

HOUSE FINANCE COMMITTEE
FOURTH SPECIAL SESSION
November 1, 2017
1:17 p.m.

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CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:17 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 Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Suzanne Di Pietro, Executive Director, Alaska Judicial Council; John Skidmore, Director, Criminal Division, Department of Law; April Wilkerson, Director, Division of Administrative Services, Department of Corrections; Randall Burns, Director, Division of Behavioral Health, Department of Health and Social Services; Matt Davidson, Program Officer, Division of Juvenile Justice, Department of Health and Social Services; Representative Andy Josephson; Representative Geran Tarr; Representative Zach Fansler; Representative Gabrielle LeDoux; Representative Ivy Spohnholz.

PRESENT VIA TELECONFERENCE

Dean Williams, Commissioner, Department of Corrections; Tony Piper, Manager, Alcohol Safety Action Program, Department of Health and Social Services; Dan Spencer, Director, Division of Administrative Services, Department of Law; Kelly Howell, Director, Division of Administrative Services, Department of Public Safety.

SUMMARY

CSSB 54(FIN)

CRIME AND SENTENCING

CSSB 54(FIN) was HEARD and HELD in committee for further consideration.

PRESENTATION: AK CRIMINAL JUSTICE COMMISSION REPORT
APPENDIX F

Co-Chair Foster addressed the meeting agenda.

#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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^PRESENTATION: AK CRIMINAL JUSTICE COMMISSION REPORT
APPENDIX F

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Co-Chair Foster reminded members that amendments were due at 5:00 p.m. in the current day. He invited Suzanne Di Pietro to the table to begin her presentation. He noted that Representative Andy Josephson had joined the audience.

SUZANNE DI PIETRO, EXECUTIVE DIRECTOR, ALASKA JUDICIAL COUNCIL, introduced herself and relayed that she worked as staff to the Criminal Justice Commission. She indicated that the project attorney for the Criminal Justice

Commission, Barbara Dunham, was on the phone. She would be taking the committee through the recommendations of the commission that resulted from two meetings that it had on January 19, 2017 and January 27, 2017. She explained that the reason Appendix F was listed at the top was because it was Appendix F of the commission's annual report to the legislature. She would be guiding members through the document and was happy to answer any questions during her presentation.

Ms. Di Pietro shared that when the commission first convened itself the commissioners discussed how they wanted to do their work. Senate Bill 64, legislation that created the commission, had a lengthy list of duties and methodologies that the commission had to adhere to. The commissioners took that into consideration and also decided as a group to do two things. First, they would act in response to empirical data, to be data driven in their study and recommendations. Second, the commission would always try to act by consensus even though it would not always be possible. She reported that almost every one of the commission's recommendations that came to the legislature in December of 2015 for criminal justice reform were consensus recommendations.

Ms. Di Pietro continued that after criminal justice reform went into effect, the commission began to receive comments from a variety of people in the community including law enforcement, citizens, and prosecutors expressing concerns about criminal justice reform. The commission had two meetings where it discussed issues brought to it by members of the community. Out of the two meetings the commission made recommendations to the legislature that were the subject of Appendix F.

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Ms. Di Pietro mentioned a slightly different methodology. She elaborated that although the original criminal justice reform recommendations were based on meta-analyses of what worked and what did not work to reduce recidivism and a very detailed assessment of how Alaska's Criminal justice system was operating. The recommendations to the legislature were derived from a different kind of knowledge; hearing anecdotal stories from the public. The commission, when making the current recommendations, specifically focused on four criteria listed in Appendix F:

The need to rehabilitate the offender; the sufficiency of state resources to administer the criminal justice system; the effect of state laws and practices on the rate of recidivism; and peer-reviewed and data-driven research. The commission also, according to SB 64, had other things to consider: The need to confine offenders to prevent harm to the public; the effect of sentencing in deterring offenders; and the need to express community condemnation of crime. She wanted to convey to the committee that the recommendations in Appendix F relied more on the last three factors than the other factors the commission had used.

Ms. Di Pietro reviewed the first recommendation, which was to return the crime of Violation of Conditions of Release (VCOR) to misdemeanor status.

Co-Chair Foster recognized Representative Geran Tarr and Representative Zack Fansler in the audience. Representative Gara had stepped in the meeting a few moments prior. He indicated that questions would be held to the end of the presentation.

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Ms. Di Pietro continued with her presentation. She explained that violating conditions of release occurred when a person had been arrested but not yet convicted of a crime, charged, and released on bail while waiting for their case to be resolved. A judge would impose some court ordered stipulations which might include not drinking alcohol or not contacting the victim. Doing those things, when a judge ordered a person not to, could lead to a misdemeanor. The commission in criminal justice reform recommended that it be turned into a non-criminal offense - a violation - but people could still be arrested, put in confinement, and brought before a judge. The judge might keep them confined, set new conditions, or whatever they thought was appropriate. That was the way it was supposed to work.

Ms. Di Pietro reported that there had been confusion about how it was supposed to work, confusion about implementation. It had been brought to the commission that a good way to clear up the confusion would be to make it a crime again. The Court System and the Department of Corrections (DOC) had worked together to implement the process of bringing the defendant back and putting them

before the judge. Changes to forms and procedures had been made. Some members of the commission felt that the remedies were working or should be given time to work. Other members thought it was too confusing and that VCOR should become a crime again. The commission recommended that VCOR become a Class B misdemeanor punishable up to five days in jail. She referenced Section 18 of the bill where it addressed VCOR and the corresponding penalty of five days in jail, consistent with the commission's recommendation.

Co-Chair Foster noted that Representative Pruitt had joined the meeting.

Ms. Di Pietro mentioned that the recommendation was not unanimous. She noted that one concern that had been brought up by the victims' representative on the commission. She was concerned that by making VCOR a crime again during the plea negotiation process it might be tempting to convict the person of the VCOR and dismiss the underlying charge. The commission stated that it did not condone that and would revisit the issue if it were to happen.

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Representative Guttenberg was concerned that a condition of release might not ordinarily be a misdemeanor.

Ms. Di Pietro replied that it was currently a violation.

Representative Guttenberg provided a scenario where someone was arrested and given conditions of release. He asked if a person could be charged with a misdemeanor that was not normally a misdemeanor if the person had never done anything.

Ms. Di Pietro thought Representative Guttenberg was characterizing the underlying conduct. A violation of condition of release would be conduct that would not normally be a crime. However, if the legislature decided to return it to a crime, it would be a crime because the person would have done something the judge had ordered them not to do. For example, if a person was intoxicated and it was a condition of bail, they could be arrested if they were caught drinking. Drinking was not against the law, but a person could be arrested under current law. If the law was changed to a misdemeanor as was recommended by the

commission, then the person could also be charged with a misdemeanor.

Representative Guttenberg was concerned about a person stacking up misdemeanors by violating conditions of release. He thought it would have a compounding effect on other crimes. He asked if it would become an issue down the road. He thought the misdemeanors resulting from a VCOR would build a bigger case against someone.

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Ms. Di Pietro answered that the commission discussed the issue. It was one of the reasons why some of the commissioners did not want to reinstate it to a crime.

Representative Guttenberg asked what would happen down the road if misdemeanors started stacking up. He asked where it was relevant.

Ms. Di Pietro stated that if a VCOR charge was not dismissed, a person might be convicted of the charge and would have the misdemeanor on their record in addition to their underlying charge.

Ms. Di Pietro moved to the next recommendation which was to increase penalties for repeat theft for offenders. She relayed that several people testified to the commission that there were problems with repeat shoplifters. Theft 4 was stealing something or concealing merchandise that was less than \$250 in value. The original penalty under criminal justice reform was that a first time or second time offender would not face active jail time, although they would be subject to paying victim restitution and fines. The third time they would receive a suspended sentence and the fourth time they could receive active jail time. The commission had deemed that a third time Theft 4 should be punishable up to 10 days in jail. She pointed to Section 19 of the current version of SB 54 where the penalties exceeded the penalties recommended by the commission. Under SB 54, a first-time offense would result in a five-day suspended sentence. No active jail time would be required unless a person violated conditions of their suspension, which, then, could become active jail time. For the second offense they would serve up to five days, and for anything more than that they would serve up to ten. It

would still be a B Misdemeanor and the limit for a B Misdemeanor was ten days.

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Ms. Di Pietro relayed there had been substantial discussion around the topic. The decision was not unanimous. A couple of [Alaska Criminal Justice Commission] commissioners who did not support this particular recommendation thought that a third-time offense should be elevated to a Class A misdemeanor. She thought a bump to the Class A misdemeanor for the recidivist was contained in SB 54. She noted there was a drafting ambiguity that needed tightening. Commissioner [Chris] Sell spoke about petty theft offenders he had known who were so accustomed to going to jail for theft that they had started using it as a housing option. Commissioner Stanfill in Fairbanks had spoken of the issue several times. Jail was a warm place for people to live. The commission had been unanimous that low level misdemeanants had a very high recidivism rate. The root of their problems needed to be addressed. She commended the municipality of Juneau for reaching out to the commission about what to do about chronic recidivist shoplifters. The commission partnered with the City and Borough Juneau's attorney and came up with the Juneau Avert Chronic Shoplifting Project. The commissioner worked to secure funding for the program through the Bureau of Justice Assistance. The Judicial Council would evaluate the project after about one year to determine its effectiveness. The point of the project was to try to work with recidivist shoplifters to get to the root of their problem.

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Ms. Di Pietro addressed the next recommendation, Recommendation 3-2017, was to allow municipalities to set different non-incarceration punishments for non-criminal offenses that have state equivalents. The issue was taken care of in SB 55 {omnibus crime legislation passed in 2017}. She moved to Recommendation 4-2017 which was to revise the sex trafficking statute. She clarified that the provisions of SB 91 [criminal justice reform legislation passed in 2016] with respect to sex trafficking were not recommendations of the commission. The legislative history suggested that the provisions were intended to ensure that sex workers simply working together but not exploiting one another should be able to be prosecuted for sex trafficking

each other or themselves. The commission made recommendations about how to clarify the language so that sex workers working together to protect each other would not be subject to prosecution. She relayed that the provisions in SB 91 needed clarification which the commission recommended. She added that SB 54 had provisions related to sex trafficking in Section 5 and 6; however, the version before the committee contained amendments that essentially restored the language that was in SB 91. She believed the sex trafficking issue needed more work.

Co-Chair Foster asked Ms. Di Pietro to delve more deeply into the subject.

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Representative Pruitt wanted to ensure he understood the bill.

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, relayed that there were amendments in the House Judiciary Committee that would have eliminated the changes. However, those amendments did not pass in the House Judiciary Committee. In fact, the amendment was withdrawn. He relayed that what was currently in SB 54 fixed the loophole that was found and was the recommendation of the commission.

Ms. Di Pietro stood corrected.

Representative Wilson asked for an explanation of the loophole.

Mr. Skidmore answered that when criminal justice reform had passed, there had been concerns about how sex trafficking laws were being used. The concept was that the legislature did not want the sex trafficking laws used to punish two sex workers that might live together or were trying to provide services in a way that was not trafficking. He noted in particular where the focus was in sex trafficking in the third degree, which talked about operating a place of prostitution. He explained that what happened was criminal justice reform amended the laws to try to provide appropriate protections. In the process of doing so, there was a loophole that was inadvertently included. The loophole was that for an individual who operated a place of prostitution, if they, themselves, offered themselves up

for a sex act in exchange for money, they would have engaged in some form of prosecution and could not be prosecuted for sex trafficking for owning the entire operation. They could only be prosecuted for the same crime that any other sex worker would - the crime of prostitution. The idea was that the person who owned the place of prostitution was at a higher level than a mere sex worker. The language in the current bill was language worked on by the Department of Law (DOL) and the Public Defender agency worked on collaboratively to attempt to close the loophole making sure to treat those who operated a place of prostitution differently than a prostitute. He believed the language closed the loophole.

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Vice-Chair Gara noted that prostitution was currently a misdemeanor and sex trafficking was a felony because it was a much more serious time. He spoke to a loophole in the law that could have allowed a misdemeanor prostitute as a sex trafficker. He asked for verification the office had not been doing that.

Mr. Skidmore agreed that DOL had not been prosecuting individuals engaging in prostitution as sex traffickers. He was not certain the law had allowed for that previously, but he knew concerns had been expressed about the issue. He cited a case in Fairbanks where a law enforcement officer originally filed sex trafficking charges against someone who had only been engaged in prostitution; the charges were ultimately reduced by the DOL prosecutor's office. The laws had been changed to clarify the intent; in the process of the changes there had been a small oversight, which would be fixed by SB 54.

Vice-Chair Gara thanked the department for offering the commitment the issue.

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Ms. Di Pietro moved to recommendation 5-2017 to enact a zero to 90-day presumptive sentencing range for first-time Class C felonies. She detailed that the commission had a number of goals in mind when it made the recommendation for first-time Class C felons to have a suspended time of 0 to 18 months. First, being on felony probation meant being held accountable in the community. The commission viewed

being on felony probation as a way to hold offenders accountable and to encourage the offender to engage in rehabilitative activities including treatment, paying victim restitution, and getting a job - whatever the probation officer thought the person should be doing and what the judge may have ordered as a probation condition. Another justification for the recommendation was that putting offenders just getting familiar with the criminal justice system in prison with other offenders convicted of more serious crimes was detrimental to low-risk individuals. When the individuals were released they were more likely to commit a new offence (criminogenic) than if they had not gone to prison and had been supervised in the community.

Ms. Di Pietro continued that after the recommendation had gone into effect, the commission had heard from numerous people, including prosecutors, that some violent Class C felonies warranted jailtime even for a first offense. There were also concerned there was not enough incentive with no active jailtime to get offenders into treatment. The commission had substantial debate on considering the right incentives to get a person into treatment. Under the commission's recommendation of 0 to 18 months suspended there was the possibility of the suspended time hanging over a person's head, but people thought that some jailtime would be appropriate to express community condemnation in certain instances or the appropriate level of coercion to get them to engage in treatment or other rehabilitative activities that would prevent recidivism. The commission ultimately recommended (the decision was not unanimous) that first-time Class C felonies carry a presumptive term of 0 to 90 days and to retain the up to 18 months of suspended time.

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Ms. Di Pietro detailed that Section 15 of SB 54 included penalties for first-time Class C felonies of 0 days to 1 year in prison, which had been the position of DOL.

Vice-Chair Gara stated that under SB 91 first-time C felons could receive jailtime if the crime included an aggravator (e.g. physical injury or use of a weapon).

Ms. Di Pietro agreed that the penalty for a crime with the addition of an aggravator would be different. The presumptive term was for the typical offender committing a typical offense. An aggravated offense would be subject to harsher penalties.

Ms. Di Pietro relayed that the commission acknowledged it had no research to suggest the magic [jail time] number was 0 to 90. The recommendation was a channeling of the idea of community condemnation. The next item had been to enact an aggravator for Class A misdemeanors for defendants with prior a conviction of similar conduct. She shared that under criminal justice reform there was a presumptive range of 0 to 30 days for a Class A misdemeanor. Importantly, the provision excluded many kinds of crimes. She elaborated that for certain violent offenses and sex offenses or for cases where the conduct was among the most serious included in the definition of the offense, the 0 to 30-day presumptive range did not apply. The commission heard prosecutors and others saying that the provision should allow for a longer sentence for defendants with past convictions for similar conduct; the provision had existed, but it applied to individuals with two or more offenses. The commission recommended enacting an additional aggravator for Class A misdemeanors for defendants with one prior conviction for similar conduct, which would enable a judge to impose a sentence up to 60 days (located in Sections 17 to 22 of the bill).

Co-Chair Foster recognized Representative Gabrielle LeDoux in the audience.

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Ms. Di Pietro moved to recommendation 7-2017: clarify that ASAP is available for Minor Consuming Alcohol [page 6 of Appendix F]. She believed the committee had heard significant testimony on the Alcohol Safety Action Program (ASAP) the previous day. The commission had recommended that minor consuming be included in the types of cases that could be referred to ASAP. She noted statute allowed people charged with the offense to receive credit if they went to and complied with the program. The commission viewed it as a way to align the two parts of the law. Under the current version of SB 54, she did not believe a person charged with the offense could be referred to ASAP. She looked at Section 47 of the bill that referred to people charged or

convicted of a misdemeanor; however, Minor Consuming Alcohol was now a violation. Although the other language referred to "alcohol related" it specified "referred by a court in connection with a charge or conviction of a misdemeanor involving the use of alcohol or a controlled substance."

Representative Wilson asked if Ms. Di Pietro had specified Section 47. Ms. Di Pietro replied in the affirmative - page 31, line 30.

Representative Wilson asked if Ms. Di Pietro had stated that the bill did not add anyone to the program because "it was not a misdemeanor, it's a citation."

Ms. Di Pietro corrected "violation."

Representative Wilson stated adding additional people [to eligible ASAP participants] was an amendment passed by the House Judiciary Committee. She thought Ms. Di Pietro was testifying that the bill did not add anyone else to the program.

Ms. Di Pietro replied in the negative. She clarified that she had been referring to the commission's recommendation regarding people charged with the violation of Minor Consuming Alcohol. She observed that as the bill was currently written, it did not appear those individuals could be referred by a court to ASAP. She had not been speaking about how the amendment may have expanded or not expanded the types of cases going to ASAP. She added that the amendment did pertain to a person charged with or convicted of a misdemeanor involving alcohol or controlled substances.

Representative Wilson understood Ms. Di Pietro was talking about recommendations from the commission, which was separate from the amendment. She stated her understanding that the amendment had not been discussed by the commission and that Ms. Di Pietro was not speaking to the amendment, but was explaining why the individuals had not been included in SB 91.

Ms. Di Pietro replied in the affirmative.

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Ms. Di Pietro moved to Recommendation 8-2017: Enact a provision requiring mandatory probation for sex offenders. The recommendation was a technical fix to ensure mandatory probation of 15 years for sex offenders (Section 16 of the bill). She reviewed Recommendation 9-2017 that clarified the length of probation allowed for Theft 4. Some ambiguity may have existed in statute about whether a probationary term could be imposed for a first and second time Theft 4 offenses. Section 19 of the bill addressed the concern.

Ms. Di Pietro highlighted Recommendation 10-2017 regarding victim notification, which had been addressed in SB 55 [omnibus crime legislation passed in 2017]. Recommendation 11-2017: felony DUI sentencing provisions should be in one statute. The commission had noticed that sentencing ranges for felony DUI and refusal were found in Title 28 and under regular sentencing statute in Title 12, meaning there were two punishment provisions for the same offenses, which could create confusion. The commission had recommended that the legislature put the penalty provision for felony DUI and refusal in one place or the other. She believed the recommendation was addressed in Section 48 of SB 54, which included repealers.

Ms. Di Pietro addressed Recommendation 12-2017: clarify who will be assessed by pretrial services. The recommendation was addressed in Section 26. She explained that when SB 91 was drafted it had included language that Pretrial Services would do a pretrial risk assessment on all people charged with a crime. She believed it had been overlooked that many people charged with a crime may not come to a DOC facility and be detained. Some people may be issued a summons to appear in court by an officer instead of being arrested, and some people may be released on a misdemeanor bail schedule. She elaborated that DOC had expressed concern that it would be spending its resources assessing people who were not in pretrial detention. The commission had recommended clarifying the language to direct DOC to conduct its risk assessments on people in detention and anyone else requested by the prosecutor. She characterized it as a common-sense provision and a way to ensure Pretrial Services was spending its resources on the people who mattered most.

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Ms. Di Pietro stated that the rest of the recommendations were technical. She was available for any questions.

Representative Grenn spoke about a potential recommendation (not included in the January recommendation) regarding barriers to reentry. He referenced the CourtView recommendation on page 9 of the Alaska Criminal Justice Commission Annual Report dated October 22, 2017 (copy on file). He wondered if the agency hoped the recommendation would make it into SB 54 as an amendment or if it could wait to for future revisions.

Ms. Di Pietro was certain the commission would be thrilled the committee had noticed the recommendation. The commission had worked hard on the topic; it had been brought to the commission and sent back to the work group numerous times. She did not know if the commissioners had a preference on timing, but she guessed it would be sooner rather than later.

Representative Grenn referred to Recommendation 3-2017 that would allow municipalities to set different non-incarceration punishments. He relayed that Anchorage had a problem with [the drug] spice several summers back. He wondered why municipalities should not be able to handle their own local issues in a different manner than what may be the standard for the rest of the state.

Ms. Di Pietro addressed the commission's CourtView recommendation. The commission had debated whether to make the recommendation to the legislature or the court system and had decided to make the recommendation to the court system. She returned to Representative Grenn's question pertaining to municipalities and relayed the commission's thought behind the binding provision - that a municipality should not be able to enact ordinances that would involve larger jail penalties than the state - was to preserve prison beds for more serious offenders (municipalities typically handled misdemeanors). She believed it was an oversight - she did not believe the commission ever believed the municipalities should not have the ability to enact larger fines or other types of sanctions. The commission's focus had been on jailtime, which was the reason it had recommended the clarification.

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Representative Grenn referred to recommendation 2 [Recommendation 1-2017] regarding VCOR. He observed that the recommendation was punishable up to five days in jail. He asked what the penalty had been pre-SB 91.

Ms. Di Pietro did not recall.

Representative Grenn asked about the aggravators in recommendation 6. He noted that the recommendation included jailtime up to 60 days. He asked what the penalty had been prior to the passage of SB 91.

Ms. Di Pietro replied that most Class A misdemeanors (some had mandatory minimums) the statutory jailtime was 0 to 365 days. There was also a presumptive range.

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Representative Kawasaki discussed that the last legislature had directed the commission to look at what it would look like if there were 15 percent fewer individuals in prison and a couple of other scenarios. He mentioned Recommendation 1-2017 related to VCOR, Recommendation 2-2017 on repeat Theft 4 offenses, Recommendation 5-2017 pertaining to Class C felonies, and Recommendation 9-2017 related to probation times. He asked if Ms. Di Pietro anticipated a large fiscal impact or an increased number of individuals in jail under probation or pretrial status.

Ms. Di Pietro thought almost anyone would agree that the provisions would increase the state's use of jail beds. She stated that trying to quantify the increase would be up to the departments; the commission was also looking into it. She relayed that Class C felons represented a large percentage of convicted felons. First-time Class C felons made up the majority of convicted C felons. She addressed repeat Theft 4 and reported that in 2014 (pre-reform) there were 324 people admitted to prison for the offense. The commission had conducted a mini-study to determine what the individuals were stealing. Even though the range was \$0.00 to \$250 for the offense, most people were stealing items significantly under \$250. Items were typically around \$50 and include things like toiletries, food, and alcohol. Individuals convicted of the crime served an average of 24 days. She emphasized that 24 days was an average; some individuals in on their first offense only served 1 day, whereas individuals in for a 10th or 15th theft served

significantly more time. She stressed it was a significant use of jail resources for people stealing very small quantities. The commission also knew that misdemeanor property offenders recidivate at high rates. She believed the state could anticipate there would be a number of people convicted of the offense and that they would use more jail beds. She clarified most would not be using jail beds for 20 days because the penalties were less than they had been pre-reform.

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Representative Kawasaki remarked on Ms. Di Pietro's testimony that in Juneau people found it fairly easy to use Theft 4 as a way to get housing. He believed it was terrible. He noted Ms. Di Pietro had specified the commission may be looking at recommendations in the future that would prevent the issue from happening. He opined that jails were not the appropriate place for homeless individuals looking for shelter. He asked what other recommendations may be forthcoming from the commission.

Ms. Di Pietro clarified the narrative of people using a conviction of a small crime to get a warm home during the winter was anecdotal from a couple of commissioners who had experience with the individuals. She looked forward to the evaluation of the Juneau Avert Chronic Shoplifting Project that used incentives instead of sanctions. Prosecutors already knew who the 30 to 40 chronic shoplifters were in Juneau. The program was designed to metaphorically meet them where they are and determine if they could be pointed towards resources, ideas, or encouragement to address their root problem. She relayed the project would be evaluated and she believed it was something to watch. She shared that when the commission had worked with the City and Borough of Juneau attorney they had done significant research on what had worked in other places for petty theft and shoplifters. There was not a substantial amount out there, which was the reason the Juneau city attorney had decided to try something. The project was innovative and was based on research on what works, which is incentives (often more than sanctions). The goal was to get at the root of the problem. She believed the program had a good design and its success was yet to be determined.

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Representative Kawasaki referred to Recommendation 1-2017 related to VCOR. When the legislature had worked on SB 91 there had been much discussion about the number of incarcerated individuals in pretrial status or who had returned to jail for breaking conditions of release. One of the examples the committee had heard about repeatedly was not drinking alcohol or going near a bar even though the underlying crime was not related to alcohol. He asked if there was a way to quantify the number of individuals who were essentially receiving an extra charge while awaiting trial.

Ms. Di Pietro answered that she had done some research on the topic when the commission had been debating the issue. She detailed that VCOR charges were very common - in the thousands, but research she had done showed about 68 percent were dismissed. She did not believe there was a good way to quantify how much jailtime a VCOR charge may involve. She believed it would be some in some cases and dismissed in other cases; it was a difficult thing to research.

Representative Kawasaki referred to the fiscal notes and discussed that part of SB 91 had dealt with rehabilitation and reformation - things that were needed within the criminal justice system. Some of the recommendations that the commission had made and some that had come from the last committee of referral appeared to cost the state more money, which would leave less money for reform and rehabilitation. He asked how it would challenge the criminal justice recommendations pertaining to reform and rehabilitation.

Ms. Di Pietro thought the commission would like her to communicate that it was recommending frontloading the rehabilitative piece of reform. She believed the use of prisons had decreased in the first year of criminal justice reform and had decreased more than predicted. Whether all of the decrease was due to SB 91 was difficult to say, but much of it was. She believed the legislature could be reasonably confident the reductions in the use of prison beds would continue as predicted. She referenced a slide from Commissioner Razo [Commissioner Greg Razo, Alaska Criminal Justice Commission (ACJC)] presented to the committee showing that the state's current trend was a bit better than predicted. She believed the state would reach its goal of a 13 percent reduction. The commission's

recommendations pertaining to SB 91 was a 13 percent predicted reduction in prison. She believed the commission was looking for a decision to frontload the resources (instead of waiting). She believed it was possible to be fairly certain that the savings would come. She noted that prison bed savings could slow a bit if some of the recommendations were enacted, but the current status was good and the commission would prefer frontloading the resources.

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Vice-Chair Gara addressed the probation violation of committing a crime. He asked for verification that a person could be charged and sentenced for the crime, which was also a probation violation.

Ms. Di Pietro replied in the affirmative.

Vice-Chair Gara stated that there were probation violations that did not involve a crime. He used an example where a person convicted of stalking a person was not allowed to go near the person's house or call them. There had been some testimony and his experience in the past that even if a crime had nothing to do with alcohol and the person had no alcohol problem, the judge often imposed the condition of no consumption of alcohol. The condition meant if a person was caught drinking alcohol it was a probation violation. He discussed that the bill would return jailtime for probation violation, which he understood the argument for. He asked if the commission had discussed conditions that were overused.

Ms. Di Pietro asked if Vice-Chair Gara was referring to violation of conditions of probation or violation of conditions of release.

Vice-Chair Gara clarified he was interested in the violation of conditions of release (pre-sentencing and pre-conviction), which often had the no alcohol condition. He asked if there had been any discussion about the overuse of the no consumption of alcohol provision for people with no alcohol problem and a crime not related to alcohol. There were a number of circumstances where some people believed the law went too far the other way.

Ms. Di Pietro answered that the commission had not heard complaints about judges imposing conditions of release not to consume alcohol in situations where the crime had no connection to alcohol. She deferred to the practitioners about the frequency of the scenario. The conditions of release were designed to ensure the individual attended their court hearings and to ensure the individual did not do anything to get rearrested. She continued that to the extent there were restrictive conditions related to alcohol, the thinking would be that somehow it would be related to the possibility that the person would get into trouble because of alcohol use. She could not say how close the connection was in practice.

Vice-Chair Gara would ask Ms. Di Pietro to confer with Quinlan Steiner, Director, Public Defender Agency, Department of Administration, at a later time.

Ms. Di Pietro agreed.

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Representative Ortiz referred to the current version of the bill that included the House Judiciary Committee amendments. He asked if the current bill met the needs of the commission recommendations.

Ms. Di Pietro answered that it was difficult to answer. She had conferred with [ACJC] Chair Razo on the question because it had come up in the past. The commission had not had time to meet or discuss its position, concerns, or support of SB 54. Chair Razo had suggested a better approach given time constraints would be for individual [ACJC] commissioners to provide the committee with their views on how SB 54 addressed the commission recommendations.

Representative Ortiz looked at the recommendations the commission had received the legislature in 2015, which had primarily pertained to the goal of reducing the use of prison beds. He believed Ms. Di Pietro's response to an earlier question by Representative Kawasaki was that the goal was being met. He asked if the goals specified by the legislature (third paragraph on page 1 of Appendix F) would be met.

Ms. Di Pietro responded that the commission's recommendations enacted in SB 91 did not meet the goals exactly. She detailed that as enacted, SB 91 was projected to decrease the prison population by 13 percent. She noted the guideline had not been included in the bullet points provided by the legislature, but it was part of the legislative process. The commission was interested not in a dollar for dollar reinvestment rule, but that reinvestment be frontloaded in a reasonable expectation. She relayed that even with changes made [in SB 54] it appeared likely the state would continue to save on prison beds.

Representative Grenn referred to Recommendation 5-2017 pertaining to first-time C Class felonies. He believed the public outcry was strongest pertaining to the issue. He noted that the list of felonies was lengthy and broad and included a range of crimes such as tampering with evidence, vehicle theft, cruelty to animals, and other. He remarked that from the attorney general there was a willing from a compromise for violent offenders and nonviolent offenders, but it was not the recommendation from the commission.

Ms. Di Pietro agreed. The discussion had occurred at the commission level. At the time it had been determined that separating violent from nonviolent would be complex. She did not recall an objection to the approach, but that it was more of a logistical challenge. She agreed that the list of Class C felonies was lengthy.

Representative Grenn wondered if the idea of separating violent and nonviolent criminals could be looked at in future recommendations. He reiterated the wide range of crimes that constituted a Class C felony (e.g. tampering of evidence, cruelty to animals, and stalking). He encouraged a future recommendation from the commission.

Ms. Di Pietro replied that several people had asked her whether the commission had ever considered whether all of those behaviors should be classified as a Class C felony. She remarked that some other places had more than three levels of felonies; some places had four, five, and possibly six levels. She added that Alaska's system had the advantage of not being as complex as other locations with more levels. She would bring the feedback to the commission for consideration.

[2:26:06 PM](#)

Representative Wilson asked if the commission would analyze whether changes had the intended effect (if SB 54 passed).

Ms. Di Pietro replied in the affirmative.

Representative Wilson asked if the commission looked at the composition of the prisons and the utilization of halfway houses and electronic monitoring. She understood the numbers were dropping in all three areas, but she believed the numbers should be dropping more substantially in prisons. She hoped the other two areas were being utilized as "step downs" towards transitioning individuals back into society. She wondered if the commission ever analyzed whether individuals in jail were not being stepped down and what the reason was (e.g. no family, housing, skills to get a job, or that prison was a better place to sleep than the street).

Ms. Di Pietro responded that the commission had looked at the issue for its annual report and had provided some initial assessments. The commission looked at how many people in prison were in pretrial status, how many had been sentenced and were serving their sentences, and how many were in jail for a supervision violation. The commission had also looked at the CRC [community residential center] usage and had received information from DOC. She believed Commissioner Williams had told the committee that CRCs were not being utilized as much. She reiterated that details were included in the commission's report.

[2:28:01 PM](#)

Representative Pruitt referenced the commission's recommendation to change the penalty for driving without a license to a refection, which was incorporated in SB 54. He wondered why people would continue to be required to have a license to begin with if it was not that big of a deal for people to have a license. He provided an example of a person who had not had a license for 15 years and had provided his expired license to authorities. The date had on the expired license had not been noticed and the individual ended up endangering numerous young peers while driving a passenger van on the ice. He surmised that if the punishment was merely an infraction, it meant a person could take their chances with the knowledge that if they got caught the penalty was merely a ticket. He added that a

person did not even have to give their real name or pay for the ticket. He wondered about the necessity of a license if the police could not potentially utilize it to help them seek additional opportunities if they pull someone over - in terms of someone who may not be driving for other reasons.

Ms. Di Pietro believed Representative Pruitt was referring to the second bullet point under Recommendation 14-2017. She believed the question went to the larger issue about why driving with a license suspended had been changed from a crime to a violation under criminal justice reform. She clarified that the change did not apply to situations involving a DUI. The reasoning was that when the offense was a crime, people stacked up violations and were having trouble getting relicensed. Some individuals did not get relicensed. She continued that individuals were getting pulled over and convicted of crimes. The commission had made an entire study of the issue at the legislature's direction (the Title 28 report was posted on the commission's website). The idea was using jail beds to correct behavior for those types of offenses were not a particularly good use of jail time and that the person could be encouraged to correct behavior through other means such as fines. There was also the crime of driving without a valid license, which was different and had not been changed in SB 91; the offense was still a crime. The offense of driving without a valid license was punishable at a higher level than driving with a revoked license. She stated that it had not seemed fair, which was the reason for the recommendation.

[2:32:37 PM](#)

Representative Pruitt surmised that instead of going back and reanalyzing how the state was dealing with suspended licenses it had been decided to lower the penalty for driving without a valid license. He had concerns with how law enforcement could utilize driving with a license suspended. He believed officers would say they had concerns with the issue. He thought lowering the penalty for another offense would expand the area of the officers' concern. He explained that if an officer pulled someone over and had reasonable suspicion they may need to further investigate, the ability to only write a ticket limited what they could do. He did not know whether the concerns of the officers had been listened to related to driving with a suspended

license, otherwise he thought the legislature would be asking questions about why they would lower another offense to the same level. He thought the conversations should perhaps be held outside the committee setting because there were officers who did not want to come on the record out of fear of punitive action being taken against them. He thought the provision would create additional challenges for officers and that the provision had gone the wrong way.

^FISCAL NOTES

[2:35:15 PM](#)

Co-Chair Foster moved to a discussion of fiscal notes.

[2:36:27 PM](#)

AT EASE

[2:43:54 PM](#)

RECONVENED

Co-Chair Foster provided the order the committee would address the fiscal notes.

APRIL WILKERSON, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF CORRECTIONS, addressed the indeterminate fiscal note, OMB Component Number 1381, from DOC for the Institution Director's Office based on version T of SB 54. The bill made several changes that were passed under SB 91, which would impact the length of imprisonment of individuals under the department's custody. The department was unable to determine the total potential impact. She provided an estimated range based on calendar year 2015 offender data and the future sentencing assumptions from DOL. The department anticipated the changes could increase the prison system's daily population by anywhere from 108 to 285 people per day. The department did not have sufficient data to determine of the other elements of SB 91 that would stay in place such as pretrial diversion, the department could not quantify how many of the individuals would come under its custody. However, if it was that number of individuals it would cost anywhere from \$1.6 million up to \$4.3 million based on the marginal daily rate from the DOC cost of care.

Ms. Wilkerson detailed that the department had a daily average cost per inmate of approximately \$149.62, which was

all inclusive (fixed cost and operating cost). The department had worked with the Pew Foundation under SB 91 to come up with a marginal rate, which excluded and removed all of the fixed costs and equaled \$41.49 per day (based on FY 15 actuals and offender population). There was a slight increase to the marginal rate of approximately \$0.20. For consistency DOC believed it would be more appropriate to stay with the marginal rate moving forward.

[2:48:04 PM](#)

Representative Kawasaki referred to the costs associated with slight changes to Felony C and Theft 4 crimes, which would perhaps require more incarceration. He believed there would be a cost. He did not like indeterminate fiscal notes. He remarked that the fiscal note that came out of the Senate Judiciary Committee had a cost of approximately \$4.3 million. The Senate Finance Committee had reduced the cost estimates and made the note indeterminate. He wondered why.

Ms. Wilkerson deferred to the DOC commissioner.

DEAN WILLIAMS, COMMISSIONER, DEPARTMENT OF CORRECTIONS (via teleconference), shared that there had been struggle with the fiscal note for multiple days during the development process. He explained that prior to SB 91 it had been possible to look at the numbers and estimate anticipated costs regarding prison population numbers and trends. When SB 91 had passed it had been possible to project anticipated savings. When SB 54 first came into play, it did not dial all the way back to where they had been with SB 91, but they were creating a third version of what the department anticipated the numbers would be. The department had used multiple assumptions to get to the anticipated amount. He had not done many fiscal notes and it was not an area he had full comfort with. He felt that the numbers had become very speculative and broad at between \$1.5 [million] and \$4.3 [million]. The department did not have enough data even with the current changes to determine what the cost may be. He understood the frustration with an indeterminate note, but he could not in good conscious provide a number (only an extremely broad range). The version before the committee was another iteration of the bill and each of the changes either increased or decreased cost and there was very little history to go on. After much consultation and discussion, he believed an indeterminate note was the best

answer. He added that he could also provide the broad cost range.

[2:52:54 PM](#)

Representative Kawasaki observed there was a difference in the indeterminate fiscal note from the Senate compared to the current indeterminate note. He remarked that Ms. Di Pietro had testified that Class C felonies and Theft 4 would probably increase the prison population. He noted that Ms. Di Pietro had testified that felony C and Theft 4 offenders and people violating conditions of release would have significant day rates - increasing the number of people in jail. He pointed to the analysis on page 2 of the fiscal note that had come from Senate that included a low estimate of 108 people per day and an upper limit of 285 people. He inferred that based on changes made in the House Judiciary Committee a larger influx of inmates was anticipated at the lower level.

Commissioner Williams replied that the narrative recognized that the changes could increase the influx of inmates to a particular number. He stated that the revisions made by the House Judiciary Committee would mean numbers would rise, not decrease. He agreed with the premise of Representative Kawasaki's question - recent revisions to the bill would drive numbers up somewhat. He referenced a Class A felony amendment from the House Judiciary Committee - the number of people in prison for Class A felonies was small. He explained DOC had not made a revision for the change because they did not know if there was even one person in jail for that offense classification, they believed there was, but they were not sure whether a law change would impact a sentence. Those issues were more difficult to articulate, but he recognized it was likely to drive some of the population up over what had originally been determined the past March.

Representative Kawasaki noted that he and Representative Wilson served on the DOC budget subcommittee and they wanted to make sure the numbers were as tight as possible in order to know what was anticipated in the coming and future years. He did not like indefinite fiscal notes and appreciated the range.

Co-Chair Foster recognized Representative Zach Fansler in the audience.

[2:56:36 PM](#)

Representative Wilson expressed concern about the numbers. She noted the average daily cost of care in the institution was \$142.66 in FY 14, \$141.17 in FY 15, and \$149.62 in FY 16. She continued that suddenly they were going to a marginal rate of \$41.49. She asked if it was accurate to indicate that every inmate would only cost \$41.49.

Ms. Wilkerson replied that the marginal rate had been developed because it became the whole number of \$149.66 when looking at the overall institution. She detailed that for any individual coming in the department was not going to hire another superintendent or correctional officer. The marginal rate was to identify that every incoming person would get an assessment, food, and clothing; however, the department's utilities and staffing structure would not change. The number did include some of the overtime that may be incurred because the population staffing needs could not be met based on routine staffing.

Commissioner Williams provided an example of a facility that housed a group of 500 people. Expenses included housing, guarding, feeding, and providing medical care for the inmates. He explained that adding or subtracting 50 people from the group would not change the overall fundamental base rate; all of the services and employees would still be required. However, it would mean more food would need to be purchased staffing would incur more overtime in certain occasions. The marginal rate measured having the smaller groups of people. The daily rate for the overall \$149 was the divided cost per person for the entire facility. A few more people in or out would not change the overall bottom line cost. The explanation highlighted the difference between the \$149 rate and the \$42 rate.

[2:59:38 PM](#)

Representative Wilson asked where healthcare fell into the analysis. She believed inmates received free healthcare.

Commissioner Williams answered that part of the marginal rate assumed the individuals would cost more because they were under the system's care; however, it did not change the number of nurses or doctors needed. The department was still paying for their salary and all of the other things

needed to run a facility. He agreed that every person coming into the prison added to the healthcare cost. The calculation was not scientific, but the marginal rate was supposed to measure what it would cost on an average basis to feed and provide medical care for inmates.

Representative Wilson asked if the location of an individual's incarceration mattered when considering the cost. She asked for verification the average \$41.49 per day applied statewide.

Ms. Wilkerson agreed and relayed that the number was the average incorporating all facilities.

Representative Wilson wanted to see potential savings from SB 91. It had been her understanding they were using something higher [a higher daily rate]. She spoke to the safety of Alaskans for a \$41 savings for some of the people who may be put back on the street made her want to rethink.

[3:01:35 PM](#)

Co-Chair Seaton looked at the third paragraph on page 3 of the fiscal note pertaining to felony C convictions. He pointed to DOC's estimate of an increase in the prison population from approximately 108 per day up to 163 per day. He observed that the department had been able to refine the figures somewhat for specific provisions of the bill. However, in the second paragraph on page 2 he pointed to the range of 108 per day up to 285 per day. He believed the third page of the fiscal note indicated the range was no longer valid because the 108 number would change to 163. He was trying to determine the differential estimate between what had been done previously and the version of SB 54 as it came to the committee. He was concerned the fiscal note did not narrow the range if there was less ability to save a portion of the population.

Ms. Wilkerson replied that based on SB 54 as passed by the Senate, the department had a range of 108 to 163; the same range had carried over. The department still had the inability to determine of the 108 that could potentially come into DOC's custody along with sentencing assumptions - the changes to the C felony gave the courts and DOL discretion and DOC did not know of those individuals who would divert to pretrial or a diversion program. The department's understood that the provision would allow the

court an opportunity to request a sentence or impose a sentence of a given duration, not that they would impose a sentence. Without knowing what would happen with the courts, diversion programs, or other provisions under SB 91, the information used was the department's best guess.

Co-Chair Seaton asked for confirmation that the fiscal note did not reflect changes in the House Judiciary Committee, which would increase sentencing and decrease the amount of anticipated savings.

Ms. Wilkerson answered that the items passed by the House Judiciary Committee did not change the sentencing guidelines under the C felonies; therefore, the department believed the prior analysis for that section was appropriate to carry over.

Co-Chair Seaton asked how the department would have the figure refined by December 15 for a FY 19 budget. He stated that DOC would need a budget to provide to the governor. He wondered how the process would work.

[3:06:35 PM](#)

Ms. Wilkerson answered that the department was working on the budget; it had needed a \$10 million supplemental the previous year. She explained that the department was beginning to see an increase in the prison population - prisons were back at 91 percent capacity at present. She deferred to Commissioner Williams for further detail.

Commissioner Williams communicated he was not happy about providing a fiscal note without much more specific detail. He reiterated his earlier testimony that the bill was up to three or four iterations of where they expected things would be. In March he had believed the numbers were a fair guesstimate about where things would go. There were some updates made to the fiscal note after changes made by the House Judiciary Committee. He believed there would be some additional prison bed costs. Without solid data to look at the past year, even the March estimate was even very shaky because the only way to get some sense of what the future would hold for cost was knowing what the past had been. The past had changed dramatically due to reform efforts. Some of the prison population had decreased, but DOC had also needed a \$10 million supplemental. Every time people were put in it cost money. For example, DOC had one dialysis

patient it was saving \$35,000 per month on because they sent the person out-of-state. He had been looking aggressively at those savings. The corrections business was very difficult because medical costs of inmates could be very expensive. He would circle back to determine if the analysis could be articulated more clearly.

Co-Chair Seaton appreciated it. He explained that the committee was making decisions on the bill, which was difficult with very broad fiscal notes.

3:10:15 PM

Vice-Chair Gara understood that Commissioner Williams had not been in the job for 20 years. However, he surmised that if Representative Wilson offered a bill with ankle monitoring the bill would get a fiscal note. He stated that someone had to estimate the cost; they did not know for certain because they would not know how many people would use ankle monitors. He was carrying a bill that had a fiscal note around \$1.7 million that could probably give or take \$500,000. He emphasized that SB 54 would cost a few million dollars. He reasoned that public safety cost money. He mentioned the need to hire more prosecutors, public defenders, and people at the Office of Public Advocacy. The bill meant the state would need to hire people because more people would be in prison. He did not understand passing a fiscal note that did not include an estimate. As a person who believed in raising revenue to fill the budget gap, it was necessary to know what government was costing. He believed they should know how much the additional cost would be. He stated that indeterminate fiscal notes were typically left for things that have minimal to no cost.

Commissioner Williams replied that the point was not lost on him. The fiscal note had been a highly debated issue with his team. He stated that perhaps it was his mistake as a new commissioner and he was willing to reflect on that. The department was not trying to hide anything from the committee. He explained that the variations of the bill were widely divergent possibilities and the information in the note reflected what he believed the middle ground to be. He was not happy to ask for supplemental budget requests. The department had tried to be transparent about the range of costs. He would continue to contemplate the information.

Representative Wilson was concerned that the committee had heard the prison system was at 91 percent capacity. She noted that as of FY 18 the prison system had increased by 114 individuals. She asked if the system had the capacity for another 285 people per day.

Commissioner Williams answered that 500 beds had been taken out of the system when he had closed the Palmer Correctional Center. He noted that the facility was still there. He believed the system would be close to capacity if 285 individuals were put back in per day. He spoke to his dissatisfaction about the housing of 50 men in a gymnasium that was supposed to be used for a gymnasium in Fairbanks. He believed it was a problem; it had been done in the past prior to his time with the department. He believed it was a false reflection of the system capacity. It was a difficult question to answer. On the one hand he could say they had capacity for most of the 285 [per day], but it impacted the system. He explained there was vacancy in some locations and maximum capacity had been reached in other locations such as Fairbanks and Anchorage. The best thing he could do in terms of population was to continue with pretrial efforts to bring down pretrial population numbers, which would provide some breathing room. He concluded that the system could probably take the additional 285 people per day, but it would not be good.

Representative Wilson had heard that the estimate of 285 people was too low due to changes made in the House Judiciary Committee. She asked if Commissioner Williams was considering reopening the Palmer Correctional Center.

Commissioner Williams replied in the negative. He clarified that if the system exceeded capacity the Palmer facility was still there. He explained that in every consideration about the system capacity he had to recognize where the trend line was going. He had made the decision on Palmer because it was clearly the assumption the trend line would continue to decline; the system had some space [in facilities] to make the decision at the time. He assumed the space would still be available but depending on whether the daily influx of inmates went from 108 to 280 people meant different operation decisions about where the individuals would go. He would need to contemplate whether the state should retain the Palmer facility for the next five years. He believed the system could take some individuals back in without adding additional beds in terms

of reopening the Palmer facility; however, much more than that would require reopening the facility. The other part of the issue was the massive cuts the department had taken in anticipation of the reducing numbers. Depending on whether the numbers went back up, a given number of staff on shift to run the facility were still needed. He would know more when he got a sense of where the final bill would land. He stated it was a difficult area to make the determinations. The best estimate the department could produce was included in the fiscal note before the committee. He would review the revisions made in the House Judiciary Committee to determine if the fiscal note information could be further articulated.

[3:18:03 PM](#)

Representative Wilson stated that finding out what the provision would do after the bill passed was too late. She stressed the legislature needed to know what the options were when considering adding various provisions. She did not want to necessarily reopen another prison. She remarked on Commissioner Williams's testimony that he needed to determine where the trend line was going; however, she noted he had told the committee earlier that the department did not have the data, which was the reason he could not look at the bill to come up with a fiscal note. She understood another option was sending prisoners out of state versus opening up another prison. She believed the issue would be discussed in the DOC budget subcommittee. Her biggest concern was being faced with voting on the bill without an accurate number.

Representative Wilson stressed that the committee was the finance committee and was responsible for looking at the numbers and determining how to come up with the money and where it would come from. She believed it was unacceptable to not have any idea of the potential cost. She was concerned to hear the system was at 91 percent capacity because it was up 141 inmates since the beginning of the fiscal year. She emphasized that the prison population was increasing. She stated that the population could increase up to 285 people [per day] without factoring in amendments made in the House Judiciary Committee, which could increase the number. She was uncomfortable voting on the bill without more accurate information. She added that it was the only fiscal impact note - the others were all zero

notes. She did not support giving a blank check to the department.

[3:20:18 PM](#)

Co-Chair Foster moved to the Department of Health and Social Services fiscal note OMB Component Number 305.

RANDALL BURNS, DIRECTOR, DIVISION OF BEHAVIORAL HEALTH, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, reported that the fiscal note had been revised to reflect zero cost for FY 18 and indeterminate cost for FY 19 and beyond. He understood there was some concern from the committee about the impact changes in SB 54 would have on the Alcohol Safety Action Program (ASAP). He detailed that if the provisions passed, given the time lag from the court system, there would be a minimal impact on the program through FY 18. For FY 19 and beyond, the program was moving forward on development of regulations that it believed could have mitigating effects on the numbers (particularly on carryover numbers each year, which added substantially to the caseload). Additionally, the program was looking more closely at setting standards for monitoring. The fiscal note was indeterminate because it was possible the program could continue serving participants with the current staff even with an increase of 2,000 individuals. However, if the program's belief about the ability to regulate some of its work through new standards failed, ASAP may need up to 2 additional probation officers. The department was submitting the indefinite note while it made an effort to really define the program.

[3:23:51 PM](#)

Representative Guttenberg discussed that concerns had come up the previous day. He requested that Mr. Burns consider building in a stronger way to measure the program's effectiveness and results. He was interested in knowing which referrals for treatment were more effective, better administered, and had better outcomes. The issues were difficult to evaluate. He referenced public testimony where individuals had testified about the number of times they had done treatment until it worked. He understood it was difficult to evaluate treatment programs and the multitude of program types such as faith-based, and boot camp-type treatment. The program that would work was hard to determine.

Mr. Burns replied that the department had been talking about the idea and it would endeavor to follow Representative Guttenberg's suggestions as it drafted and implemented policies for ASAP.

Co-Chair Foster recognized Representative Ivy Spohnholz in the audience.

[3:26:22 PM](#)

Representative Wilson recalled that the previous day Mr. Burns had testified that ASAP did not do any monitoring of the treatment programs. She asked why it was incorporated into the fiscal note.

Mr. Burns responded that statute asked the department to implement standards for ASAP, which it had not formally done. The department would be adopting regulations that would put the standards in place, which would give it the basis to begin looking at the type of questions raised by Representative Guttenberg.

Representative Wilson highlighted that in the previous meeting the discussion had been about whether ASAP followed whether participants completed the program successfully. She noted that Mr. Burns had told the committee he was looking for the information but did not necessarily have it. She pointed out that part of the fiscal note addressed intensive monitoring requirements. She did not know whether it meant ASAP would do the monitoring or the treatment programs would monitor participants. She referenced the \$180,000 included in the note and asked if Mr. Burns had a projection for the number of additional individuals that would come to the program.

Mr. Burns responded that ASAP also included therapeutic courts and the programs attached to therapeutic courts. Those programs were highly monitored, their success rates were known, and ASAP followed up. He detailed that those program numbers were much smaller. He volunteered to have a discussion with the committee in conjunction with the therapeutic courts coordinator regarding the success rates and progress for those individuals. He noted that the ASAP program served thousands of people, unlike the therapeutic courts. In misdemeanor cases where the judge believed alcohol or drugs were a factor and where the person could

benefit from treatment or education on the impacts of their behaviors, they were referred to ASAP. The program screened and monitored the individuals and referred them to treatment. The way the program knew whether a person was successful was their completion of the program and when the judge agreed and released them. The program required individuals to assume some responsibility. They were in the program because of their actions that brought them before the court. The program was tracking participants ability and ASAP support for the individuals as they got through the court system, were released, and received their car and driver's license back.

[3:30:42 PM](#)

Representative Wilson clarified she wanted to know how many more people the department anticipated would participate in ASAP to account for the \$180,000 in the fiscal note.

Mr. Burns answered the \$180,000 reflected the cost of hiring two additional staff.

Representative Wilson reiterated her previous question. Mr. Burns answered that the department was uncertain what the numbers would be, which was the reason for the indeterminate fiscal note. The department was hoping to have a much better picture at the end of FY 19 after a year's worth of time regarding how the changes impacted ASAP. Eventually one or two additional probation officers may be required (there were currently four serving over 3,500 people).

Representative Wilson referred to Mr. Burns' testimony from the previous day that individuals paid to participate in the program. She wondered what percentage of the cost was paid by participants.

Mr. Burns answered that the individuals paid the entire cost for treatment.

Representative Wilson asked for verification that the only thing the participants did not pay was Mr. Burns' salary or whoever was conducting the intake.

Mr. Burns replied that ASAP funding went to paying for ASAP staff and rural ASAP offices in other communities.

Representative Wilson wondered if there was a possibility to look at increasing the fees to cover the entire program expense. She thought it meant the committee would not have to worry about indeterminate fiscal notes, meaning the committee could zero the current note out.

Co-Chair Foster recognized Representative Harriett Drummond in the audience.

[3:33:52 PM](#)

Representative Kawasaki stated that the Alaska Criminal Justice Commission had recommended referrals be limited unless more funding was allocated. He noted the recommendation was included on slide 18 of a presentation provided by ACJC about one week earlier ["Alaska Criminal Justice Commission: House Finance Committee" dated October 26, 2017 (copy on file)]. He remarked that SB 91 had limited referrals to the most high-risk offenders, but it also increased workload for ASAP. He understood the amendments taken up by the House Judiciary Committee would expand the referrals again. He asked if that was Mr. Burns' understanding.

Mr. Burns answered in the affirmative.

Representative Kawasaki stated the presentation delivered the previous day by Mr. Piper [Manager, Alcohol Safety Action Program, Department of Health and Social Services] indicated that in FY 15 there were about 8,900 new and remaining cases under ASAP's purview prior to SB 91 and approximately 8,047 in FY 16. Post-SB 91 (in FY 17) there were only 5,271 cases. He referenced slide 13 of the same presentation pertaining to ASAP FY 16 actuals. The slide showed ASAP had 13 permanent full-time positions in FY 16 and FY 17. He surmised the total number of referrals had dropped under SB 91. He thought it may be a good thing because ASAP had been underfunded and its high workload meant it may not have been as effective as it could be. He believed under SB 54 it appeared that ASAP would have an increased number of referrals and workload. He asked for verification that ASAP had done that in the past with only 13 staff.

Mr. Burns agreed, but the workload had been different in the sense that the screening (use of the LSI-R [Level of Service Inventory-Revised]) and the monitoring requirements

were different. He explained it was one of the issues ASAP wanted to address more fully through a review of the program and the adoption of standards - whether it could control and mitigate some of that through the adoption of standards. He referenced the slide's information about the number of cases held over each year, which jumped from 1,600 to 2,200 and back down to 1,700. He believed it was important to determine the reason in order to have some impact on that caseload as well.

3:37:37 PM

Co-Chair Seaton stated that the legislature had been told that ASAP was less effective when caseloads were high (around 9,000). He elaborated that SB 91 had reduced the classifications referrals to 6,000, which had increased probation officer follow up. The legislature had been told the changes made the program more effective. He found it problematic to go back to 8,000 or 9,000 participants. He continued that an effective program would require case management and probation officers. He pointed to the second to the last paragraph on page 2 of the fiscal note and read "...based on a determination of the risks and needs present, the amount of intensive monitoring needed, and other factors." He thought it meant the program may decide to provide the same level of service that had been ineffective in the past. He was unsure what the program was saying to the legislature. He asked if it could handle more referrals but not the workload. He asked about looking at implementing a delayed effective date for expanding the program to additional people. The delayed effective date would allow the state to know whether the program would have monitoring and case management.

Mr. Burns addressed monitoring. He stressed the importance of knowing what the monitoring entailed. For some individuals it was relatively modest if almost nonexistent. He explained that if a person was very committed, ASAP sent them to education for 12 hours, they went back to court, and got their license back. He relayed that it did not require a significant amount of monitoring for people low on the scale of recidivism. There were also people on the higher end. The program did not know how to estimate what the numbers would be over time. Prior to SB 91, many of the individuals assigned to ASAP had domestic violence misdemeanor charges; some of those individuals did not need significant screening and others did. The department needed

the opportunity to track and determine what a particular score on the LSI-R meant in terms of ASAP's commitment to monitoring; it would also share the information with the other offices and would determine the impact. He did not want to hire people merely to fill slots until they had a much better idea of what they would be asked to do and what was required based on the scores and screenings.

Mr. Burns addressed the idea of a delayed effective date to the beginning of the next fiscal year. He did not believe there would be numerous referrals between the immediate effective date under the current version of SB 54 and a delayed date of July 1 [2018]. Delaying the effective date for a year would allow the program to create the standards it wanted by looking at the population it continued to serve, which may better prepare the program for any changes.

3:43:59 PM

Co-Chair Seaton noted they were talking about over half of the fiscal year. He continued that if the referrals were the same as in the past the program would see at least half of the number in the coming fiscal year (without any additional funding). He remarked that the department had testified in the House Judiciary Committee that it was maxed out on funding resources. He was confused about how the department anticipated it would be possible to add another 1,500 or 2,000 referrals to the ASAP system before July 1, 2018 and provide the same level of service.

Mr. Burns answered that it would take a while for the individuals and the court system to be apprised of the change. Additionally, it would take time before referrals began occurring at the level they had in the past. The department believed it would not be seeing double [the referrals] in the next six months - it would take time for the transition to occur. He reasoned that the number of referrals would grow during that timeframe, but not as astronomically as it could, or most likely did in prior years.

3:46:50 PM

Representative Tilton pointed to language on page 2 of the fiscal note specifying that the increased referrals to the program would offset the receipts. She asked if people

referred to the program paid a fee. She wondered who was responsible for paying for the program. She asked if costs to participate in the program were higher in ASAP satellite offices where ASAP administered the treatment programs. She queried the payment structure. She reiterated that the fiscal note specified ASAP would not need to offset receipts, which she assumed showed up under designated general funds on the budget.

[3:48:32 PM](#)

Mr. Burns deferred to a colleague.

TONY PIPER, MANAGER, ALCOHOL SAFETY ACTION PROGRAM, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), replied that there was a statutory requirement for a \$200 case management fee to help offset some of the ASAP costs. The fee went to the Anchorage office and for outlying grantee offices it helped the grantee offset some of the case management costs. The fee was paid directly by the individual.

Representative Tilton asked if program participants were required to pay the \$200 fee and the additional cost of an outside treatment program.

Mr. Piper replied that the treatment or education was always outside of the ASAP office. He detailed it could be in the same agency in outlying areas, but the additional fee for treatment or education would be paid by the individual, their insurance, Medicare, or whatever they had to cover it. In some cases, there were programs that assisted with the funding (e.g. the Veterans Administration or Alaska Native hospitals). He added there were some programs with no fee, but typically the fee was paid by the individual.

Representative Tilton thought the program may want to consider an increase in the fee if it was not currently covering the program costs.

Representative Grenn asked what happened if someone was referred to the program but could not pay.

Mr. Piper answered that for the most part, the individuals would be seen by ASAP regardless. He continued the individuals could have a payment plan and do whatever

necessary to pay off the case management fee. Treatment agencies tried to have a sliding scale fee. Additionally, there were some grant programs. He elaborated that ASAP tried to find a way to assist individuals when they had a need. The individual would be seen by ASAP regardless of ability to pay.

Representative Grenn was trying to determine if there was a trigger point when the program would feel the need to bring on more probation officers.

3:52:16 PM

Mr. Piper answered that it was a goal, but the program had not identified a specific number of cases assigned to a particular individual and had not determined the tipping point. The number of caseloads was one of the things the program wanted to standardize. Additionally, the goal was to solidify the requirements necessary for each probation officer to manage the program appropriately under standards that would be implemented.

Vice-Chair Gara believed there was an overutilization and underutilization of ASAP. He remarked that ASAP was needed for people needing alcohol treatment. He stated that frequently cases where there was no evidence of the need for alcohol treatment were also referred to the program. He spoke to a change by the House Judiciary Committee that would add cost. He wondered how effective the change would be and whether it was needed.

Mr. Piper asked Vice-Chair Gara to clarify.

Vice-Chair Gara rephrased his question.

Mr. Burns answered that the ASAP program had been operating for some time. He had heard only good things about the program. He recently read a report published by the University related to a cost/benefit ratio. The report indicated that for every state dollar invested, the state was receiving \$1.50 in return; the return was not as high as some of the other programs but was certainly providing service. He continued that because standards had not been set, it was difficult to gauge ASAP success. He did not yet have the answer, but the program was working on it.

Vice-Chair Gara clarified he was asking whether the changes in the House Judiciary Committee were positive and cost-effective given the added cost.

Mr. Burns replied that he understood the goal of the change was to provide courts with the option to allow more people to be served (than under changes made by SB 91). He understood there was value and it was nice to know people believed the ASAP program could help misdemeanants with alcohol and drug involvement. He appreciated the goal, but he did not know what the changes would cost long-term. He assured the committee that the department would run ASAP to the best of its ability; if additional funds were needed they would ask. He believed that in one year they would be on a better footing to know what the program would need (after some history and the implementation of standards) and how new requirements for screening and monitoring would impact the office.

[3:57:48 PM](#)

Vice-Chair Gara was asking if the changes made in the House Judiciary Committee were a good idea and would be cost-effective. Mr. Burns answered in the affirmative.

Co-Chair Seaton shared that DOL had just confirmed that the referral system to ASAP could apply to a sentence for conduct that occurred prior to the bill's effective date; the program could start getting referrals from the court system immediately due to the immediate effective date.

DAN SPENCER, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF LAW (via teleconference), relayed that DOL had one zero fiscal note. He deferred to Mr. Skidmore for questions.

Mr. Skidmore provided detail on the zero fiscal note. He highlighted that SB 54 would adjust sentences and the way the department may handle work it was already provided. The vast majority of the amendments in the bill would not add work for DOL. The only thing that would potentially add to the department's cost was the addition of Pink and Tramadol to the scheduled drug list; however, he did not know the number of cases that would come to DOL and the department assumed it would be able to absorb the cases into its current workload. He did not mean to imply that DOL was flush financially, but prosecutors had discretion on which

cases to bring; therefore, DOL had the ability to regulate how much work the bill would create.

4:01:29 PM

Representative Kawasaki spoke to the addition of presumptive sentencing, amendments to the offense of violating conditions of release, and a couple of other items that favored prosecution. He surmised it did not necessarily mean the department would prosecute more frequently. He asked for verification it meant DOL may prosecute different crimes and that it had discretion about cases it chose.

Mr. Skidmore used the violation of conditions [of release] as an example. Currently, if an individual charged with a crime and released pretrial violated the conditions of release it would most likely result in a bail hearing. The department's prosecutors would have work to do to address the violation. The difference the bill made was the type of work DOL may do or how it would address the work. He believed the addition of violation of conditions of release would increase efficiency for the department because when someone was arrested and a charge was filed, the bail hearing was more likely to automatically come about. The change was smoother than the current process where the department had to find out what was going on, had to try to get the person into court, and had to file other sorts of paperwork. He explained that it would not alter the fact that a person had violated their conditions or that a response to the violation had to take place. The change would provide DOL with more tools to respond with.

Mr. Skidmore highlighted Class C felonies as another example. The bill would change the penalty from 0 to 18 months of probation time to 0 up to 1 year of jail time. The bill changed what the sentencing may be, but not whether the crime was prosecuted. He explained that DOL may alter the sentencing memorandum filed for a case, but they would still be required to file the memorandum. Additionally, the department would still have to negotiate the case. There would be different tools, but the work would not change - with the exception of Pink and Tramadol; there may be additional cases for possession of the drugs, but he did not know how many cases there would be - the cases would have to be factored into the workload. Nothing

else in the bill increased workload but provided different tools to address existing work.

[4:04:22 PM](#)

KELLY HOWELL, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF PUBLIC SAFETY (via teleconference), spoke to the department's zero fiscal note [OMB Component Number 2325]. The department did not anticipate proposed changes in SB 54 would have a significant impact on the enforcement efforts of the Alaska State Troopers (AST). She noted that AST Captain Dan Lowden was available for questions.

[4:05:36 PM](#)

Co-Chair Foster moved to Judiciary fiscal note, OMB Component Number 768. He relayed that Alaska Courts and Juvenile Justice fiscal notes remained unchanged from previous versions of the bill. He asked members to provide questions to his office.

MATT DAVIDSON, PROGRAM OFFICER, DIVISION OF JUVENILE JUSTICE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, addressed the zero fiscal note OMB Component Number 2134. He detailed that the division had submitted a zero fiscal note on the initial version of the bill. The department handled juveniles referred to the division for criminal offenses based on their risks and needs, so changes to sentences and adult probation did not generally impact the division. The addition of the drugs Pink and Tramadol may bring in some additional referrals, but the division believed it would handle them internally. The division had not updated the fiscal note based on the latest version of the bill. He was happy to update the note if the committee desired; the fiscal note would continue to be zero.

[4:07:25 PM](#)

Representative Wilson asked to hear from DOC Commissioner Williams [Commissioner Williams was no longer available during the meeting]. She asked for a breakdown of the marginal daily rate of \$41.49. She wanted to know how the rate was determined.

Co-Chair Foster would follow up on the issue.

Representative Wilson requested the formula for the marginal rate prior to amendments the following morning via email. Ms. Wilkerson agreed.

Co-Chair Foster asked members if they had questions.

Representative Wilson hoped Commissioner Williams would be online for the meeting the following day. She emphasized the importance of real numbers.

[4:10:31 PM](#)

Co-Chair Foster relayed that Nancy Meade, General Counsel, Alaska Court System was available for any questions.

CSSB 54(FIN) was HEARD and HELD in committee for further consideration.

Co-Chair Foster addressed the schedule for the following day.

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ADJOURNMENT

[4:11:12 PM](#)

The meeting was adjourned at 4:11 p.m.