, and effort than it did to handle lower-level cases. He had not determined a good way to quantify the trend, but he emphasized that based on his 20 years of experience, it did not take the same thing to handle a homicide case as it did to handle an assault IV case, vehicle theft, or other similar crime. The department was working to determine how to quantify the situation to help the legislature and public better understand.

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Representative Grenn referred to slide 10. He asked if a person who committed a misdemeanor would likely be a repeat offender.

Mr. Skidmore responded that it was not an easy yes or no answer. A person's past behavior was frequently looked at to help predict future conduct, but it did not mean that just because a person had committed one crime that they would commit numerous additional crimes.

Representative Grenn spoke about repeat offenders stealing cars, shoplifting, and other. He asked that if recidivism would be reduced if the state had the means to prosecute more swiftly and effectively.

Mr. Skidmore answered that the question combined two separate concepts. First, whether holding people accountable via prosecution helped the overall crime rate. He argued that it would for multiple reasons. Whether holding people accountable via prosecution helped recidivism was a different question. He explained that recidivism was not about how many crimes occur. Alternatively, recidivism is about a person who was convicted for a second time for committing an offense. He confirmed that recidivism reduction could help with the crime rate.

Representative Grenn referenced data on slide 5 showing a dramatic increase in violent crime from 2015 to 2016. He asked how violent crime sentencing had changed with SB 91.

Mr. Skidmore answered that criminal justice reform had adjusted presumptive sentencing ranges for all crimes except sex offenses (the majority of sex offenses had been placed in a subsection of statute that had not been

adjusted) and unclassified crimes such as murder (which did not have a presumptive). All other A, B, or C crimes [felonies] left in generic sentencing ranges had been adjusted downward. Criminal justice reform had impacted all crimes in the same way because the adjustments were not based on violent and nonviolent crimes, but on adjusting A, B, and C felonies. He reiterated the exceptions related to sex offenses and unclassified felonies.

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Vice-Chair Gara had read in a newspaper recently that the governor was recommending five additional prosecutors. He believed the department was down 22 prosecutors since 2014. He asked about what 5 additional prosecutors would do. He stated it was a balancing act to try to provide adequate public safety when the state had no money. He asked how 5 additional prosecutors would help the problem when the department was down 22 prosecutors and crime was on the rise.

Attorney General Lindemuth conceded that in a perfect world the department would have the 22 prosecutors back. She explained that it would take time to rebuild DOL. The department had turnover annually and it would always be recruiting for prosecutors. She had requested 5 prosecutors in the current year because it was the number she thought she could add to the department without impacting quality the it was seeking. She planned to request an additional 5 positions annually in the coming years. She could not put out a recruitment for 20 prosecutors for the current year in addition to the positions that would see turnover. She was concerned it would be more difficult to recruit for rural positions if the department opened recruitment for 20 positions.

Vice-Chair Gara noted that murder was up substantially since 2014. He was doubtful any perpetrators had gone to the statute books before committing a crime to see what their sentence would be; however, if they had looked they would have discovered sentencing lengths had increased (and murders had continued to rise regardless). General theft appeared to have decreased month-by-month in 2016 even after the passage of SB 91. In 2016 car theft had increased in January, declined in the summer, and increased near the end of the year. He asked if any correlation could be drawn between the passage of SB 91 and crime rates.

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Attorney General Lindemuth remarked on the complexity of the question. She remarked that Brad Myrstol with the University of Alaska Anchorage would be available for related questions later in the meeting. Overall the crime rate [increase] had begun well before the passage of SB 91. For the most part the changes in law were not attributable to the increase in crime. Many of the fixes in SB 54 focused on recidivist theft (low-level theft) and on vehicle theft (Class C felony). When she had looked at the month-to-month data for motor vehicle theft and larceny it appeared there had been a slight uptick after July 2016, which would support the need for the recommended changes in SB 54. However, Mr. Myrstol who is a statistician expert, was not seeing those types of things.

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Vice-Chair Gara observed that the UCR showed a decrease in larceny theft offenses on a monthly basis after August 2016. The offenses had been on the rise in January and July prior to the passage of SB 91.

Attorney General Lindemuth replied that she did not believe it was fair to compare June to December. There were cyclical crime trends and experts would say there was always more crime in the summer when school was out, people were out camping, and other. She believed it was necessary to look at the statistics for the first half of a year compared to the second half or to the prior year.

Vice-Chair Gara mentioned that in the past (when the state had not been in a budget deficit) if prosecutors were added, the state recognized the need to add public defenders and Office of Public Advocacy attorneys. He assumed there would be a recommendation for additional positions in these areas along with the request for the additional prosecutor positions.

Attorney General Lindemuth pointed out that the Criminal Division had been cut 10.5 percent since FY 14. She believed the other public safety agencies had only been cut 3 to 4 percent in the same timeframe. She furthered that the Office of Public Advocacy and the Public Defender Agency had child protection cases they were also

considering. In order to make an apples-to-apples comparison it would be necessary to consider cuts to child protection. She believed the cuts at DOL had been deeper than in other agencies.

Co-Chair Foster acknowledged Representative Harriet Drummond in the audience.

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Representative Thompson referenced Mr. Skidmore's testimony that DOL was having difficulty recruiting attorneys to fill vacant positions. He asked how many Criminal Division positions were currently funded in the budget.

Mr. Skidmore responded that the division had several open recruitments. He approximated the number at about five - some of the positions were staff and paralegal. He offered to follow up with the information later that day.

Representative Thompson asked if there would be any benefit to hiring paralegals to free up some attorney time.

Mr. Skidmore replied that the addition of paralegals and law office assistants were critical positions working alongside attorneys; any attorney position required support positions. He continued that if an imbalance occurred it meant starting to pay attorneys to do support staff position work. He noted that while the work was extremely important, it did not necessarily require the same level of education and the positions were not on the same pay range as an attorney. He confirmed it made sense to have things balanced and it was one of the things the division had been discussing.

Representative Thompson pointed to slide 10 and observed that the capacity for DOL to prosecute misdemeanors was down substantially. He asked if some of the cases were picked up by the cities of Anchorage and Juneau.

Attorney General Lindemuth answered that the city was doing more prosecutions in that same timeframe, which helped with the statistic on slide 10. She explained that the issue was about the capacity to prosecute. She reported that if DOL had the 22 prosecutors it would be prosecuting more crime overall. She noted the division may not be the same - DOL may be doing more felony prosecutions as it addressed the

record number of homicides over the past two years. She detailed that the split may not be the same as the number of felony versus misdemeanor cases prosecuted in 2013.

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Representative Thompson surmised the number of cases that the department was not able to prosecute (reported on slide 10) were not all going unprosecuted.

Attorney General Lindemuth answered in the affirmative; the city had been doing some of the misdemeanor prosecutions. With crime increasing in 2015 and 2016, she was confident the 22 positions would enable DOL to prosecute 6,800 more misdemeanors and 187 more felonies. Or the number would be split, she estimated the department would be prosecuting 400 to 500 more felonies and 4,000 more misdemeanors. The crime was there to prosecute if DOL had the prosecutors.

Representative Ortiz returned to Attorney General Lindemuth's original statement regarding staying committed to the process. He asked if she had meant the process of criminal justice reform.

Attorney General Lindemuth responded that she had been speaking about the process of how additional changes to criminal justice laws were evaluated. She had not meant that there was something negative about criminal justice reform as implemented. She had not been the attorney general or part of the ACJC or when SB 91 had been developed. She had started in the position in August 2016, one month after SB 91 had gone into effect. She had been part of ACJC for the past 15 months, which had regular meetings at the commission and working group level evaluating everything that was happening with the criminal justice system. She elaborated that the commission had a special meeting almost every other week on different issues such as pretrial. The right people were at the table (including heads of agencies, staff on the ground working with the issues, courts) to have the discussion about what laws need to be changed or further considered prior to making recommendations to the legislature and/or where to put additional funding for reinvestment. She stated that it was a good process, which was good to keep in mind when responding to the public outcry for something to be done with crime.

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Representative Ortiz referenced Attorney General Lindemuth's testimony about going back to the commission before changes were made to SB 54. He believed she had expressed her support for the bill. He asked if her testimony pertained to the bill as passed by the Senate.

Attorney General Lindemuth replied that the commission's recommendation was slightly different from DOL's recommendation. The Senate had made some changes to strengthen a couple of issues DOL had identified. She reported that DOL was comfortable with the Senate's version of SB 54. An amendment had been made by the House Judiciary Committee that included scheduling the drugs Pink and Tramadol. She detailed it had come from pending legislation the previous session, which the administration and DOL supported. She believed it needed to happen at some point - the department would be happy to have the provision pass as part of SB 54.

Representative Ortiz asked if any changes made in the House Judiciary Committee were of concern.

Attorney General Lindemuth recommended bringing the changes to the commission for consideration the during the next regular legislative session. She had some small concerns about some of the changes and wanted further debate on some of the other changes prior to making a recommendation to the legislature.

Representative Ortiz referred to slide 6, which showed different areas in DOL where funding was used. He asked for further detail on statehood and revenue protection including how the funding was spent.

Attorney General Lindemuth answered that statehood and revenue protection included R.S. 2477 cases where the department was protecting state assets.

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Representative Grenn wanted to discuss feedback about public education on SB 91 and SB 54. He remarked the committee heard about misinformation during public testimony and in budget subcommittees. He continued it was

not only the public that may not know what SB 91 did, but also public safety stakeholders. He noted he was the one committee member who had not been in the legislature during the SB 91 debate. He detailed there had been much to catch up on and new information he had learned. He believed that when SB 91 passed the public had not known what the changes were - some large and some small. He believed regardless of a person's support or opposition to SB 91, there had been significant misinformation. He hoped that if SB 54 passed there would be coordination between departments and that there would be efforts to do a better job getting factual information to the public and those working in the criminal justice system. He asked the department to comment on the issue.

Attorney General Lindemuth replied that it was a very good point. Leading up to special session she had appeared on numerous radio shows as had Mr. Skidmore and Commissioner Monegan. She furthered that DOL was encouraging district attorneys to attend community meetings to be more engaged with the community regarding crime. She believed it was very important to stay engaged with the public and to be talking about the issues.

Co-Chair Seaton was interested in Attorney General Lindemuth's introductory comments and presentation showing that reductions to DOL had resulted in less prosecutions, meaning people were not going through the system and were probably committing repeat offenses. He referenced Attorney General Lindemuth's testimony correlating the opioid crisis with an increase in crime. He wondered if the department had further data on the subject. He asked about her mention of child protection cases. He asked if her statements about opioid abuse and child protection cases had been related. He asked Attorney General Lindemuth to repeat the information.

Attorney General Lindemuth responded that the deaths resulting from opioids and the increase in child protection cases was evidence that opioids were driving crime. Opioid deaths were only one snapshot about the number of users and how the issue was impacting Alaskans generally. She believed the increase in child protection cases in recent years was being driven by the opioid epidemic. She communicated that ACJC had included opioid deaths in its annual report (page 48).

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Co-Chair Seaton expressed concerns about looking at the seriousness of crimes, which would result in longer minimum mandatory sentences and prison beds being occupied for longer periods. He was concerned because savings for reinvestment were anticipated to be generated from a reduction in occupied prison beds. The idea was to use the funds to thwart recidivism, provide treatment, and help individuals to become productive members of society. He wondered how keeping individuals in prison for longer periods of time would impact the savings for reinvestment.

Attorney General Lindemuth responded that she could not quantify the information during the meeting. She thought there would still be savings overall, but not as significant as what had initially been hoped for (given the rise in crime in 2015 and 2016 and the seriousness of the types of crimes going through the system). Her understanding was at the time SB 91 passed about 41 percent of the criminal population was pretrial. She pointed to the new [Department of Corrections] Pretrial Division, the addition of 60 new officers, and the removal of bail restrictions that previously kept individuals in prison who could not afford bail. She believed the items would result in savings. She noted the pretrial component was scheduled to be running in January [2018]. She reiterated there would still be savings, but not as significant as hoped.

Co-Chair Seaton noted they were looking at allocating savings into more productive efforts in the criminal justice system. He asked how the reduction and anticipated savings would be reflected in the fiscal notes. He surmised they may be recommending further investment instead of quite so much reinvestment. He asked for detail.

Attorney General Lindemuth answered that DOL was not submitting a fiscal note for SB 54. The department did not anticipate being impacted by the bill. She believed others prepared to testify could speak to the anticipated impact on other departments.

Co-Chair Seaton remarked that in order to have a reinvestment strategy, the committee would need to know if proposed amendments would reduce savings. He appreciated testimony elucidating that an increase in prosecution of

violent crime meant longer jailtime, which may reduce savings. He wanted the Department of Corrections (DOC) and DPS to address the issue to understand the fiscal impact.

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Attorney General Lindemuth replied that there was discussion about giving some discretion back to judges for Class C felonies and recidivist theft. For example, the jailtime for Class C felonies would still be zero to 1 year. There were a number of felonies that would not see jail time. She expected to see courts reserving jailtime for more violent Class C felonies and crimes that could be better addressed with jailtime. The prosecutors had communicated it was difficult to incentivize people to take a treatment option over jailtime, because residential treatment was treated as incarceration for purposes of sentencing. By authorizing zero to 1-year sentencing, the department was hoping to put more people into treatment programs and to incentivize them with deals as an alternative to returning to a jail bed. There were many unknowns around how the situation would play out in terms of how many more people would be spending more time in prisons.

Representative Wilson asked for clarification. She asked if Attorney General Lindemuth was saying that SB 91 was about pretrial and making changes so individuals were not sitting in prison waiting for trial. She stated it had not been her understanding.

Attorney General Lindemuth replied in the negative. She clarified she had not been speaking about what SB 91 did generally. She explained she had been responding to Co-Chair Seaton's question about the department's expected cost savings. Her point had been that a significant portion of the population addressed by criminal justice reform was pretrial. There were many other components of SB 91 that had not been encapsulated in her answer to Co-Chair Seaton.

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Representative Wilson believed that SB 91 had been about reducing recidivism. She assumed that if SB 91 was successful, DOL would have fewer cases because there would be a reduction in crimes committed by repeat offenders.

Attorney General Lindemuth responded that in the long-term Representative Wilson was probably correct. Much of the current discussion was about first-time offenses. Many of the changes SB 54 was addressing pertained to how to handle a first-time offense. She did not know the percentage of repeat offenders currently under prosecution by DOL. She suspected that Representative Wilson's point was a significant number were repeat offenders. She explained that new opioid addiction may lead to more criminal behavior in the future. Overall, if recidivism declined, the DOL numbers should decline in the long-term as long as new offenders were not coming in for other societal reasons.

Representative Wilson observed that a reoffender rate of two out of three individuals was substantial. She referred to slide 4 showing positions lost in the Criminal Division. She noted the Criminal Division budget was \$27 million and the Civil Division budget was \$22 million. She was trying to determine how [Criminal Division] positions had dropped from 128 to 106 when the number of paralegals had remained the same (the decrease in staff was more substantial) and there were still 130 civil attorneys. She reasoned if there was a \$5 million difference between the Civil Division and Criminal Division budgets, there should not be such a drastic difference between the number of attorneys in each division. She was concerned that the subcommittee book data from the department showed an average 10 percent vacancy in the Criminal Division, meaning on any given day the division would have approximately 96 attorneys, not 106.

Attorney General Lindemuth explained that the numbers represented a snapshot in time. She believed the numbers on slide 4 were from March 2017. She clarified that the numbers fluctuated and reflected the number of filled positions at that time. She explained that [in addition to general funds] the Civil Division budget had an interagency receipt component. There were more civil attorneys than criminal because a number of the civil attorneys were funded by other departments. For example, in DOL's Environmental Section, there were a couple of attorneys that the Department of Environmental Conservation helped fund.

Representative Wilson asked whether the \$27 million for the Criminal Division and the \$22 million for the Civil Division figures excluded interagency receipts.

Attorney General Lindemuth replied in the affirmative. Slide 2 only included general funds.

Representative Wilson remarked that it was confusing to hear the department had less money for the Civil Division, but it had a higher number of attorneys. She reasoned that mathematically it did not add up.

Attorney General Lindemuth answered that the department had provided a longer presentation to its finance subcommittee. She had condensed the presentation to focus on the public safety component. She understood that the concept was confusing without showing the full picture of the department's budget.

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Representative Wilson referenced Attorney General Lindemuth's testimony that SB 54 had been brought forward by DOL and DPS. She asked if the department had determined methods to measure the success of the proposed changes.

Attorney General Lindemuth replied that measuring and accounting for changes would be addressed and reported on by ACJC. The commission had expressed concerns that the more changes made along the way (e.g. every 18 months) made things more difficult to track.

Representative Wilson referred to numbers provided to the legislature from the University of Alaska Anchorage Justice Center showing a relatively low increase in the murder rate, but a substantial increase in the rape rate from 2014 to 2106. Robbery had also increased, and assaults had increased slightly. She asked for verification it was necessary to understand the root cause of the increase. She referenced discussion of opioid abuse and a correlation with child protective services. She reported that she had asked OCS the question, but the office did not keep those kinds of statistics. She wondered how the state collected the data and how DOL looked at its cases and determined why they were increasing substantially. Many people blamed SB 91, but she observed the presentation showed numbers from 2013 and 2014 continuing to rise substantially. She

wondered if changes in SB 54 had any relevance to the increasing crime rates.

Attorney General Lindemuth responded there were multiple causes impacting criminal behavior. She believed the struggle with opioids had a significant impact. She spoke to correlating information from other departments into the numbers. She stated that economic stress could also impact the level of crime in a community. Given when SB 91 went into effect, she did not believe it was feasible to conclude that SB 91 increased or caused crime. The department had observed there were problems in the implementation - it had heard from law enforcement and prosecutors about issues needing to be addressed. They believed providing additional tools and discretion to courts in SB 54 would help bring the issues into alignment.

Attorney General Lindemuth clarified that her understanding of the evidence before the commission was that longer sentences were not superior to shorter sentences in addressing crime. Spending a significant amount of time in prisons could increase future recidivism due to mixing low level offenders with high level offenders. She did not believe there was any evidence showing no jail time was an appropriate consequence for Class C felonies. The change in jail time to zero to 1 years recommended by DOL was still consistent with the principles of the evidence presented to the commission (that had led to SB 91), while addressing some concerns of law enforcement, prosecutors, and the public.

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Representative Wilson was not certain the current system was helping recidivism or whether there was new crime resulting from other issues. She was uncertain there would be any money to reinvest. She wondered about taking time to revisit SB 91, the associated fiscal notes, and projected savings. She would prefer the statistics to be for 2017 instead of 2016, but she understood there was a time lag. She opined that going forward it was necessary to know whether any savings would be available to fund treatment programs. Additionally, she reasoned that if the new crimes were felonies with increased prison sentences, it would mean an increase in prison cost. She concluded that until the state understood exactly what it was trying to fight and what it was measuring, it would make it challenging to

determine whether SB 54 took care of the problems or issues with SB 91.

Mr. Skidmore provided an explanation for some of the numbers mentioned by Representative Wilson specific to sexual assaults. He referenced a document from the University of Alaska Anchorage Justice Center titled "Crimes Known to Police (Alaska)" (copy on file). He spoke to a spike in the number of sexual assaults from one recent year to another (slide 4). He detailed that the UCR was based on what the FBI requests. He elaborated that there had been a change to the definition of sexual assaults being reported (indicated on the chart in yellow). He clarified that the dramatic increase was not due to a higher incidence of sexual assaults, but due to the change in definition that was expanded to include crimes that had not been previously counted.

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Representative Wilson remarked that there was drop between 2012 and 2013, but she observed a fluctuation in the rate following. She wondered if there had been a change to the definition more than once.

Mr. Skidmore answered that the definition had only changed once (indicated on the chart in yellow beginning in 2013). He agreed there was a subsequent fluctuation in the numbers. His point had been to highlight the change in the UCR definition indicated in yellow.

Representative Wilson remarked that her document only showed black lines with yellow dots. She hoped to get some further clarification and remarked that the numbers were awful. She reasoned that a very bad sector of crime had increased she believed it was important to understand whether the system would help. She noted that the state had been battling sexual assault for a long time and the chart showed they were losing the battle.

Representative Guttenberg thought there had been a lot of misinformation from many areas of society in Alaska. He asked about statutory changes had been made in SB 91 to diminish the arrest authority of law enforcement. He asked what was being changed in SB 54 to make the state's ability to prosecute crime more effective.

Mr. Skidmore responded that SB 91 had gone through numerous changes before its passage. When first introduced, there had been provisions limiting arrest authority; however, the bill that had passed the legislature did not limit an officer's ability to arrest an individual. The bill had expanded an officer's ability to issue a citation. However, the system witnessed that for crimes without authorized jailtime (e.g. a first-time Class C felony). He elaborated that an officer would arrest an individual and courts would say they did not want to hold the person pretrial in custody because if they were ultimately convicted they would not receive jailtime; therefore, the person was released immediately. The impact had been officers questioning why they were arresting a person if they were merely going to be released; it had resulted in a reduced number of arrests for a variety of offenses.

Mr. Skidmore addressed Representative Guttenberg's question about how SB 54 would solve the problem. The bill did not provide officers with additional discretion to arrest because it was not needed, but for first-time Class C felonies it gave courts the discretion to give jail time, meaning that courts would consider the appropriate bail for a particular case. The bill provided a tool to help address one of the problems with implementation that had occurred.

Representative Guttenberg remarked on officers around the state telling people they were victims of SB 91. He believed it was an inaccurate and unfortunate statement. He stated that SB 54 came with recommendations from the commission and law enforcement; additionally, there were changes by the House Judiciary Committee. He wondered whether the state would be able to track the differences between the data driven changes versus some of the amendments made in the House Judiciary Committee that would impact the efficiencies of the law. He wanted to know the cost of the data driven changes versus others.

Attorney General Lindemuth answered that the commission had reported that the more times the law was changed, the harder it became to track. She believed the concern was valid. She thought the commission would do its best to track the items. Additionally, the University of Alaska Anchorage Justice Center was also helping. She reasoned that just because something was difficult to track did not mean it was something the state should not do. She believed

it was necessary to keep evaluating. She reminded the committee that when criminal justice reform had passed, the bill was so comprehensive, everyone had known it would not be perfect right out of the gate and that subsequent changes would be necessary. She continued that the commission was meant to be in place for a number of years to look at implementation and provide further recommendations on changes to the law.

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Representative Guttenberg remarked that the state was experiencing a crime spike, much of which was driven by the opioid crisis. He believed it may overshadow any prospective savings, but he thought the savings would be there and merely would not be seen due to the increase in crime resulting from drug abuse. He wondered if there was any way to overlay trends in Alaska with other states like Texas that had implemented criminal justice reform and had seen results. He knew it was early to be tracking at present.

Attorney General Lindemuth did not know the commission would be comparing Alaska to other states and looking at their trajectories. As far as the savings projected for Alaska, the number of prison beds not used to house inmates since the passage of SB 91 was on track with what had been anticipated. Much of the issues Representative Guttenberg had raised were addressed the commission's recent report.

Representative Guttenberg mentioned the creation of a prescription drug database in recent years. Part of the goal had been to increase awareness of the physicians who fell outside the norm of prescribing drugs. He asked if Attorney General Lindemuth had seen any referrals from medical boards concerning the issue. He wondered if DOL was involved in any part of the issue.

Attorney General Lindemuth understood that the number of the doctors had signed on had increased significantly - far over 50 percent of the doctors in Alaska were participating in the database (previously it had been far less). The department was anticipating it would be useful going forward - if doctors knew that a person was "doctor shopping" and getting pills from multiple prescribers, it would be reflected in the database. She referenced a DOL press conference from earlier in the day where she had

announced the department had filed a lawsuit against Purdue Pharma, the manufacturer of oxycontin. She furthered it was an 85-page report with detailed allegations against the company about false advertising that had been taking place for a number of years; the advertising had significantly impacted the use of pharmaceuticals in Alaska. She reported that Dr. Jay Butler, the state's chief medical officer, had told her that 80 percent of current heroin users had begun with prescription medication. The state was going to the source to fight the problem on the front end, so manufacturers knew they would not be making money on the backs of Alaskans who then became crippled by addiction.

Co-Chair Foster reminded members that the committee would hear two additional presentations that would be helpful in answering questions.

[2:35:21 PM](#)

Vice-Chair Gara thanked Attorney General Lindemuth for bringing a case against Purdue Pharma. He detailed The New Yorker had published an article in its current edition about the company's history of hiring physicians to deny that opioid addictions led to heroin addiction. He asked whether the attorney general thought there should be a fiscal note on the bill. He believed the longer a sentence the more likely the defense would choose to go to trial, but the shorter the sentence it was less likely. He asked if there was a correlation between the amount of work that may need to go into a case if a defendant was facing jailtime as opposed to less or no jailtime.

Mr. Skidmore disagreed. However, he would agree with the statements about the likelihood of going to trial if they pertained to sex crimes. He explained that sentences had been dramatically increased for sex crimes (the maximum sentence for a Class A or unclassified offenses had increased from 20 years to 99 years). He did not believe that more litigation would occur for cases impacted by SB 54 (Class C felonies) that could receive 18 months of probation versus one year in jail. He anticipated less litigation under the scenario. He did not believe there would be a dramatic change in the amount of litigation involved for low-level theft (theft under \$250). Additionally, he did not anticipate increased litigation for violation of conditions of release. He explained that when responding to crime, there was a need for labor and

the tools; SB 54 pertained to the tools, which would make the system work more efficiently and effectively. The bill would not cost DOL increased costs. He deferred to other departments to address any potential fiscal impact they may see.

Vice-Chair Gara acknowledged the number of hours put in by attorneys had an impact on their personal lives. He believed the individuals should be offered some help in that regard. He recalled testimony to the attorney general was that the department was not able to prosecute thefts at present. He detailed that under SB 91, first-time offenses with an aggravator could be prosecuted and jailed for up to five years, but first-time offenses with no aggravator essentially received probation. He furthered that under SB 54, sentencing with aggravators remained the same, but the courts could give jailtime from zero to 1 year for first-time offenses. He asked for verification that DOL would need additional attorneys if the department accepted more prosecutions.

Attorney General Lindemuth thought the items discussed by Vice-Chair Gara were two separate issues. She was not saying that the department was not prosecuting misdemeanors or theft cases. She clarified that DOL was prioritizing and spending more time on more serious cases. She confirmed that the department would prosecute more crime if it had additional prosecutors. However, making a change in SB 54 for a particular jailtime would not be a deciding factor in pushing for something additional.

Vice-Chair Gara understood the department was prioritizing, but he thought it meant some felony thefts were not prosecuted. He asked for the accuracy of his statement.

Attorney General Lindemuth agreed that some cases were not getting prosecuted that the department would otherwise prosecute if it had the available resources. She did not want to send the message that DOL was not prosecuting any property crime.

Mr. Skidmore reemphasized the attorney general's point. He detailed that DOL had filed over 14,000 misdemeanors in 2016, almost 2,000 were felony property offenses. He underscored that the department was prosecuting felony property offenses, but it could not prosecute all cases.

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Co-Chair Seaton discussed that a number of individuals had called to request the repeal of SB 91. He asked Attorney General Lindemuth whether repealing SB 91 would cost the state money.

Attorney General Lindemuth replied in the affirmative. She detailed that the current path for criminal justice reform was evidence-based and was supposed to reduce recidivism and save the state money. She believed there was evidence for the reforms the state had undertaken; the anticipated cost savings were still expected to be achieved. Additionally, the state had implemented numerous things that cost money. She highlighted the 60 pretrial officers set to begin in January [2018] as an example; the officers had already been hired. She believed it was a "good add." The state had spent the money on numerous things that it would not get back. She stated that the undertaking was a bit of an experiment, but one that was evidence-based and that had worked for other states. She recommended seeing the reform through and to continue evaluating its success and whether changes were necessary going forward.

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Representative Pruitt spoke about the department's 10-year lookback. He observed that the current budget was slightly higher, and the Criminal Division budget remained flat. He stated that in FY 08 the Criminal Division had 231 permanent full-time employees; it currently had 214. He reasoned that if the department had been tracking at inflation over the course of 10 years, why it had not done so with personnel and other items. He wondered what was driving costs higher than inflation. He was using inflation because the legislature often heard that if the budget did not meet inflation it reflected a cut. He asked for the reason DOL had fewer people and was still challenged, but its budget had stayed even with inflation.

Attorney General Lindemuth agreed there were fewer positions in 2008 based on the same dollars. She did not know what piece was tracking higher than inflation. She deferred to administrative services directors who would be available for questions the following day.

Representative Pruitt noted Attorney General Lindemuth had mentioned she expected to come to the legislature for additional funding if a fiscal plan was developed. He thought there may be a decrease or diminished need for increasing the department's budget if the catalyst behind maintaining SB 91 was to bring cost savings and lower crime.

Attorney General Lindemuth replied that there were numerous things going on. All things being equal, if the opioid and fiscal problems had not occurred, she agreed that the recidivism rate should decrease and the demand on the Criminal Division would flatten out. She suggested that perhaps that would occur in five or ten years, but she did not know. The spike in 2015 and 2016 in violent crime and a record number of homicides in Anchorage were not driven by criminal justice reform. The prosecutors were needed to prosecute those crimes and others. There were many things that contributed to the cause of crime and it was not all an SB 91 issue.

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Representative Pruitt thanked Attorney General Lindemuth for bringing the lawsuit that had been mentioned earlier. He was less concerned about the monetary aspect and more about a goal of reform within the [pharmaceutical] industry. He addressed Mr. Skidmore and referenced an earlier question related to the ability for police officers to make arrests. He believed there were a few things that may have changed. For example, driving with a suspended license had changed to a citation. He had heard from officers that the change limited their ability to pursue a person (who they may want to ask more questions or dig deeper) because they were only able to give a ticket instead of taking it a bit further.

Mr. Skidmore clarified that his earlier answer had been in response to a question about an officer's authority under the law when a crime occurred and their ability to arrest. What Representative Pruitt was describing was a slightly different scenario where conduct that had formerly been criminal was decriminalized to a violation. He agreed that it would change an officer's ability to affect an arrest.

Representative Pruitt appreciated Mr. Skidmore's clarification.

Co-Chair Foster reviewed the presentation testifier list.

^PRESENTATION: CRIMES KNOWN TO POLICE (ALASKA): STATEWIDE RATES, BY MONTH: 2014-2016 - UAA JUSTICE CENTER

[2:53:58 PM](#)

BRAD MYRSTOL PHD, ASSOCIATE PROFESSOR AND INTERIM DIRECTOR, UAA JUSTICE CENTER (via teleconference), introduced the PowerPoint presentation titled "Crimes Known to Police (Alaska); Statewide Rates, by Month: 2014-2016" (copy on file). The first part of the presentation addressed annual crime rates for Alaska from 1985 to 2016, which provided a big picture historical perspective for the three-year period focused on by the presentation. The second part of the presentation focused on monthly crime rates for Alaska for the same seven crime categories presented in the first part of the presentation. He read from prepared remarks:

Presenting monthly crime rates provides the opportunity to zoom in on annual crime rates and see important patterns and variations that are masked when crime counts are aggregated for an entire year.

Dr. Myrstol advanced to slide 3 titled "Property Crime Rates (Alaska): Crimes Known to Police: 1985-2016" and continued to read from a statement:

Slide 3 shows the annual crime rates for three offense categories: larceny theft, burglary, and motor vehicle theft. Before diving into the trends let me orient you to the graph. On the left side of the graph you will see the vertical axis that shows the annual rate measured of the number of crimes known to police per 100,000 population. Data for the number of crimes were obtained from the Department of Public Safety's annual crime in Alaska reports. The population data used to compute the per capita rates for each crime were obtained from the population data compelled by the Department of Labor and Workforce Development.

On the bottom of the graph you will see the horizontal axis. This axis shows the year, beginning with 1985 in the lower left corner and extending through 2016 in the lower right corner. Larceny theft is represented by a dash/dot line. The larceny theft rate peaked in

1986 at 3,672 per 100,000 population. The data reveals a consistent near-linear downward trend in larceny theft rates since 1991 with occasional year-to-year fluctuations.

Burglary is represented by a dashed line. The burglary rate peaked in 1985 at 1,121 per 100,000 population. Once again, we see a steady decline in the statewide burglary rate through the period.

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Dr. Myrstol continued to address slide 3:

Finally, motor vehicle theft is depicted by the solid black line. The motor vehicle theft rate also peaked in 1985 at 566 per 100,000 population and again we see a consistent decline in the motor vehicle theft rate between 1985 and 2016.

The data shows that Alaska has experienced a long period of decline for these three categories of property crime: larceny theft, burglary, and motor vehicle theft. However, all three also show upticks in recent years. The rate of larceny theft has increased 16.8 percent since 2011. The burglary rate has increased almost 39 percent in 2011 as well. And last, but certainly not least, the rate of motor vehicle theft has more than doubled, increasing by 116 percent in 2011.

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Dr. Myrstol turned to slide 4: "Violent Crime Rates (Alaska): Crimes Known to Police: 1985-2016." He continued to read from prepared remarks:

Slide 4 shows the annual crime rates for four offense categories: murder and nonnegligent homicide, robbery, forcible rape, and assault. This graph is a bit noisier than the previous slide depicting property crime, so let me walk you through what is depicted in the graph. You'll notice first that there are two vertical axes rather than just one. The reason for the second vertical axis in blue is that the scale for assaults is so dramatically different from those from murder, robbery, and forcible rape. In order to

present them on the same graph and be able to reasonably observe variability, the assault rate needed to be presented on a separate axis.

The assault rate depicted in the graph ranges from zero in the bottom right hand corner to 2,000 per 100,000 population. In contrast, the rates for murder, robbery, and forcible rape range from zero in the bottom left corner to 150 per 100,000 population. You'll also notice some color changes in the forcible rape trend line. There is gray from 1985 through 2012 and black from 2013 through 2016. This color change is intended to highlight a change in the definition of forcible rape made by the FBI for the purposes of uniform crime reporting.

In 2016 the FBI expanded the definition of forcible rape to include both female and male victims and to reflect the various forms of sexual penetration understood to be rape, especially nonconsenting acts of sodomy and sexual assaults with objects. In addition to changing the color of the line, I've also changed the color of the line markers from black to yellow for each of the four years for which the new UCR definition applied.

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Dr. Myrstol continued to address slide 4 with prepared remarks:

Beginning with assaults, you can see that there was a dramatic increase in Alaska's assault rate beginning in 1987 and peaking in 1995 with 1,938 per 100,000 population. Since 1996, the assault rate has been consistently hovering around 1,740 per 100,000 population give or take. However, after dropping to 1,561 per 100,000 in 2013, Alaska's assault rate has increased 17.5 percent.

The pattern for robbery is notably different than that for assaults. Whereas, the assault rate increased through the mid-1990s and then remained at a new higher level, the robbery rate dropped precipitously after peaking in 1994 at 143 per 100,000 population. By 1998, the robbery rate had dropped back down to 76.5. By 2004, the robbery rate was down to 65.3 per

100,000, a level that had not been seen since 1989. Since 2004, Alaska's robbery rate has increased 75.5 percent with a rate of 114 per 100,000 in 2016.

With respect to the forcible rape rate, this rate too peaked in the 1990s. In 1992, Alaska's forcible rape rate was 96.5 per 100,000. By 1997, the rate had declined to 61.5. As recently as 2011, Alaska's forcible rape rate was 60 per 100,000 population. In 2012, the last year under the legacy UCR definition of forcible rape, Alaska's rate stood at 79.2 per 100,000. Due to the change in the definition of forcible rape, direct comparisons should not be made between the 2013, 2014, 2015, and 2016 rates on the one hand and the rest of the time series on the other. Only those years with the same UCR definition should be compared. Since 2014, the rate of forcible rapes known to police have increased 36.7 percent.

Finally, while it is difficult to see on the graph because of the relatively low prevalence of murder and non-negligent homicide, in general Alaska's homicide rate has been stable between 1985 and 2016. The highest rate in the time series came in 1985 at 9.6 per 100,000 population. The lowest rate was in 2009 at 3 per 100,000 population. Since 2009, Alaska's murder and nonnegligent homicide rate has more than doubled, increasing from 3 per 100,000 to 7 per 100,000 in 2016.

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Dr. Myrstol scrolled to slide 5 titled "Zooming in: Monthly Crime Rates 2014-2016." He read from prepared remarks:

So, with the big picture in mind we'll now turn to the presentation of monthly crime rates for the period 2014 through 2016. As I mentioned before, examining crime rates on a monthly, as opposed to an annual basis, allows us to see important patterns in the data that would otherwise be masked when the data are rolled up into annualized rates.

We'll begin with Alaska's monthly larceny theft rate beginning in January 2014 and extending through December 2016.

Dr. Myrstol moved to slide 6: "Larceny Thefts (Alaska): Larceny Theft Rate, by Month: 2014-2016." He continued addressing prepared remarks:

You'll notice first that the vertical axis scale is much smaller than what was used when the annual data were presented. This is because the annual data represent the sum total of every month for a given year. Thus, the monthly rate data are of a much smaller magnitude than the annual data. Two other things to note in this graph that distinguishes it from the annual data that were presented earlier. First, you'll notice a vertical green line located at July 2016. This is a visual reference to when SB 91 was signed into law. When this presentation was first developed I was asked to present monthly crime data in order to see how crime rates changed immediately after the law went into effect. For purposes of consistency I retained that visual reference in today's presentation.

You'll also notice a smooth red dotted line in the graph. This represents a best-fit trend line for the data in the time series. It's presented here to provide you with a sense of the overall trend, absent the month-to-month fluctuations in the data.

On to the trend itself. What you'll notice first are three distinct humps in the time series. This pattern in the data is what you might call a textbook example of what we refer to as seasonality. That is the data, clearly show upward and downward fluctuations at regular, cyclical intervals. These cyclical fluctuations correspond to roughly the same months each year. In other words, the fluctuations in larceny theft rates follow a cyclical pattern according to season.

In each of the three years shown, there are peaks in late summer, early fall and valleys during late fall, early winter. Understanding seasonality is important for a number of reasons. Not the least of which is that if seasonality is not understood, improper conclusions can be reached. As you can see, the larceny theft rate declined marginally in the six months immediately following SB 91 becoming law. However, as I explained when I presented this data

previously, it would be incorrect to conclude that such a decline was attributable to SB 91 becoming law. While the data clearly show decline, the decline is fully expected given the seasonal pattern in the data.

A second pattern in the data, which is much more difficult to see at first glance, is what you refer to as trend. When we say there is trend in the data, what we mean is that there is a long-term increase or a long-term decrease. In this case there was upward trend in the three-year period shown in the graph. This overall trend is what was shown in the annual data for larceny theft back on slide 3. So, what we have in this time series are two components that need to be taken into account: seasonality and trend.

3:05:52 PM

Dr. Myrstol explained slide 7 titled "Shoplifting (Alaska): Shoplifting Rate, by Month: 2014-2016":

This slide shows the monthly rate for shoplifting, which is a subcategory of larceny theft. There is no seasonality in this time series, but there is a discernable trend downward.

Dr. Myrstol pointed to slide 8: "Burglaries (Alaska): Burglary Rate, by Month: 2014-2016." He read from remarks:

Slide 8 presents the monthly rate for burglary between January 2014 and December 2016. Once again, we see both seasonality and trend in these data, much like what we saw with the larceny theft time series, just not nearly as smooth. The trend in these 36 months of data is upward, once again as was previously reflected in slide 3.

Dr. Myrstol advanced to slide 9: "MV Thefts (Alaska): MV Theft Rate, by Month: 2014-2016." He continued to read from a statement:

Slide 9 shows the monthly rate of motor vehicle thefts for Alaska. There is little in these data to suggest seasonality and can clearly see pronounced upward trend, particularly since the early spring in 2015. The month-to-month increases in these data beginning in early spring 2015 are quite striking.

Dr. Myrstol detailed slide 10: "Homicide (Alaska): Homicide Rate, by Month: 2014-2016." He read prepared remarks:

Slide 10 shows the murder nonnegligent homicide rate from January 2014 through December 2016. While there is wide variability in these data, something that is common with such low base rate phenomena, there is no discernable seasonality or trend in these data. You can see a very modest aggregate increase during the period, but not an increase of statistical significance.

[3:07:44 PM](#)

Dr. Myrstol continued to slide 11: "Forcible Rape (Alaska): Forcible Rape Rate, by Month: 2014-2016." He read from prepared remarks:

Slide 11 presents Alaska's forcible rape rate for the three-year period. I would note here that this three-year period is the new definition under the FBI's UCR program. There's a hint of seasonal pattern of the data, but not much of one. There is discernable trend in the data however. Since 2014, Alaska's forcible rape rate has certainly increased.

Dr. Myrstol discussed slide 12 "Robbery (Alaska): Robbery Rate, by Month: 2014-2016" with prepared remarks:

Slide 12 presents Alaska's robbery rate for the period spanning January 2014 and December 2016. These data do not show evidence of seasonality, but there is clear trend present. There's been a notable increase in the monthly robbery rate. This increase was reflected back in slide 4.

Dr. Myrstol moved to slide 13 "Assault (Alaska): Assault Rate, by Month: 2014-2016" and read prepared remarks:

Finally, slide 13 shows Alaska's assault rate month-by-month for the three-year period spanning 2014 through 2106. These data show both seasonality and upward trend.

Dr. Myrstol advanced to slide 14 "All Crime Rates (Alaska): Crime Rates, by Month: 2014-2016" and continued to read:

This slide presents all of the monthly crime data together in one chart. Two big takeaways from this slide: one, property crime rates are driven primarily, though not exclusively, by larceny theft; and two, violent crime rates are driven primarily, though not exclusively, by assault.

While I presented both annual and monthly crime rate data to you today, it is important to note that all of the data have been statewide estimates. Statewide crime rates do not necessarily reflect what is happening in particular communities, just as annual crime rates mask important monthly variation in crime rates, statewide rates also mask important community variation.

[3:10:07 PM](#)

Dr. Myrstol read remarks pertaining to slide 15: "Summary: July 2016 - December 2016":

The last two slides are summary tables showing the percentage change between two specific months of each crime category. The table on slide 15 shows the difference in the monthly crime rate as recorded in July 2016 and December 2016. This difference represents change in the monthly crime rates during the immediate post-SB 91 period. The table on the next slide presents a different percentage change.

Dr. Myrstol moved to slide 16: "Summary: January 2014 - December 2016." He read from prepared testimony:

Slide 16 shows the percentage change between the first month in the time series (January 2014) and the last month in the time series (December 2016). You'll notice a dramatic change in the color and direction of the percentage change arrows for five of the crime categories presented. The difference in these slides demonstrates the importance of taking account of both seasonality and trend in the data. If you use too short of a time period to calculate a percentage change, you could reach faulty conclusions. As a general rule, more data is better, and this is particularly true for examining crime trends. Crime is cyclical, crime is seasonal; month-to-month and year-to-year fluctuations are both normal and expected. In

order to reach firm conclusions, we should take as long a view as possible whether examining monthly crime rates or annual crime rates.

Dr. Myrstol concluded his testimony and thanked the committee for its time.

Co-Chair Foster reviewed other testifiers available online.

[3:12:34 PM](#)

Representative Grenn thanked Dr. Myrstol for his presentation. He noted that several weeks earlier Dr. Myrstol had given a presentation to a subcommittee that was much more focused on several urban communities. He believed the data had showed that petty theft and car thefts were up in Anchorage. He continued that the data [in the current presentation] was not reflecting that, but his neighbors felt differently. He thought people had a difficulty accepting the data whole heartedly because crimes were not reported for various reasons. He wondered if it was possible to know what percentage of crimes went unreported. He asked how confident Dr. Myrstol was that the data provided an accurate reflection of what was happening in the communities.

Dr. Myrstol had a tremendous amount of confidence in the data; however, it was important to understand the limitations of the data. For the reasons articulated by Representative Grenn, there were limits to administrative data pertaining to how much crime was occurring in the community. He stated that most crime was not reported and varied significantly from one crime category to another. He stated it was about half-and-half in terms of the volume reported to police. However, the way the UCR program was set up, there was high confidence in the year-to-year data submitted. The gap between how much crime occurred and how much was reported to police was consistent from year-to-year; therefore, statistically it went to zero. One of the tremendous benefits of the UCR data was the uniform collection process from year-to-year in each jurisdiction; it aided in the development of time series. Unless there was reason to believe a significant structural shift had occurred in the reasons people were not reporting, it was possible to look at trends and understand whether or not crime was increasing or decreasing over the long-term (even

if they did not know precisely how much crime was taking place).

Representative Grenn asked for verification that unless SB 91 significantly altered the number of crimes people were reporting, Dr. Myrstol was confident it was possible to compare 1995 to 2005 to 2015 because the data collection remained the same.

Dr. Myrstol answered in the affirmative. Unless there was a good reason to believe that people were suddenly not reporting at all at a magnitude that would impact crime rates - he reminded the committee they were talking about population level metrics - it would take a large segment of the population previously reporting, to not be reporting now. He furthered it was plausible, but it would be a monumental shift.

[3:17:36 PM](#)

Representative Kawasaki had a similar question about sexual assault because it was broadly known as being an underreported crime. He asked for detail.

Dr. Myrstol replied that in general, violent crimes were reported more often than property crimes. He noted there was important variability within each of those broad categorizations. Sexual assaults were notoriously underreported for a host of complicated reasons. He detailed that only one in four or one in three sexual assaults and rapes were reported to police. While there was some variability in year-to-year reporting rates, there was research showing it was pretty consistent over time. The reporting rates were not known in Alaska because there was not a statewide victimization survey. He explained that victimization surveys measured the difference between how much was happening to people and how much was reported to police. The statistics he cited regarding the number of sexual assaults and rapes reported was based on national data.

Dr. Myrstol continued that there was not great data on shoplifting. The best estimates he had seen showed that about 90 percent of shoplifting incidents were not reported. The percentage appeared to be consistent over time. There were a host of complicated reasons why businesses may not report shoplifting. He detailed that

businesses may absorb the loss, it may be part of their business model, they may not want to go through the hassle of reporting for small dollar items, and other. On the other hand, motor vehicle thefts tended to get reported at very high rates. There was high incentive and motivation for people to report those sorts of thefts. The estimate was between 70 and 80 percent of motor vehicle thefts were reported to police. He emphasized that in general across all categories, the nonreporting rates were consistent over time.

Representative Kawasaki referenced Dr. Myrstol's testimony that systematic shifts could take place. He relayed that Fairbanks had fewer deputized officers than it had four or five years earlier. He believed they were down 10 percent. He noted that DPS mentioned they were 40 troopers down. He wondered about the impact on reporting.

Dr. Myrstol answered that he could only speculate on how the number of police officers would impact reporting rates, which may be different than things like response time. To the extent that people did not report because they felt a disconnection or apathy with the police department. Adding more police officers may do nothing to increase reporting rates; however, adding more officers may help the department capture unfound crimes reported to dispatch. It was a complicated mix in terms of the motivation to report, the relationship residents had with their local police agency, and the ability for the agency to accurately and adequately capture reported crimes that ultimately went into the UCR data.

Representative Kawasaki spoke of a personal experience in which he had a trailer was stolen. He shared that he had not reported the crime because he felt like police had a lot to do and it had not been a very important thing to him. He did not know if other people were thinking the same thing. He supported the state's law enforcement and knew they were struggling, which was one reason had had not yet reported the theft. He noted he would report it.

[3:23:11 PM](#)

Vice-Chair Gara asked if Dr. Myrstol was familiar with the substantial increases in jailtime the state had adopted in the mid-2000s for rape and other sex crimes.

Dr. Myrstol responded that he had a general familiarity with the sentencing structure that was changed in the mid-2000s, but he did not claim any statutory authority in that regard.

Vice-Chair Gara reasoned that people were sent to jail for violent crimes for reasons other than reversing the trend in crime (e.g. community condemnation, punishment to fit the crime, and other). He furthered that even with the statutes that increase jailtime for those serious crimes, the increase in the rape rate since 2010 was disturbing. He asked if Dr. Myrstol had any information to help the committee understand why.

Dr. Myrstol answered there were two data sources with respect to the prevalence of sexual violence and forcible rape as measured through the UCR. He shared that his colleague Dr. Andre Rosay was the principal investigator for the Alaska Victimization Survey (AVS) in partnership with the Council on Domestic Violence and Sexual Assault (CDVSA) - they had conducted statewide surveys in 2010 and 2015. It was one of the victimization surveys that Alaska had, which was state of the art. The most recent data from the survey showed that victimization rates had improved since the first iteration of the AVS in 2010 for past year and lifetime prevalence of sexual violence. On the other hand, the police data showed the inverse. One likely explanation was that police data captured a phenomenon of increased willingness for victims to come forward and seek assistance through the criminal justice system. Given recent very intense work by the state in that area of public policy, he believed it was a reasonable hypothesis that the state did not have the data to specify it was the reason for a decline in victimization rates and an increase in the number of reports being made to police.

Vice-Chair Gara referenced the black line showing an increase in the rape rate (slide 4) and understood the increase also had something to do with the federal definition change. He asked if the line would be increasing if the definition had not changed.

Dr. Myrstol responded that it was hard to know how the change in definition impacted the overall pattern in the data. He pointed to the gray line on slide 4, which showed a relative period of stability through the 1990s and early 2000s with a slight uptick in the early 2000s. The change

in the federal definition resulted in a structural jump in the line, which turned to black and included yellow markers. The challenge was there was not a lengthy time series when it came to forcible rape under the new definition. The monthly data presented on slide 11 helped breakdown the information a bit with 36 data points over the three-year period. They were beginning to understand the overall trend under the new definition, but it was difficult to reach firm conclusions with only four years of data.

[3:28:19 PM](#)

Representative Grenn mentioned the opioid epidemic and asked if the UAA Justice Center tracked drug arrests in recent years.

Dr. Myrstol responded that DPS published annual arrest data in its Crime Alaska report. The center had some ability to get some analytic leverage on that, but it did not have a standing research program focusing specifically on the topic. However, it could compile a dataset and provide detail on drug related offenses.

Representative Grenn replied that he would appreciate the information.

Representative Pruitt remarked that legislators were hearing a significant amount about nonviolent offenses. He reported that business owners were seeing an increase in shoplifting. He understood it may be challenging for the center to gather the information if it was not reported to police. He asked if the center had the means to connect with retail organizations to find out if they had seen an increase or change in shoplifting, employee theft, or other loss. He stated that huge spikes [in crime] were usually analyzed by those organizations to understand the cause.

Dr. Myrstol answered that in theory if the center had access to data it could analyze it. He had never undertaken an original data collection asking private businesses for their loss prevention shrink data. It would be something new for the center, but it was open to the idea.

Representative Pruitt had heard scenarios where people were openly stealing liquor from liquor stores. He believed there may be an impact that may show in business

financials. He wondered if the information would help determine if businesses were noticing theft more because people were being bolder or if crime had increased. He appreciated Dr. Myrstol's testimony.

Co-Chair Foster noted there was one additional presentation and was willing to continue through the scheduled time.

^PRESENTATION: ALCOHOL SAFETY ACTION PROGRAM

3:33:39 PM

TONY PIPER, MANAGER, ALCOHOL SAFETY ACTION PROGRAM, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), introduced the PowerPoint Presentation: "Alcohol Safety Action Program (ASAP)." The goal of the presentation was to provide an understanding of what ASAP did and how the changes in SB 91 and proposed changes in SB 54 impacted the program. He began on slide 2 titled "Changes with SB91." He detailed that SB 91 had made two major changes for the ASAP office. First, it had narrowed the offenses to be referred to ASAP to include only OUI [operating under the influence] and DUI [driving under the influence] and refusals or those offenses referred by the Division of Motor Vehicles (DMV) for violating laws pertaining to a driver's license action due to alcohol or a controlled substance. He furthered that the change eliminated many other referrals such as domestic violence with alcohol, disturbing the peace, and other misdemeanor crimes accompanied by alcohol or other controlled substances. Second, SB 91 required ASAP to provide a risk assessment or screening in order to determine a person's risk of reoffending and to provide more intensive monitoring of high-risk individuals.

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Mr. Piper turned to slide 3: "Proposed changes with SB54." The proposed changes in SB 54 would change the requirements for referrals and open up those referrals to offenses outside of OUIs and DUIs. The change would mean that misdemeanors (including domestic violence) involving alcohol or controlled substances could be referred to ASAP. The change would increase referrals to ASAP and it would require the program to maintain the same scope of work designated by SB 91 involving increased screening and monitoring of higher risk people.

Mr. Piper moved to slide 4: "Cases BEING MONITORED." He detailed that in FY 15 there had been 7,286 new admissions and 1,618 remaining cases related to individuals who had not completed their ASAP requirements in the year they had been admitted. He furthered that the cases not completed in the year admitted may take one, two, or more years due to longer treatment requirements, taking a break in fulfilling requirements, or acquiring additional charges. The total amount of cases monitored were 8,904 [pre-SB 91]. The new admissions had decreased some in FY 16, but the remaining cases were relatively high adding up to a total of approximately 8,000 or so cases continuing to be monitored pre-SB 91. New admissions had decreased by approximately 2,200 or so in FY 17, post-SB 91, but it required ASAP staff to provide more intensive scope of work for higher risk people.

[3:39:11 PM](#)

Mr. Piper advanced to slide 5: "How ASAP works." He explained that many people who came in contact with ASAP were overwhelmed by the experience of being arrested. The program's initial job was to inform individuals about what the program did, how they could get court requirements met, how the process could work for them, and how they could get their driver's license back or other things that could help motivate them to finish the program. The ASAP goal was for participants to benefit from the experience and not come back. He furthered that program staff helped participants fill out releases of information and gave them privacy notices. The releases allowed staff to speak with a participant's attorney, the treatment agency, family services, and other people who may be involved in the case. Staff also reviewed a participant's rights and responsibilities with them in terms of making it through the program.

Mr. Piper moved to slide 6: "Information Gathering/Screening/Assessments." The program's next step was to gather all the information about a person they could including a person's criminal history, treatment history, details about prior ASAP cases, and blood alcohol content (if known). The program used a substance use screening tool and following changes in SB 91, ASAP also used a risk/needs screening tool for each client.

Mr. Piper addressed slide 7: "Choosing an Treatment Agency & ASAP Referral." The next steps involved determining the best fit for a client, what their needs were, the amount of required monitoring, and all other available options to enable a person to successfully complete the program. The screening tool used was a level of service inventory (LSI-r); the tool was also used by therapeutic courts and DOC for inmates. The tool provided a good measurement of the person's risk of reoffending and gave direction for treatment recommendations because it looked at several domains that may affect a person's life.

[3:41:57 PM](#)

Mr. Piper looked at slide 8: "Monitoring Higher Risk (NEW WITH SB91)." He continued that once the program determined the best fit for an individual in terms of location, cost, treatment philosophy, some people went to education and some it was about convenience for people (some individuals lost their driver's license and had use bus transportation), some people were available for services at the Veterans Administration (VA), or other options.

Mr. Piper relayed that after the assessment process, staff identified the lowest risk individuals who would successfully complete the program with minimal assistance from the program. Once the individuals completed the program, ASAP notified the court and individuals could follow up with any remaining action such as contacting DMV. The medium risk individuals (those with other stressors in their lives or needed more help getting through the program) received moderate monitoring. For example, ASAP may check with an agency to ensure an individual had followed through with an appointment. The higher risk individuals required most of the resources and caused most of the problems in the system; therefore, they were monitored as closely as possible. Program staff reminded the individuals of appointments and followed up with them afterwards to ensure they attended. The program also helped with referrals related to primary care issues or other things to help individuals be successful in the program.

[3:45:00 PM](#)

Mr. Piper moved to slide 9: "Levels of Treatment." There were different treatment options - many people with little risk could get away with doing an alcohol drug information

school (ADIS), a standardized program that followed best practices; ASAP made sure providers were trained on a regular basis and had continuing education every couple of years. Other treatment options were outpatient, intensive outpatient, and residential/inpatient - whatever the court would allow for individuals needing care. Other items considered in assessments were signs of behavioral health issues and the need for mental health treatment or a therapist. There was a victim impact panel (VIP) for individuals involved in traffic related incidents (the panel occurred once per month). There was also an option for a second opinion valuation for individuals who wanted it.

Mr. Piper addressed slide 10: "Agency Reports." The program gave a letter of compliance to first-time offenders, which the individual could send to DMV to start the process of getting an interlocking device for their vehicle as long as they maintained their treatment requirements. When individuals complete the program, ASAP sent a letter to DMV and notified the court. There was a list of other options that may occur when individuals were not in compliance:

- Petition to Revoke (PTR)
- Bench Warrant (BW)
- Reassignment to ASAP (\$)
- Fast Track (more court oversight)
- Hearings
- Impose Suspended Fine/Time

Mr. Piper moved to slide 11: "DMV Sign Off." First offenses could be in compliance and may just require education. Individuals with a second offense or with a higher blood alcohol concentration may need to see a treatment specialist or someone to assess their use in case a more intensive level of treatment was needed. When individuals finish with ASAP they always had access to program staff for questions. The program had grantee offices throughout the state with a primary office in Anchorage.

Mr. Piper highlighted the ASAP FY 16 and FY 17 budgets on slide 12. The program housed 13 permanent full-time positions. He pointed to a small grant line that went out to providers around the state. There had been some shifting in funding, but it remained stable at present.

3:49:58 PM

Co-Chair Foster relayed that the committee would be looking at Appendix F and fiscal notes the following day.

Representative Wilson pointed to slide 4 and began with FY 15. She noted that 6,675 people was the difference between the number of people in the program at the beginning. She asked how many of the individuals successfully completed the program. She asked what success meant.

Mr. Piper answered that he would follow up with the numbers. A good portion of participants did not return to the program. Successful completion of the program meant that a person fulfilled all needs determined after their assessment (e.g. treatment or an educational program). Individuals may have problems along the way, but once a person graduated from the programs they had completed the ASAP and court requirements.

Representative Wilson asked if the individuals were tracked after completing the program. Mr. Piper answered in the negative. He noted tracking may be something ASAP did in the future.

Representative Wilson asked if a person who had been through the program and reoffended had an opportunity to come back to the program.

Mr. Piper answered that individuals could return to the program as many times as they wanted. However, at some point an offense may rise to the felony level and would involve a direction other than the misdemeanor ASAP office.

Representative Wilson asked how many individuals had been in the program more than once. Mr. Piper replied that he had asked staff to compile the numbers and he would follow up with the information.

Representative Wilson believed the information would be helpful.

3:53:29 PM

Co-Chair Seaton shared that he had followed the House Judiciary Committee meetings [on the bill] where there had been testimony the ASAP budget was fully utilized on the participants it had. He referenced an adopted amendment that maintained criteria for the program to provide more case management services and more follow up, which he believed (based on testimony) was what made the program most effective. He thought there were potentially 3,000 more participants per year. He asked if the program had the budgetary resources to follow the additional individuals. He wondered if the program would need additional staff or resources.

Mr. Piper answered that the plan was to develop the regulations required of the program; through the regulations, ASAP was hoping to modify the workload, so it would be manageable for staff to do what was required without additional resources. However, whether additional resources would be needed was not yet known because the expanded caseload was new. The program was aiming for more efficiencies, such as a group orientation versus the prior individual orientation. The program was also looking at computerized screening to cut down on some of the manpower. They did not want to over or under monitor people. Once efficiencies had been made the program would determine whether it needed to ask for more funding later.

[3:56:02 PM](#)

Co-Chair Seaton asked when the regulations would be written and adopted.

Mr. Piper answered that ASAP was currently writing the regulations. They were trying to gather more information about what the changes looked like for the program prior to implementing regulation. Some of the processes, such as group orientation, were already in place. The program was also looking at potential changes to the screening process and increasing other efficiencies.

Co-Chair Seaton asked how long the regulatory process would take.

Mr. Piper deferred the question to a colleague.

RANDALL BURNS, DIRECTOR, DIVISION OF BEHAVIORAL HEALTH, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, replied that ASAP

would go through the normal process. Once regulations were drafted they would go out for public comment prior to adoption. The process would occur over the next six months. He believed they would have adequate time to get the regulations in place if the House passed SB 54 with the new language.

[3:58:36 PM](#)

Co-Chair Seaton asked the department to follow up on whether a delayed effective date was needed for the expansion.

Representative Guttenberg asked for verification that ASAP assessed and monitored individuals coming into the program, but it was not a treatment provider.

Mr. Piper answered in the affirmative. He detailed the program did the monitoring, screening, assessment, and referral for treatment agencies.

Representative Guttenberg referenced recent public testimony in Juneau regarding treatment. He noted the speakers had been successful with treatment, but success had not happened for them on their first time. He believed there were a broad spectrum of successful and unsuccessful programs. He asked if ASAP measured the programs to determine their success. He believed it was a critical component.

Mr. Piper deferred the question to Mr. Burns.

Mr. Burns answered that ASAP was not conducting regular monitoring of the treatment programs it referred participants to. The programs filed reports in order for ASAP to monitor performance of the individuals.

Mr. Piper added that many of the programs were private and they were all required to be nationally accredited; therefore, they were required to follow certain national standards. He furthered that ASAP investigated complaints made by individuals, but it did not monitor the success rates of programs. He did not know whether it was something ASAP could do.

Representative Guttenberg did not understand the concept of the state was putting people into programs without

assessing their success rates. He reasoned that some people did well in one program and not in another. He furthered that ASAP was assessing individuals and assigning them to private and nonprofit treatment. He could not imagine that ASAP was not evaluating programs it referred individuals to. He found the situation problematic.

4:03:59 PM

Mr. Burns clarified that ASAP made an effort and paid attention when individuals had been unsuccessful in a program. The probation officer was aware of the information and the officer could and did make referrals to other programs that may be more appropriate. He did not know that ASAP was tracking on a daily or quarterly basis how many individuals were successful in a program on a case by case basis; however, ASAP was certainly aware of programs where an individual was not succeeding, and it did make referrals to other programs. Success in a program was individualized; if an individual was not ready for substance abuse treatment, they were probably not ready and may have to return later.

Representative Guttenberg asked if ASAP had the ability to stop referrals to an agency. Mr. Burns answered in the affirmative.

Representative Guttenberg asked how ASAP established conditions to justify its decision to discontinue referring participants to a specific program.

Mr. Burns answered that when ASAP placed conditions on grants issued; if the conditions were not met, ASAP program managers worked with grantees to determine why and to hopefully help them make adjustments. He clarified that ASAP did not rely only on a program's accreditation; it followed up on complaints to ensure the program was operating as it requested.

4:07:08 PM

Representative Tilton observed that ASAP's second largest budget item was the grants and benefits line. She asked how many grants were administered by the program. She asked whether there were different varieties of treatment throughout the state. She stressed that treatment was one of the number one items the committee heard about from the

public in terms of importance. She believed having a monitoring program tracking individual grantees was very important. She suggested talking with the Department of Health and Social Services (DHSS) - in the past DHSS had trouble following outcomes of grantees and it had come up with a solution.

Mr. Piper answered that the program had 12 grantees around the state including small communities such as Bethel, Copper River, and Dillingham. He explained that the grantees acted as an ASAP office in those areas. The grants were sometimes very small and were all supported by the Anchorage ASAP office. He detailed that ASAP provided the training and access to the MIS [Management Information System] database. Additionally, ASAP was available at any time to help grantees through the process. There were also ASAP offices in larger communities such as Fairbanks, Juneau, Kenai, and Ketchikan, which were typically able to do most of the work themselves. He reiterated his earlier testimony that the Anchorage office provided support and backup to the other offices.

Representative Tilton surmised that the dollars included on the grant line funded satellite ASAP offices in smaller communities. Mr. Piper replied in the affirmative. He detailed that most of the offices were connected to a treatment agency as well.

[4:10:40 PM](#)

Representative Tilton asked for verification that the treatment programs ASAP offices referred individuals to were not ASAP grantees.

Mr. Piper replied that occasionally the ASAP office was the only entity in the area; sometimes the office had treatment services available within the organization or a different part of the organization.

Representative Tilton asked for verification that when ASAP made recommendations to refer someone for treatment, in most instances in smaller communities the individuals went to a satellite ASAP office for treatment.

Mr. Piper answered in the affirmative; in many cases it was the only option available [in small communities].

Representative Tilton asked for verification that in larger communities ASAP made recommendations for people to get treatment with providers outside the ASAP office.

Mr. Piper replied in the affirmative. He detailed that when there were additional options available, the ASAP agency was required to offer those options as appropriate for an individual.

Representative Tilton asked for verification that ASAP did not have a way to track the outcomes of a particular treatment program that fell outside the ASAP offices. She asked how the program decided where to recommend a person go.

[4:13:22 PM](#)

Mr. Piper answered that ASAP found and referred individuals to treatment agencies with national accreditation. Almost every agency used had oversight giving ASAP confidence in the agency's legitimacy.

Mr. Burns asked Mr. Piper to explain how ASAP individuals pay for the treatment.

Mr. Piper explained that participants typically paid for the services out of pocket. Many of the agencies had sliding scale fees. He furthered that many times ASAP tried to find people eligible for Medicaid assistance.

Representative Tilton stated her understanding that individuals paid for the service and most of the grant line went towards funding satellite ASAP offices in smaller communities. She asked how a treatment provider got on ASAP's list as a recommended provider.

Mr. Piper replied that ASAP maintained a list; people could apply and most went through the division in some way. Grant programs and private providers contacted ASAP and the programs were then required to meet a certain standard to be on the list.

Representative Tilton surmised that a program participant could find a treatment program to bring forward to ASAP. She believed ASAP would then check the program's credentials and would approve it. She asked for

verification that ASAP was not keeping any background information on the overall outcomes coming from a provider.

Mr. Piper corrected that ASAP maintained a list of treatment providers it had approved, and individuals could choose from that list. The individuals did not come to ASAP with a provider. He underscored that providers to achieve national accreditation it was a process for ASAP to ensure the programs met the standards to be on its provider list. He furthered that ASAP knew who graduated from programs; ASAP investigated if it had suspicion that no one was graduating from a program or there were problems. However, ASAP did not track in a statistical way how programs were doing or how they graduated participants.

[4:17:42 PM](#)

Representative Wilson referenced the FY 16 and FY 17 ASAP budget shown on slide 12. She estimated that each of the program's 13 staff had been making about \$104,000 in FY 16 compared to approximately \$84,000 in FY 17. She asked if program staff had decided to take a pay cut.

Mr. Piper responded that in FY 17 there had been some vacancies, which had taken some time to fill; there had been periods where the program had been lacking staff, which was part of the discrepancy between the two personnel budgets.

Representative Wilson asked if the average salary of an ASAP employee was about \$100,000.

Mr. Piper replied that the starting salary for an ASAP probation officer was about \$86,000. He was not sure where the \$104,000 mentioned by Representative Wilson came from.

Representative Wilson replied that she had divided \$1,361,900 [on the personal services line] by 13. She asked if the [starting] salary was \$86,000 plus benefits. Alternatively, she asked if it was \$86,000 complete.

Mr. Piper replied that \$86,000 was the complete figure.

Co-Chair Seaton remarked that the bill currently had an immediate effective date on the specific provision; there would be no time delay before additional people would be

referred to ASAP. He asked ASAP to consider that in follow up information it would provide to the committee.

Co-Chair Foster noted that members could ask questions of any of the departments present. He added that members would have an opportunity to ask questions the following day as well.

[4:20:37 PM](#)

Vice-Chair Gara remarked that his comments the previous day related to sentencing ranges had been confusing. He hoped to clarify information on sentencing ranges and the concept of increasing sentences with aggravators. He asked about the sentencing maximum for unclassified offenses (i.e. murder, rape, and other).

Mr. Skidmore replied that unclassified felonies generally had a maximum sentencing range of 99 years.

Vice-Chair Gara noted there had been testimony several times from the family of a murder victim that feared they would have to start going to parole hearings. He asked for verification that minimum jailtime for murder in the first and second degree from 10 and 20 years to 20 and 30 years respectively.

Mr. Skidmore replied that the mandatory minimum sentencing had been increased for both offenses, but he would have to follow up with the detail.

Vice-Chair Gara asked Mr. Steiner if the numbers he had provided were accurate.

QUINLAN STEINER, DIRECTOR, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION, answered that the minimum sentencing had been increased by SB 91, but he did not have the numbers on hand.

Vice-Chair Gara asked the departments to follow up and let him know if he was wrong about the numbers he had listed. He spoke to his understanding of discretionary parole. He believed that a murderer could request a parole hearing, but the Parole Board could deny the request. He asked if his description of discretionary parole was accurate.

Mr. Skidmore answered that discretionary parole was when someone could ask for parole and the Parole Board decided whether they would be released. He followed up on Vice-Chair Gara's earlier question about murder sentencing increases. The mandatory minimums for first degree murder had been increased from 20 to 30 years and the minimum for second degree murder had been increased from 10 to 15 years.

Vice-Chair Gara spoke to the question about when a murder victim's family had to worry about the perpetrator asking for parole. He asked for verification that before and after the implementation of SB 91 a person could request discretionary parole after the greater of the mandatory minimum sentence or one-half of the actual sentence if greater than the mandatory minimum.

Mr. Skidmore clarified that a person could request discretionary parole after the greater of either the mandatory minimum or one-third of the imposed sentence.

Vice-Chair Gara restated that the timeframe was at least the mandatory minimum, but if one-third of the imposed sentence was longer than the mandatory minimum it would be that period.

Mr. Skidmore answered in the affirmative.

Vice-Chair Gara asked for the maximum sentences for Class A, B, and C felonies.

[4:25:14 PM](#)

Mr. Skidmore replied that the maximum sentence for a Class A felony was 20 years, the maximum for a Class B was 10 years, and the maximum for a Class C was 5 years.

Vice-Chair Gara stated there were over 30 aggravators in statute. He asked for a description of an aggravator.

Mr. Skidmore replied that an aggravator was a set of circumstances the legislature had placed into statute that would authorize a judge to increase the sentencing above the presumptive range.

Vice-Chair Gara asked for verification a judge could increase sentencing up to the maximum for a given class of crime.

Mr. Skidmore replied in the affirmative.

Vice-Chair Gara noted that much of the bill related to Class C felonies. He stated that criminal mischief in the third degree was a C felony for first-time offenders with a sentence of zero to one year. However, if a person committed an aggravator they could be sentenced up to five years. He believed an aggravator could include firing a weapon while committing criminal mischief.

Mr. Skidmore did not recall whether criminal mischief in the second or third degree was a C felony. Pertaining to a C felony, because the use of a dangerous instrument would not be an element of the criminal mischief, the use of a dangerous instrument in furtherance of an offense would be an aggravator and would authorize a court to impose a sentence up to the maximum if it chose to do so.

Vice-Chair Gara stated there had been discussion in committee over the past week about sexual abuse of a minor in the third degree, which was a C felony. He described the crime and explained it applied if there was an age difference of four years between the two individuals - it could be amplified for certain ages. Sentencing under SB 54 for a first-time offense of sexual abuse of a minor in the third degree was zero to one year. He referenced a case where the individual had been severely beaten; in that case the aggravator made the crime one of the most serious versions of the crime. He asked for comment.

Mr. Skidmore answered that a Class C felony, sexual abuse of a minor in the third degree, had a sentence of zero to one year under SB 54. He referenced the case mentioned by Vice-Chair Gara and believed the case was Atkinson. The fact that the victim had been severely beaten was one of the facts considered by the court to determine an aggravator applied.

[4:29:38 PM](#)

Vice-Chair Gara believed that in the cases talked about the aggravator could move the sentencing range from zero to one year up to five years for a first-time felony.

Mr. Skidmore agreed.

Vice-Chair Gara asked if the use of aggravators was uncommon.

Mr. Steiner replied that the use of aggravators was common. He detailed that it was a matter of how a case processed. A person may be charged with something, but aggravators were not pled as part of the charging process. The aggravators came up in the plea negotiation process and potentially at the trial process where they may get pled if necessary because of a jury verdict, which was true for most aggravators.

Vice-Chair Gara wanted to make clear that for a first C felony offence an aggravator could increase the sentence of zero to one year up to a maximum of five years.

Mr. Steiner agreed.

Vice-Chair Gara returned to the topic of sexual abuse of a minor in the third degree. He detailed his understanding of the crime. He believed the crime had to involve a four-year age difference. He stated it could be an 18-year-old and a 14-year-old and the law specified that a 14-year-old could not consent. He continued that the individuals could think they have a relationship, but the law disagreed. He believed the situation was a Class C felony.

Mr. Skidmore responded that sexual abuse of a minor in the third degree was based upon an offender being 17 years of age or older and a victim who was 13, 14, or 15 years of age; a four-year age difference was required. He referenced Vice-Chair Gara's question about consent related to sexual abuse of a minor. He clarified that consent pertained to sexual assault and did not play a role in sexual abuse of a minor.

Vice-Chair Gara addressed that sentencing ranges existed to recognize that some conduct within a given crime could be more serious than in other cases. For example, a person may get a shorter sentence if the defendant was 18-years-old, the victim was 14-years-old and brief touching occurred. Another version of the same crime could involve a 50-year-old, with a 14-year-old victim where severe groping

occurred without clothing. He asked if those two examples were different versions of a given crime.

4:33:23 PM

Mr. Skidmore replied that for many crimes the elements described the facts that had to exist. Vice-Chair Gara had provided two sets of circumstances that both met the elements. The presumptive sentencing range was considered to be for the ordinary course of the crime. There was a mitigator for least serious and an aggravator for most serious. The aggravators and mitigators were meant to be on the far ends of the spectrum and the presumptive sentencing was supposed to be in the middle.

Mr. Steiner believed the description was fair.

Vice-Chair Gara surmised the point of sentencing ranges was to enable a judge to sentence based on the conduct committed.

Mr. Skidmore agreed.

Representative Wilson referred to public testimony from the previous evening where the committee had been told a person could come up for probation [parole] every two years. She asked if it had been done in SB 91.

Mr. Skidmore clarified that it was parole, not probation. He detailed that a provision in SB 91 talked about the frequency of a parole hearing, not how quickly it occurred. He explained that SB 91 did suggest a parole hearing could occur every two years, but SB 54 removed the provision; therefore, the time between hearings could be longer than two years.

Representative Wilson asked if a victim could specify they did not want to continue to be notified. Alternatively, she asked if the notification was mandated.

Mr. Skidmore answered that his department did not get involved in many parole hearings. He recommended speaking with Jeff Edwards from the Parole Board.

4:36:30 PM

Representative Pruitt referred to the topic of aggravators and spoke about a situation where a weapon or gun was the element of a crime. He surmised an aggravator would not be used if it was the basis of the crime. For example, if a drive by shooting occurred, but a person was not hit or killed, the crime would be a Class C felony, but an aggravator would not be used if the gun was the element of the crime. He asked for verification that under current law the perpetrator in the scenario could potentially receive no jailtime for a first-time offense.

Mr. Skidmore agreed, but used a different example. He explained that assault in the third degree involved a perpetrator placing another person in fear of imminent serious physical injury by means of a dangerous instrument. He cited Alaska appellate case Linn v. State 658 P.2d 150 from 1983 that specifically stated an aggravator could not be used to enhance a sentence if the aggravator was also an element of the offense. In the case of his example, it was the use of the dangerous instrument. It was necessary to evaluate whether something was an element of the offense to begin with.

[4:39:10 PM](#)

Co-Chair Seaton returned to the topic of the parole timing for individuals in jail for murder. He stated that for murder in the second degree - 15 years. He surmised that discretionary parole could not be requested before 15 years and it could not be requested before 30 years for murder in the first degree.

Mr. Skidmore responded that the mandatory minimums were correct. He cautioned that the mandatory minimums applied to crimes that had occurred since SB 91 went into effect. For crimes occurring prior to the SB 91 effective date, it was not possible to increase a sentence after a crime had occurred.

[4:40:15 PM](#)

Co-Chair Seaton asked that if the crime had occurred previously the crime would have been 10 years for murder in the second degree and 20 years for murder [in the first degree] before a first request for a discretionary hearing. He stated that if there had been a longer sentence the

timeframe could be longer. For example, for a 90-year sentence, one-third of the sentence would be 30 years.

Mr. Skidmore replied that Co-Chair Seaton was correct. It would be necessary to take one-third of the imposed sentence and determine whether the mandatory minimum one-third of the sentence was longer. Whichever period was longer controlled when the first hearing would occur. The two years was about the frequency the hearings could occur after the first hearing.

Co-Chair Seaton asked for verification it would not be the first hearing, but the first application for a hearing.

Mr. Skidmore answered that the conversation was about when a person became eligible for discretionary parole. He clarified that if a person applied for a hearing, they would get the hearing. The hearing did not mean the person would be released.

Vice-Chair Gara remarked that in many cases it was a longer period before a person could ask for discretionary parole because the mandatory minimums were increased in SB 91. He thought it possible that a testifier from the previous evening had believed a perpetrator did not have to wait for the full mandatory minimum (e.g. 30 years for murder in the first degree) to ask for discretionary parole. He believed the individual thought good-time was subtracted from the 30 years, which was untrue. He clarified it was a minimum of 30 years [for murder in the first degree].

Mr. Skidmore relayed that good time did not have an impact on when someone was eligible for discretionary parole.

SB 54 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the following day.

ADJOURNMENT

[4:43:16 PM](#)

The meeting was adjourned at 4:43 p.m.