HOUSE FINANCE COMMITTEE
November 2, 2017
10:05 a.m.

10:05:54 AM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 10:05 a.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

John Skidmore, Director, Criminal Division, Department of Law; Dean Williams, Commissioner, Department of Corrections; Geri Fox, Pretrial Director, Department of Corrections; Walt Monegan, Commissioner, Department of Public Safety; Suzanne Di Pietro, Director, Alaska Judicial Council and Staff, Alaska Criminal Justice Commission; Quinlan Steiner, Director, Public Defender Agency, Department of Administration; Brodie Anderson, Staff, Representative Neal Foster; Amanda Ryder, Analyst, Legislative Finance Division; Representative Andy Josephson; Representative Matt Claman; Representative Chris Tuck; Representative Ivy Spohnholz; Representative Geran Tarr; Representative Gabrielle LeDoux; Representative Justin Parish; Representative Jonathan Kreiss-Tomkins.

PRESENT VIA TELECONFERENCE

Laura Brooks, Deputy Director, Health and Rehabilitation Services, Department of Corrections.

SUMMARY

SB 54 CRIME AND SENTENCING

HCS CSSB 54(FIN) was REPORTED out of committee with a "do pass" recommendation and with two new fiscal impact notes from the House Finance Committee for the Department of Corrections; one new indeterminate fiscal note from the Department of Health and Social Services; one new zero fiscal note from the Alaska Judicial System; one new zero fiscal note from the Department of Law; one new zero fiscal note from the Department of Public Safety; and one previously published zero note: FN3 (DHS).

Co-Chair Foster reviewed 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."

10:06:47 AM

^AMENDMENTS

10:07:00 AM

Co-Chair Seaton MOVED to ADOPT Amendment 1, 30-LS0461\T.17 (Martin, 10/31/17) (copy on file):

Page 2, lines 10 - 11:

Delete "[, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,]" Insert", adjusted for inflation as provided in AS 11.46.982,"

Page 2, lines 23 - 24:

Delete "[, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,]" Insert", adjusted for inflation as provided in AS J 1.46.982,"

Representative Pruitt OBJECTED.

Co-Chair Seaton explained the amendment with a prepared statement:

> This is a technical amendment to fix a drafting error that occurred as a result of the House Judiciary conceptual amendment. In Judiciary the leading inflation adjustment of monetary amounts from the statute was originally part of Amendment 37, but a conceptual amendment removed that part of the amendment, leaving inflation adjustment in the statute unchanged. Legislative Legal conformed this with the conceptual amendment in all but one section. Amendment 1 would conform with the intent of the Judiciary conceptual amendment and would leave inflation adjustment in all sections unchanged in the current statute.

Co-Chair Foster remarked that the amendment was technical.

10:08:12 AM

Representative Pruitt noted that the amendment pertained to Class C felonies and Class A misdemeanors. He asked if it was related to all theft. He wondered if there was inflation adjustment in other areas.

Co-Chair Seaton replied that inflation adjustment had been added back in to all sections in the conceptual amendment, with the exception of the references in the amendment. The sections had been inadvertently missed.

Representative Pruitt WITHDREW his OBJECTION. There being NO OBJECTION, Amendment 1 was ADOPTED.

10:09:50 AM

Co-Chair Seaton MOVED to ADOPT Amendment 2, 30-LS0461\T.27 (Martin, 10/31/17) (copy on file):

Page 2, line 3:

Delete "two"
Insert "three"

Page 2, line 29:

Delete "two"
Insert "three"

Representative Wilson OBJECTED for discussion.

Co-Chair Seaton explained the amendment with a prepared statement:

> This amendment addresses the ambiguity around the sentencing for theft in the fourth degree as pointed out in the October 27th memo that all members received from Legislative Legal. As a result of the amendment N.23 in Judiciary, SB 54 now contains two different sentencing structures for the same crime and that crime is third offense of theft in the fourth degree; theft under $250 value, a B misdemeanor. The concern is that the first sentence is for the third offense and that is under Section 19 of the bill, which states that the third offense of theft in the fourth degree is up to 10 days of active imprisonment, which is an increase from the 5 days on the second offense, but it is still considered a B misdemeanor. The second way in which a sentence could be carried out is under Sections 1 and 2 of the bill, which says that a person that commits a crime in theft in the third degree, which is an A misdemeanor, would be 0 to 30 days. If that is their third offense or more - under $250, which is normally theft in the fourth degree. Having two sentences for the same crime creates ambiguity and would lead to an equal production claim.
>
> This amendment changes the point at which the step up in theft from fourth degree (B misdemeanor) to theft in the third degree (A misdemeanor) is from the third offense having two priors to now having the fourth offense, having three priors. This would leave in

place the third offense is only charged at one spot - up to 10 days in jail as a Class B misdemeanor, but it keeps the spirit of the House Judiciary amendment because the sentence increases with each offense and still converts to a higher crime of Class A misdemeanor, it's just after the fourth offense.

Representative Wilson asked if the conceptual amendment was needed prior to withdrawing her objection.

10:13:13 AM

Co-Chair Seaton MOVED to ADOPT conceptual Amendment 1 to Amendment 2. The amendment would delete the words "or more" following the word "two" on page 12, line 23.

Representative Pruitt OBJECTED for discussion. He wanted to understand the impact. He asked if the intent was that after a third offense, the crime would be considered a misdemeanor A. He asked if the conceptual amendment was necessary or duplicative.

Co-Chair Seaton replied that it was necessary in order to know where the second, third, and fourth offenses occurred. He furthered that if the statute merely referenced "two or more" the interpretation was that an offense could be a Class B misdemeanor instead of elevating to a Class A misdemeanor after a fourth offense.

Co-Chair Foster WITHDREW his OBJECTION. There being NO further OBJECTION, conceptual Amendment 1 to Amendment 2 was ADOPTED.

Representative Wilson WITHDREW her OBJECTION to Amendment 2 as amended. There being NO further OBJECTION, Amendment 2 was ADOPTED as amended.

10:15:52 AM

Co-Chair Seaton MOVED to ADOPT Amendment 3, 30-LS0461\T.30 (Bruce/Martin, 11/1/17):

Page 8, lines 3 - 7:

Delete all material and insert:

"(2) a class C felony

(A) under AS 11.41, AS 11.56.730, AS 28.35.030, or 28.35.032;

(B) that is a sex offense; in this subparagraph, "sex offense" has the meaning given in AS 12.63.100; or

(C) that is a crime involving domestic violence; in this subparagraph, "crime involving domestic violence" has the meaning given in AS 18.66.990;"

Representative Wilson OBJECTED for discussion.

Co-Chair Seaton explained the amendment with a prepared statement:

> This amendment makes an adjustment to a change made in Judiciary Committee creating a list of specific C felonies that can be held for up to 48 hours before pretrial release, even if that individual had been assessed at a low-risk using the assessment tool if the prosecution requests more time. Under current statute, this 48-hour prosecutorial hold provision applies to all felonies except C felonies if the individual is assessed as a low-risk. In Judiciary they created a list of specific C felonies which were exceptions to that rule, meaning that they could now be held for additional time even if they were low-risk. However, the Judiciary list did not include all crimes against persons and it did include some nonviolent crimes such as witness tampering. Amendment 3 modifies the list of C felonies that could be held for additional time to cover all crimes against a person, all sex offenses and domestic violence crimes, failure to appear, and DWIs. This ensures a broader range of crimes against a person are covered. It also aligns this section with other C felony exemptions or carve outs that exist in the pretrial section of the law, which will reduce possible confusion and contradictions for the courts or the attorneys.

Co-Chair Seaton clarified that the amendment would align C felonies that were not eligible for automatic release under their own recognizance. The pretrial list and the list for longer hold, would be the same.

10:18:40 AM

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 3 was ADOPTED.

10:19:08 AM

Co-Chair Seaton WITHDREW Amendment 4, 30-LS0461\T.18 (Bruce/Martin, 10/31/17) (copy on file).

10:19:29 AM

Vice-Chair Gara MOVED to ADOPT Amendment 5, 30-LS0461\T.10 (Martin, 10/28/17):

Page 10, line 24, following "(B)":

Insert "AS 11.41.438, zero to 18 months; (C)"

Page 10, line 26:

Delete "(C)"
Insert "(D) [(C)]"

Page 10, line 28:

Delete "(D)"
Insert "(E) [(D)]"

Representative Wilson OBJECTED for discussion.

Vice-Chair Gara explained that he would need to offer a conceptual amendment to Amendment 5. The goal was to increase the maximum sentence for sexual abuse of a minor in the third degree for a first-time felon. He had been informed that the section the amendment pertained to may be deleted. He did not want to adopt the amendment to later have the entire section deleted.

Vice-Chair Gara MOVED to ADOPT conceptual Amendment 1 to allow Legislative Legal Services to ensure Amendment 5 would not be deleted in a different part of the bill.

Representative Wilson OBJECTED. She asked to hear from Legislative Legal Services.

10:21:07 AM

AT EASE

10:21:48 AM
RECONVENED

Vice-Chair Gara WITHDREW conceptual Amendment 1. He explained there would be a statement at the end of the amendment process giving Legislative Legal Services the authority to write conforming language in case any language offered during the amendment process was mistaken. He flagged that there was some concern that subsection (C) may be deleted in another part of the bill. He wanted to ensure that if Amendment 5 was adopted that it would remain in the bill.

Vice-Chair Gara explained that Amendment 5 would increase the jail sentence for a first-time felon who commit sexual abuse of a minor in the third degree; it was a Class C felony. As written in the current bill, the jail sentence would be 0 to 1 year, which was the same sentence for a misdemeanor lower level crime of sexual abuse of a minor in the fourth degree. He furthered that the sentence for a Class B felony for sexual abuse of a minor was 0 to 2 years. He surmised that there should not be a felony sentence that was the same as the misdemeanor sentence. He wanted to give the court a broader range of sentences. He explained there was a broad range of conduct that fell under sexual abuse of a minor in the third degree. He explained details about what constituted sexual abuse of a minor. There was a minimum four-year age difference between the two people - it could involve an 18-year-old and a 14-year-old or a 40-year-old and a 14-year-old; it was the same crime. The amendment would change the sentencing range to 0 to 18 months to give the judge more discretion. He thought the offense between an 18-year-old and a 14-year-old was a lesser crime than a 40-year-old doing the same thing to a 14-year-old. The crime would apply whether individuals were clothed or not; the more extreme versions of the crime should be a longer sentence. It would give the judge the ability to impose sentencing up to 18 months. He stated that if any of the aggravators applied (e.g. committing physical violence or use of a weapon) the sentencing could be up to five years.

Representative Wilson WITHDREW her OBJECTION. There being NO further OBJECTION, Amendment 5 was ADOPTED.

Co-Chair Foster recognized Representative Andy Josephson in the audience.

10:25:11 AM

Representative Pruitt MOVED to ADOPT Amendment 6, 30-LS0461\T.34 (Martin, 11/1/17):

Page 12, line 31:

Delete "or"

Page 12, following line 31:

Insert a new paragraph to read:

"(3) a sentence of more than five days of active imprisonment and a term of probation of more than six months if the person has

(A) not been previously convicted of an offense under AS 11.46.110 - 11.46.220, 11.46.260 - 11.46.290, 11.46.360. or 11.46.365. or a law or ordinance of this or another jurisdiction with substantially similar elements; and

(B) been previously convicted of an offense under AS 11.71.010 - 11.71.060. or a law or ordinance of this or another jurisdiction with substantially similar elements; or"

Renumber the following paragraph accordingly.

Representative Grenn OBJECTED for discussion.

Representative Pruitt explained the amendment. He addressed the increase in nonviolent theft that had been attributed to the current opioid crisis. He spoke to the importance of getting the individuals into treatment. He noted the committee had earlier fixed a few aspects of thresholds on theft. He stressed that the amendment only pertained to prior theft offenses, not any other crime. The amendment pertained to first-time theft with prior drug convictions. Instead of the first theft starting off as a violation or five days suspended; the individual would be started off at a second instance of theft with five days of active

imprisonment. The amendment would give the individuals five days in jail and would enter the individual into the system to consider treatment.

10:27:47 AM

Co-Chair Seaton wondered if the amendment corresponded with the Alaska Criminal Justice Commission's mandate to stop recidivism. He believed data showed that if a person with a first-time theft offense was put in jail for five days with hardened criminals, it would not reduce recidivism. He thought it would encourage more bad behavior. He was trying to determine how relating a theft offense to a previous drug offense would reduce recidivism.

Representative Pruitt answered that if the person had a prior drug offense and then committed theft it was indicative that the first conviction did not work. He believed that most likely an individual would be farther along in the process of their addiction. He had learned from conversations with police officers that when a person started committing theft, they had most likely lost their job and suffered from bad addiction. He detailed that it cost up to $100,000 per year to pay for some addictions. He argued that there was a problem with the correctional system if people put in prison became worse. He believed there was a need to get the individuals back into the system to address their issues if they had previously been arrested for a drug offense. The goal was a balance. He continued that the public was demanding the legislature repeal SB 91. He was trying to balance between the repeal discussion and addressing the valid concerns of the public, while taking the opioid crisis into consideration. He did not want to fully roll back the commission's work and items previously passed under SB 91.

10:31:38 AM

Co-Chair Foster recognized Representative Matt Claman in the audience.

Vice-Chair Gara observed that before marijuana had been legalized in Alaska, possession of marijuana constituted a drug offense. He noted that the amendment pertained to Class B misdemeanors - theft of less than $250, which was mostly shoplifting. He asked if the amendment included prior marijuana use convictions.

Representative Pruitt noted that Vice-Chair Gara was speaking about individuals who had been convicted prior to the passage of the new marijuana law. He would have to take a moment to consider the answer.

Vice-Chair Gara opposed the amendment. He stated there was currently a problem with repeat theft; someone could get convicted for shoplifting repeatedly with no jail time. He believed most to all legislators believed it was a problem. He did not want to allow repeat petty thefts of less than $250, which was addressed by SB 54. He explained that the bill reinstated the prospect of jail time for repeat shoplifters. He furthered that the bill imposed active jail time of 0 to 30 days for individuals arrested for stealing something worth more than $250. The issue of repeat thefts was already addressed in the bill. He continued that the amendment specified that a first-time shoplifting offense was punishable with jail time. He underscored that the state did not want repeat thefts, which had been a problem and was addressed by the bill. He did not believe throwing individuals in jail for a first-time shoplifting offense was prudent. He reiterated that repeat offenders should have jail time, which was already addressed by the legislation.

10:34:22 AM

Representative Ortiz spoke to Representative Pruitt's explanation that the amendment's purpose was to get individuals with a prior drug conviction [who were then arrested for theft] into the system. He asked if the amendment sponsor meant the individuals would have better access to treatment. He asked if the belief was that a person with a prior drug conviction did not have access to treatment.

Representative Pruitt replied that the first offense was a violation and a person received a ticket. He explained that if the first offense was a catch and release scenario and the person had a [prior] drug offense, the prosecutors did not have a tool to encourage someone to get help. He stated that the amendment would allow up to five days of imprisonment. A court could also rule that a person was mandated to get treatment with no jail time. He reasoned that the option was not available if individuals were merely ticketed and released for a first offense. The

amendment would start at sentencing at the level of a second offense. He underscored that the amendment pertained to individuals who had been convicted in the past. He added that not everyone with drug issues had been convicted of a drug crime. The amendment pertained to individuals who had been through the system in some capacity with a conviction (but not a prior theft conviction). He wanted to give prosecutors a tool instead of the catch and release issue. He stated that prosecutors had not been given the opportunity to offer individuals with the needed help because they did not have the tool in their toolbelts.

Representative Wilson asked to hear from the Department of Law (DOL). She was reading the amendment differently than it was being explained. She thought the amendment would require five days of jail time.

Representative Pruitt explained the misunderstanding. He referred to the bill [version T, Section 19, page 12, line 20] and explained that subsection (l) already included the language that a court "may not impose." The amendment language would follow the current bill language to read "may not impose a sentence of more than five days..." He clarified that five days was the maximum.

Representative Wilson stated that the amendment did not specify former crimes pertaining to drugs. She remarked that it referred to individuals who had been shoplifting and she thought it could be for any purpose. She wanted to make sure that the committee's interpretation was the same as the department's. She stated that shoplifting was a serious problem in her district. She did not care what the reason was that a person was shoplifting - whether they were on drugs or not - she wanted to make sure the amendment would be a useful tool for DOL.

Representative Pruitt responded that subsection (B) of the amendment listed statutes pertaining to prior drug convictions. Subsection (B) clarified that it affected individuals who had been previously convicted of an offense under specific statutes.

Representative Wilson restated her desire to hear from the department. She thought perhaps limiting the amendment to prior crimes pertaining to drugs was not enough. She explained that people were repeating offenses and violations were not stopping this from occurring. She

wanted to ensure the committee had the same understanding as the department.

10:40:47 AM

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, replied that Amendment 6 would create additional judicial discretion when an individual had previously been convicted of a drug offense (not a theft offense). He could not say when a person committed theft that it was or was not related to a prior drug offense. He understood the logic used by the amendment sponsor - he found the concept intriguing, but it was not a concept that the Criminal Division had contemplated. The department's position was that the type of issue was best referred to the Alaska Criminal Justice Commission for evaluation in order for various stakeholders to analyze whether the structure made sense. The amendment specified that a court may have greater discretion in the sentence they imposed (0 to 5 days) if an individual had previously been convicted as a drug offense. He did not know whether it was a good or bad thing; therefore, he recommended the commission should have an opportunity to evaluate the concept.

10:42:52 AM

Representative Grenn asked for verification that SB 54 would roll back some of the sentencing changes made by SB 91.

Mr. Skidmore replied in the affirmative.

Representative Grenn surmised the amendment took an additional step.

Mr. Skidmore agreed.

Vice-Chair Gara provided a scenario of a person stealing something under $250 from Fred Meyer's. He explained that the crime did not involve hurting someone or breaking into a house. He asked if a person was high on drugs at the time of the theft whether it was a separate crime.

Mr. Skidmore replied it was not a separate crime. In Alaska, possession meant possessing a drug outside of a person's body, not in their bloodstream. He stated that if an individual had it on their person and in their system,

it may be further evidence of possession. A person could not be charged with possession merely for being under the influence.

Vice-Chair Gara surmised that if a person had been given a sentence pertaining to using drugs in the past (but not dealing) the sentence had probably involved probation and rehabilitation. He stated the amendment would punish the individuals again for something they had already been punished for. He would be more sympathetic to the amendment if it pertained to individuals previously convicted of drug dealing, which did not rehab well.

10:45:20 AM

Co-Chair Seaton had concern about the amendment. He stated that the goal was to establish proportional sentencing, which the amendment did not adhere to. He referenced testimony that the average shoplifting crime was $50 or less. He observed that the amendment meant that if an individual had previously been convicted of a drug offense in any jurisdiction it would apply. He was concerned that a person may lose their job if they were sent to jail for five days. He opposed the amendment. He wanted to ensure the bill did not veer from proportional sentencing. He explained that theft under $250 sentencing was 0 to 5 days suspended for a first offense and 0 to 5 days active jail time for a second offense.

Representative Pruitt replied that sometimes people looked at the numbers as hard numbers that were guaranteed. He stated that interpreting that the amendment would mean a person would be sentenced to 5 days was incorrect. He stated that interpretation meant a person would also inappropriately read the other existing statutes. The amendment would give a judge the right to sentence a person with up to 5 days in jail. He stated that a prosecutor would not be able to argue the particular case without bringing up a person's prior drug offense. The prosecutor would have to explain how the drug offense related to the theft. The amendment's goal was to allow a judge to sentence a person up to 5 days; they did not have to give 5 days of active imprisonment. He thought it was important to recognize that the penalty was the maximum, not a guarantee.

Vice-Chair Gara asked if the committee would wait to hear if the amendment would apply to someone who had been previously convicted of [possession of] marijuana.

10:50:24 AM

Vice-Chair Gara explained his question. He detailed that prior to the legalization of marijuana it had been a crime to use and possess a certain amount of the drug. He wondered if the amendment would apply to someone who had been previously convicted of possession of marijuana prior to its legalization.

Mr. Skidmore answered in the affirmative. He directed attention to line 13 of the amendment that included drug statutes AS 11.71.010 through AS 11.71.060. He furthered that AS 11.71.060 was misconduct involving controlled a substance in the sixth degree, which was the possession of marijuana.

Representative Guttenberg remarked that the punitive nature of what had been done over the years had not been as effective as thought. He noted that the commission was examining the effectiveness of certain things and making recommendations. He would rather be effective in criminal justice sentencing than punitive. He believed the amendment meant a previous drug offense conviction may or may not be completely unrelated to the theft offense. He stated that the commission's recommendation was the starting point. He continued that being effective on sentencing, probation, treatment, and other reforms was the purpose of the bill. He commented on the complexity of criminal justice. He stated that data-driven evidence was more important than appeasing his anger.

Representative Grenn remarked that he shared the same concerns about crime in Anchorage; however, the issue related to marijuana had changed his mind on the amendment. He believed action taken in SB 54 to roll back of some SB 91 provisions was getting aggressive towards accomplishing a goal similar to the amendment. He the clause pertaining to marijuana went too far for him.

10:54:19 AM

Representative Ortiz asked if the judge would have discretion to take into account the fact that marijuana was now legal.

Mr. Skidmore responded that when the court had discretion of sentencing of 0 to 5 days, it would look at a number of factors, including how recent a prior conviction had been (e.g. 20 years back or the prior week). He agreed that if the prior conviction was for marijuana, the judge would take that into consideration. He did not know what precisely a court would do, but it would have discretion. He had heard judges indicate that because marijuana had been legalized that they had given less weight to marijuana convictions.

Representative Wilson supported Amendment 6. She stated that if the amendment imposed a rigid 5-day jail sentence she would oppose the amendment; however, it was a range. She stated that currently courts could only impose suspended jail time [for a first offense]. She stated that it was not possible to know all of the cases. She did not see how it was harmful to give more discretion to the courts. She did not believe there would be many times when a court would impose the five-day penalty. She shared that the stores in her district had stopped calling the police because there had been no action. She stated there were some people who were still scared of jail. She thought it could act as a deterrent.

Representative Grenn MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Tilton, Wilson, Ortiz, Pruitt, Thompson
OPPOSED: Gara, Green, Guttenberg, Kawasaki, Seaton, Foster

The MOTION to adopt Amendment 6 FAILED (5/6).

10:59:10 AM

Representative Seaton MOVED to ADOPT Amendment 7:

Page 13, lines 6 - 9:

Delete all material.

Renumber the following bill sections accordingly.

Page 32, line 29:

Delete "sec. 25"
Insert "sec. 24"

Page 33, line 8:

Delete all material.

Renumber the following paragraphs accordingly.

Page 33, line 9:

Delete "sec. 21"
Insert "sec. 20"

Page 33, line 10:

Delete "sec. 22"
Insert "sec. 21"

Page 33, line 11:

Delete "sec. 34"
Insert "sec. 33"

Page 33, line 12:

Delete "sec. 34"
Insert "sec. 33"

Page 33, line 13:

Delete "26"
Insert "25"

Page 33, line 14:

Delete "sec. 50"
Insert "sec. 49"

Representative Wilson OBJECTED for discussion.

Representative Seaton explained the amendment with a prepared statement:

> This amendment returns maximum jail time for disorderly conduct to 24 hours, which is the current law. Disorderly conduct is most often used to remove someone from a difficult situation such as a bar fight; SB 54 raised that to a maximum of 5 days. Someone held for 5 days on disorderly conduct, a Class B misdemeanor, would begin to see life consequences such as losing a job. I have expressed the opinion before that I'm worried about disproportionate sentencing, which we have seen in our judicial system. The information we have seen come forward is that the police and troopers need some method to remove someone from a situation, but that doesn't require retention for a long period of time. I think that we should move back to the 24 hours, which is what the commission recommended.

Representative Wilson stated it was another amendment that pertained to sentencing up to 5 days and gave more discretion. She could not imagine that if it was a simple removal, the courts would want an individual in jail 4 or 5 days. She did not know how to fit everyone into 24 hours.

Vice-Chair Gara stated that disorderly conduct was a "catch-all" crime when someone was fined with something most people did not consider a crime. He continued that the bar fight scenario mentioned by Co-Chair Seaton would be assault. He detailed that assault constituted putting someone in physical harm against their will. He explained that disorderly conduct could be a person blaring a speaker outside someone's house in the middle of the night or yelling in a bar and disturbing someone. He elaborated that they were not crimes that hurt people, involved drugs, sexual offenses, or theft. He characterized the offenses as having no other crime that covered the conduct "that you just don't like." He stressed that the amendment did not pertain to assault in a bar. He clarified it pertained to kids and drunk people doing annoying things. He stated the crime was the lowest level crime in Alaska statutes - it was the catchall when a person really had not committed what people considered to be a crime.

11:02:58 AM

Representative Ortiz supported the amendment. He believed SB 91 made disorderly conduct an infraction and that SB 54 would change it to something else. He spoke to the

establishment of a 24-hour period and up to a potential 5-day period through the judicial process. He had asked the Ketchikan police chief whether he needed five days. The chief had responded that he could not imagine why 5 days would be needed, but that they did need the ability to hold individuals for 24 hours.

Representative Pruitt opposed the amendment. He had heard from some police and troopers that the issue was important. He stated the argument he kept hearing against more judicial discretion made it appear to him that the system was so broken that judges and prosecutors would always go for the worst-case scenario. He reminded the committee that the bill language specified that they may not impose a sentencing of more than 5 days. He underscored that the language did not mandate judges to impose 5-day sentences. He had faith that the state's judicial system would make a judicious decision on whether 24 hours or five days was prudent. He noted that some of the people on the commission also worked in the criminal justice system and were making some of the decisions. He spoke against assuming that judges and prosecutors lacked the ability to determine the appropriate jailtime for each case. He believed it was good to give the system the tool to do what was necessary and needed depending on the situation and circumstance.

11:07:10 AM

Representative Guttenberg supported Amendment 7. He discussed that the amendment pertained to the lowest, most basic element of a crime that did not fit under any other crime. He detailed the situation basically pertained to a cop on the street needing to take some type of action - nothing more was needed than to take someone in overnight. He spoke about missing work or school due to jailtime. He thought the sentencing discretion for 5 days in jail should be available if a person committed an actual crime. He believed 24 hours was an appropriate tool. He stated that bar fights, waving a gun, and doing other things in neighborhoods that were more than annoying were already classified as other crimes. He believed it was completely appropriate for individuals charged with disorderly conduct to only receive an overnight jail stay.

Representative Thompson opposed the amendment. He stated that the newspaper frequently included occurrences where charges were reduced to disorderly conduct. He believed

some discretion was needed up to 5 days. He doubted a person arrested for mooning another person would receive 5 days, but in situations where it was clear a person had a problem, the court could sentence up to 5 days.

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Kawasaki, Ortiz
OPPOSED: Wilson, Gara, Grenn, Guttenberg, Pruitt, Thompson, Tilton

11:10:27 AM

Co-Chair Foster asked to VOID the roll. There being NO OBJECTION, it was so ordered.

A roll call vote was taken on the motion to adopt Amendment 7.

IN FAVOR: Guttenberg, Kawasaki, Ortiz, Gara, Seaton, Foster
OPPOSED: Grenn, Pruitt, Thompson, Tilton, Wilson

The MOTION PASSED (6/5). There being NO further OBJECTION, Amendment 7 was ADOPTED.

11:11:18 AM

Representative Kawasaki MOVED to ADOPT Amendment 8, 30-LS0461\T.15 (Glover/Martin, 11/1/17) [note: due to the amendment length it is not included here, see copy on file for detail].

Representative Wilson OBJECTED for discussion.

Representative Kawasaki noted he would offer a conceptual amendment to Amendment 8 after explaining the underlying amendment. The amendment sought to direct the Alaska Judicial Council and the Alaska Criminal Justice Commission to help them design and implement a project study with risk factors about criminality. Currently, the Department of Corrections (DOC) published the offender management profile annually, which included a person's ethnicity, reason for imprisonment, length of stay, and age. He stated they always missed out on some information that he believed was important to understanding why a person was in jail. The

study would include information on adverse childhood experience, mental health and substance abuse histories, education, income, current employment status, and other. He believed the information would provide visibility into why a person was in jail to determine if there was primary prevention policy the state could undertake in the future. He relayed that DOC (Division of Administrative Services director April Wilkerson) did not see any financial impact of the amendment but it requested replacing the word "regulation" with "policy."

Representative Kawasaki continued that the majority of the information was already captured through the offender assessments and the Level of Service Inventory - Revised (LSI-R) when individuals were in the prison system. The amendment would impact individuals in jail for longer than 30 days; the information could be used by the Alaska Criminal Justice Commission, the Alaska Judicial Council, the Alaska Justice Information Center, and other organizations involved in constructing future policy with the legislature.

11:13:53 AM

Representative Kawasaki MOVED to ADOPT conceptual Amendment 1 to Amendment 8. On page 1, line 12, the words "receive/analyze" would replace the word "obtain." On line page 1, 22 the word "policies" would replace "regulations" at the request of DOC. Page 2, line 6, the words "requirements for collection of information under this subsection would terminate June 30, 2024" after the word "happening," which coincided with the Alaska Criminal Justice Commission's sunset. Page 4, line 20, would read February 14 to give more time before the commission sunset. The date change would also occur on page 5, lines 9, 24, 27, and one other section that discussed DOC under policies rather than regulation. He explained that the amendment pertained to dates before the commission terminated, policies rather than regulations, and receiving and analyzing information rather than obtaining information.

There being NO OBJECTION, conceptual Amendment 1 to Amendment 8 was ADOPTED.

11:16:25 AM

Representative Grenn asked if partaking in the option under Amendment 8 be voluntary.

Representative Kawasaki replied in the affirmative. The information received under LSI-R was voluntary.

Representative Guttenberg stated that earlier in the regular session, homeland security had issued a national request for prison systems around the nation for information on their database. He had found some restrictions the state had on disseminating some of the information regarding ethnicity and country origin. He wondered if there was a conflict with the restrictions and the proposed amendment. He understood the data collection for the commission would be public and wondered if the other information would be included as well.

11:17:58 AM

Representative Kawasaki answered that he was unsure what data would be public. He knew the requests had been related to specific individuals' country of origin. He stated that the data would be aggregated for use as a decision-making tool. For example, the information could help look at why there were twice as many Alaska Natives in the state's prison system. The data would be useful in creating primary prevention plans. He did not believe individual data was released at present. He deferred to DOC for further detail.

Co-Chair Seaton pointed to language on page 2, line 16, subsection (4) of the amendment "may not publish or present individually identifiable information relating to an inmate." He asked if the language carried throughout the bill. He surmised it was meant to specify that only the identified information would be made public.

Representative Kawasaki replied in the affirmative. He detailed that the annual report would summarize data. The report would be for informational purposes and would not identify particular people - that information would be confidential.

Co-Chair Seaton stated that although subsection (4) required making a report, the legislative intent was that any publicly released information, whether in the report or any other form, would be deidentified.

Representative Kawasaki replied it was his intent for the information to be confidential and not identifiable to the individual.

Co-Chair Seaton wanted to clarify that all the data would be deidentified.

Representative Wilson WITHDREW her OBJECTION.

There being NO further OBJECTION, Amendment 8 was ADOPTED as AMENDED.

11:21:05 AM

Representative Kawasaki MOVED to ADOPT Amendment 9, 30-LS046\T.35 (Glover/Martin, 11/1/17):

> Page 1, line 5, following "license;":
> Insert "establishing a maximum caseload for probation and parole officers;"
>
> Page 18, following line 11:
> Insert a new bill section to read:
> "* Sec. 26. AS 33.05.040 is amended by adding a new subsection to read:
> (b) The caseload of a probation officer supervising probationers or the combined caseload of a probation officer or parole officer supervising probationers and persons on parole as provided for in (a)(5) of this section may not exceed 75 persons except in temporary or extraordinary circumstances approved by the commissioner."
>
> Renumber the following bill sections accordingly.
>
> Page 33, line 11:
> Delete "sec. 34"
> Insert "sec. 35"
>
> Page 33, line 12:
> Delete "sec. 34"
> Insert "sec. 35"
>
> Page 33, line 13:
> Delete "26"
> Insert "27"

Page 33, following line 13:
Insert a new bill section to read:
"* Sec. 52. Section 26 of this Act takes effect July 1, 2019."

Renumber the following bill section accordingly.

Page 33, line 14:
Delete "sec. 50"
Insert "secs. 51 and 52"

Representative Wilson OBJECTED for discussion.

Representative Kawasaki explained that the amendment would set an upper cap for probation and parole caseloads at 75. There was significant data showing that as the number of supervised probationers or parolees increased, there was an impact on whether the individuals made it through the program. He cited a 2012 study called Reduced Caseloads Improved Probation Outcomes in the Journal of Crime and Justice had studied the particular impact and had estimated a smaller caseload could reduce recidivism by roughly 30 percent. At some level, when a probation officer has too many cases they cannot keep track of everyone under their supervision. Part of SB 91 and SB 54 were specifically meant to put low-risk offenders on probation and parole back into society. He believed reentry reinvestment and rehabilitation was very important and that the individuals deserved the best chance they could get.

11:23:05 AM

Representative Wilson asked for the current recidivism rate for individuals on probation and/or parole.

Representative Kawasaki replied the latest data received was 2016 through a report published by Legislative Research Services showing the average recidivism rate at about 65 percent.

Representative Wilson asked if the recidivism rate for individuals on probation and parole was the same as the rate for individuals released without probation or parole.

Representative Kawasaki did not know the rate for individuals released without probation or parole. He

relayed that the rate for individuals released on probation and parole was roughly 65 percent.

Representative Wilson asked to hear from DOC. She noted the amendment would also affect pretrial. She wondered about the number of individuals who would be released on their own recognizance beginning in January. She wondered how the amendment would impact the number of people seen as the program began.

11:24:37 AM

DEAN WILLIAMS, COMMISSIONER, DEPARTMENT OF CORRECTIONS, requested to hear the question again.

Representative Wilson complied. She stated that pretrial would begin in January for individuals currently awaiting trial in jail and new entrants into the system. She asked if there was an anticipated number of individuals that would initially be going through and how it corresponded with the number of officers the department was looking to hire.

Commissioner Williams believed the amendment could have an impact on the issue. Under pretrial, some individuals would be put on monitoring status, meaning they would still be under a caseload, but they would not be followed the way others on pretrial status who were getting out or were higher risk. Research showed that the best thing to do for low-risk individuals on pretrial status was nothing but to remind them of their court date. He elaborated that over monitoring low-risk offenders who had never been in trouble before was bad. The individuals may be considered on the case status and the amendment could potentially restrict the number of people on the caseloads.

Representative Wilson asked about January numbers - she imagined DOC knew the number of individuals currently in jail waiting trial who did not have the means to bail themselves out.

Commissioner Williams deferred to a colleague.

11:26:53 AM

GERI FOX, PRETRIAL DIRECTOR, DEPARTMENT OF CORRECTIONS, asked Representative Wilson to repeat the question.

Representative Wilson complied. She wondered if DOC had a ballpark number of the individuals who, through the screening process, would be released on their own recognizance.

Ms. Fox replied that she anticipated potential caseload sizes at approximately 200. She believed Amendment 9 could impact the pretrial caseload. She explained that the amendment specified probation; however, there were some areas where a person had both probation and pretrial. She thought the distinction did potentially have impact on some of the realities about how the work would be assigned.

Representative Wilson asked how many officers the department anticipated hiring by January.

Ms. Fox replied that they believed they would be close to 40 hired by January. Currently, there were approximately 10 individuals the department hoped to make offers to.

Representative Wilson did not want to merely multiply 40 officers by 200 to come up with the number of people DOC estimated would be released from prison. She asked if the 40 positions included office help, screening, and other work outside of officers responsible for following up on individuals who had been released.

Ms. Fox had tried to take every possible PCN at the line level for supervision. The department had some minimal administrative support in each of the areas, but the bulk of the PCNs would be line level officers. She estimated roughly 8 to 10 support positions including herself and her administrative team to do the work.

Representative Wilson asked for an estimate of the number of currently in prison awaiting trial.

Ms. Fox answered there were approximately 1,500 individuals on pretrial who were in an unsentenced status. While the assessment tool helped the department with predictions - DOC did not yet have a sense for the decisions the judiciary would make when it came to who would be supervised and who would not be supervised. She had a sense based on a total projection, but she did not know what the immediate number would look like from the institution.

11:30:54 AM

Representative Wilson asked about the average caseload size for probation and parole officers at present.

Commissioner Williams answered that some offices had very specialized probation officers doing specialized work. The amount of people on a caseload was representative of some of the work, but not a great indicator of the level of work on some cases, which was the problem he saw with Amendment 9. He understood and agreed with the intent and agreed that overloading the probation system was not a good thing. The problem was that 30 cases, or 35 specialized cases may be a maximum capacity. However, there may be other situations where 100 to 135 low-risk individuals may not be a full load. The department had divided some of the offices up. He noted that the deputy director of probation was online for questions as well. He agreed that numbers mattered, but it was really about the workload of the numbers the officers were doing. There were more reentry efforts at present than probation officers were doing. In some situations, caseloads of 35 to 40 could be too much depending on the cases, and in another situation a caseload of 125 may not be too much because the individuals were low-risk and the officer's responsibilities for those individuals was much lower. It was difficult to set the cap.

11:32:50 AM

Representative Guttenberg highlighted the pretrial population, people released from jail without probation, and people released from jail on probation. In all the situations there were programs where people provided oversight and counseling. He pointed to the success of counselors in schools. He asked about the success rate of reducing recidivism. The amendment focused on probation officers who had a wide range of responsibilities. He asked whether overloading the officers mattered or whether oversight by the officers drove recidivism rates down.

Commissioner Williams deferred to his colleague.

Ms. Fox replied that the question got to the heart of evidence-based practices. One of the tenets of evidence-based practices was not to overwork a low-risk defendant. She furthered that it was historically what corrections was very good at because low-risk defendants showed up, they

were nice, they gave positive urinalysis and the department liked working with them. However, the tendency was for DOC to want to work with the individuals; therefore, they remained on supervision for much too long. Evidence-base practices showed that recidivism was increased when low-risk caseloads were overworked. When managing the programs, it was necessary to consider how to motivate employees to get the right level of attention to the right level of client. She continued that high levels of surveillance and oversight for moderate to high-risk defendants provided better results. Higher caseloads for low-risk people made sense because less time and attention was needed for individuals who were naturally compliant. Likewise, there were lower caseloads for higher risk individuals in order to target and surveil the individuals for better outcomes.

Commissioner Williams agreed. He spoke to the intent of the amendment to ensure there were manageable probation workloads. He spoke to Ms. Fox's testimony about the importance of utilizing the right amount of supervision for the right person. He was concerned about the probation caseloads, but there were other key components in terms of how to switch the department over. Specifically, more evidence-based models of supervision that were more important. There was a litany of other things he would target pertaining to why the recidivism rate had not changed in 20 years. Much of the issue pertained to things that happened behind prison walls, not just in supervision. He spoke to the importance of getting smart about how supervision occurred. He highlighted important strategies in SB 91 pertaining to probation supervision and earned compliance credit. He appreciated the intent of the amendment but thought there were other areas that were the most important aspect to get right.

11:37:47 AM

Representative Guttenberg remarked that the legislature left it up to DOC to determine how it managed its caseloads. He stated that they could get into discussions about other ways to reduce recidivism, but the amendment addressed that caseloads were too large. The point was not to micromanage the department. He asked if the department had enough people to do the needed casework.

Commissioner Williams replied that before he asked for more resources for a specific area, he wanted to make sure they

were needed and justified. The amendment did not relate to anything he had asked for. He continued the department had reducing probation counts of a fairly significant nature, but at the same time it was asking officers to do more. He was not throwing his probation staff under the bus by not asking for more officers or setting a minimum caseload, he was concern about the caseload cap of 75 in the amendment. For example, some offices did field probation and pretrial; they could take far more pretrial because some would require little attention. He questioned what would happen if caseloads exceeded 75. He asked if he would have to hire more staff. He was concerned about asking for additional resources without knowing where the positions would be housed. He did not believe the amendment was in the department's best interest.

11:40:19 AM

Representative Grenn agreed with the intent related to caseload burnout. The committee had heard from different departments on caseloads and burnout. He stated that probation and parole officers nationally had a high burnout rate due to the difficulty of the job. He discussed recruitment and retention. He wondered if the department had unfilled positions.

Commissioner Williams replied that the department did have unfilled positions - 10 to 12 vacant in probation ranks at present, but there were more unfilled positions in the correctional officer ranks at present. There were currently 10 to 12 vacant positions in the probation ranks. He believed Department of Public Safety Commissioner Walt Monegan's answer had been good when asked why trooper positions were unfilled. First, stability and predictability was needed - people needed to know they were going to have a job and be supported. He spoke to the importance of fiscal stability for a long-range plan and to know how many positions were likely. He detailed that it provided comfort to come to work and stay in a job. He had been concerned about the [new] Pretrial Division for the same reasons. He mentioned discussion of repeal and questioned who would want to work in the division. He stressed the work was new and challenging; there needed to be stability and commitment showing the state was going to stick with its selected course. He continued that employees wanted to know the state would keep its word; otherwise it was difficult to recruit. He agreed that money mattered,

but stability, support, appreciation, and other also mattered.

Representative Grenn asked there were areas in the state where unfilled positions took longer to fill.

Commissioner Williams answered that it could be more difficult to fill positions in some rural offices. For example, he had been at a rural office where a probation officer was planning to retire - the individual had been a stable factor in the community for a long time, which was positive. Other people applying who were under a different retirement status, did not view the office the same way. He worried about the rolling consequences. He stood by his prior comments about the need for stability and for employees to know there was a commitment to a chosen direction.

11:44:25 AM

Representative Grenn asked if the commissioner's lukewarm feelings on Amendment 9 pertained to the cap.

Commissioner Williams replied in the affirmative. He agreed with the intent of the amendment but believed the cap would be restrictive. He explained that a caseload of 75 in one office may be no problem. He continued there may be another officer with a caseload of 40 or 50 who was overworked. He believed the amendment was specific to particular probation officers.

Co-Chair Foster recognized Representative Chris Tuck in the audience.

Representative Ortiz was supportive of the goals of the amendment. He asked if there were ways to achieve the goals other than a cap.

11:46:12 AM

Commissioner Williams answered that allowing DOC to average would provide an option, so he would not have to worry about being in violation of the spirit of the amendment if one officer constantly had a caseload over 75. He stated it would provide more flexibility, but it did not address the issue that sometimes the caseload was representative of the work, but really it was the type of caseload - who was on

the caseload and the expected work on the caseload. He did not know how to articulate that in the amendment. He did not want similar situations he had seen in other states where their probation force was overwhelmed. He understood the complete downside of that issue.

Representative Kawasaki commented that the committee was talking about pretrial services. He clarified that Amendment 9 pertained to individuals in jail who had been adjudicated, sentenced, and were serving time in the correctional system. He underscored the importance of recognizing the distinction between the Pretrial Division, which he supported as a substantial portion of SB 91. He stressed that the amendment only pertained to probation and parole for individuals who had been convicted. The amendment did not pertain to individuals in pretrial status.

Co-Chair Seaton understood the department's reluctance to go with a hard cap, but he wanted to make sure the system was not being shortchanged by zero fiscal notes. If the amendment was not accepted, he wanted to be assured that DOC would come forward in the next budgetary cycle with the proper allocation of resources to reduce recidivism and recommendations to the legislature. He wanted to accomplish the commission's goal and move forward with reducing recidivism. He wanted to understand the breadth of the things the legislature could consider to accomplish the goal. He stated that if the legislature did not get the information designed by the agencies, it was left shooting at targets to make sure that something would move forward.

11:51:03 AM

Commissioner Williams recognized that nothing was free. Putting people in jail cost money as did to the system. He did not want to get ahead of anyone in the governor's team about the items. He shared that the administration was a team and collaborated. He had been clear that certain aspects of the DOC budget and that safety inside the prison mattered for recidivism and reoffence rates. He had been straightforward about things that he believed were crucial, such as internal affairs in the system and understanding why bad things happened and how to fix them. He pledged to be as transparent as he could be with the legislative branch. He acknowledged that they would not always agree on things. He was open to having a discussion, but in the

context of the administration's team and the importance of ensuring a comprehensive approach.

11:53:12 AM
AT EASE

11:57:45 AM
RECONVENED

Co-Chair Foster relayed that the committee was addressing Amendment 9. He asked if individuals had questions for the departments. Seeing no questions, the committee recessed for lunch.

11:58:34 AM
RECESSED

1:22:57 PM
RECONVENED

Co-Chair Foster relayed that the committee had been considering Amendment 9.

1:23:23 PM
AT EASE

1:25:13 PM
RECONVENED

Co-Chair Foster reiterated that the committee was considering Amendment 9.

Representative Kawasaki MOVED to ADOPT conceptual Amendment 1 to Amendment 9. The words "an average" following the words "may not exceed" on page 1, line 9. The sentence would read "...may not exceed an average 75 persons..."

Representative Wilson OBJECTED. She understood that the commissioner had said the change could be better, but there still could be issues. She referred to varying caseloads where some individuals required strict monitoring while others did not. She stated that if the legislature did not trust DOC to manage its personnel, it was a discussion the legislature needed to have. She believed the amendment would micromanage the department by setting a limit. She did not know the caseload of each officer. She asked the

amendment sponsor how many parole and probation officers had caseloads exceeding 75 people.

Representative Kawasaki replied that the most important component was to determine the level of supervision each officer was providing. He detailed that for a high priority person, the generally accepted time spent would be four hours per month; time spent on a medium priority person would be closer to two hours; and a low maintenance individual would require one hour per month. He shared that the one officer in Barrow had an average caseload of about 30.08 people. He did not know the acuity level at present but could dig into the numbers later. Whereas, the two probation officers in Bethel had a total of 238.8 cases. He continued it depended on the acuity level an officer was supervising - the higher level the criminal the more hours an officer spent, while lower level offenders required fewer hours. He stated it was not really fair to base the amendment specifically on 75 persons, but he had factored high, medium, and low risk cases and averaged over a caseload, which had resulted in a number of about 70.

Representative Wilson asked about other locations with caseloads exceeding 75.

Representative Kawasaki replied that it was very difficult to tease out the numbers. The only thing he could provide was the total caseloads versus total number of probation officers at a particular field office. Out of the 15 offices, half had caseloads above 75 and half had caseloads below 75. The average national caseload was 60 individuals and the average [in Alaska] according to DOC was just below 50.

Representative Thompson asked Representative Kawasaki to restate the last number.

Representative Kawasaki replied "50 cases." The number had been derived by taking the total average of the total number of cases, divided by the total number of probation officers.

1:29:43 PM

Representative Wilson understood how hard it was to get information. She stated that she had submitted requests to agencies weeks ago and getting information had been almost

impossible. However, she believed the amendment would micromanaging the department. She asked for the measurement the amendment sponsor hoped to accomplish. For example, she wondered if the amendment sponsor hoped recidivism would decline to 30 percent or other. She surmised that with an average, caseloads would already be under 75. She thought the amendment would not change what was currently taking place. She asked about the recidivism rates in states with caseloads under 75. She wondered if the decline in recidivism had been based only on the caseloads each officer had or other factors as well.

Representative Kawasaki replied that the average caseloads nationally were 58 individuals. There were outliers, such as Georgia with an average caseload of close to 200 - he did not know Georgia's recidivism rate. The state fell somewhere within the median, which was great for the time being. Under SB 91, the department anticipated over 600 people being out on probation or parole in the coming year. He emphasized the need for adequate supervision of the individuals; it was a public safety issue if former convicts did not receive necessary supervision. He offered the amendment as an opportunity to allow the department to move individuals back and forth. Additionally, page 1, lines 10 and 11 of the amendment allowed for temporary or extraordinary circumstances as approved by the commissioner. He stressed that it was a public safety issue.

Representative Wilson agreed that they wanted to keep the public safe. The issue was about whether the legislature trusted DOC to put the right amount of staff in the appropriate locations. She believed the amendment implied the legislature did not trust the commissioner to make the decisions without micromanagement by the legislature. She believed the commissioner had testified that the amendment would not be in the department's best interest at present. She thought Commissioner Williams had tried his best to answer an earlier question by explaining that how SB 91 would impact each area was not completely known in terms of the need for more staff and where. She believed that voting for the amendment communicated that they did not trust the DOC commissioner. She thought it may be better to let the Alaska Criminal Justice Commission look at the issue. She did not want to send the message that the commissioner could not manage his department. She did not believe that at present. She thought it was the wrong message.

Co-Chair Foster recognized Representatives Ivy Spohnholz, Chris Tuck, and Andy Josephson in the audience.

Vice-Chair Gara thought by including the word "average," the amendment did not micromanage the department. He reasoned the amendment gave the commissioner the discretion. For example, if there was a higher caseload in Anchorage and a lower caseload in Bethel, the amendment would allow the commissioner to decide where to place the officers. He furthered if DOC did not feel it was able to monitor people to determine whether they were drinking or doing drugs, but they were more than full staffed in another region, it would give the commissioner the flexibility to move officers around. He believed the amendment added flexibility for the department by including the word average.

1:35:36 PM

Co-Chair Seaton remarked that it seemed the concept was done frequently - whether it was the number of hours a nurse could work in a shift, or Office of Children's Services caseloads to ensure children were protected. He believed the intent of criminal justice reform was to make sure that recidivism was dealt with and avoid adding more and more people to the criminal justice system. He did not want to reach a point where there was insufficient probation supervision. He spoke to the need to protect the safety of the public. He believed the amendment sent the message that they did not want high caseloads. He pointed out the delayed effective date and believed if there was something inordinately wrong it could be addressed in the future. He wanted to make sure that probation officers had a load they could supervise and the focus on reducing recidivism was maintained.

Representative Wilson WITHDREW her OBJECTION to conceptual Amendment 1. There being NO further OBJECTION, conceptual Amendment 1 was ADOPTED.

Representative Wilson asked for verification that pretrial would not be impacted by the amendment.

Representative Kawasaki replied in the affirmative. The amendment only pertained to individuals who had been adjudicated and were on probation or parole.

Representative Wilson provided a scenario where a parole officer was also responsible for supervising two or three officers. She asked if a supervisor was still a probation officer classification. She asked if a probation officer would also include her supervisees versus a probation officer with a caseload of 75.

Representative Kawasaki replied that the amendment pertained to the probation or parole officer dealing directly with the probationer or parolee.

Representative Wilson asked if supervisors were classified as probation officers. She provided an example about the Office of Children's Services where a supervisor may be classified as a caseworker, but they did not have caseloads. She thought the supervisors would fall under the amendment if so.

Representative Kawasaki replied by reading a sentence from the amendment regarding intent: "probation officer supervising probationers or the combined caseload of a probation officer or parole officer supervising probationers and persons on parole..." He wanted the amendment to pertain to the person directly interacting with the probationer. He believed the amendment and his intent were clear.

Representative Wilson stated it came down to the classification of a job. She wanted to ask the commissioner for verification that a supervisor was not also classified as a probation officer.

1:41:01 PM

Commissioner Williams answered that there were some offices where a supervisor provided direct line supervision. He elaborated that in some cases a probation officer III who would normally be a supervisor in some locations would have direct supervision of probationers. There were other offices where some of the probation officer supervisors only supervised. He understood the intent of the amendment and offered that it could be cleaned up by saying "those officers who are providing direct supervision, regardless of their class, would be included in the averaging of the tally." There were some differences between supervisors depending on what office they were in.

Representative Pruitt wondered if the budget had ever included intent about the issue being a concern of the legislature's.

Representative Kawasaki replied that SB 91 had numerous things it had promised including reinvestment and reentry. The reentry component was one of the most important components, because people who did not reenter society on smooth footing ended up repeatedly in jail. He detailed that SB 91 had included over 36 positions in the Probation Division to address the issue in future years. He furthered that if things went as anticipated, probation and parole populations would increase by the end of FY 18 and were anticipated to be steadily increased in outyears. The total number expected in the next year was 600, some of whom would be stood up by pretrial as soon as it began in January 2018. It was anticipated there would be fewer individuals in jail and more that would be out on probation and parole or pretrial. He stated that most of the positions had been taken out - he believed only about five remained when SB 91 had passed.

1:44:06 PM

Representative Pruitt opposed the amendment. He was concerned that the issue would be better addressed with intent language through the budgetary process. He elaborated that if the [DOC] commissioner was not able to hire enough people in the coming year or in the future, if caseloads were higher than the 75 average, the commissioner would be in violation of the law. He noted that even if the commissioner was looking at an average of 77 caseloads per officer, it would be in violation of the law if the amendment passed. The only way the legislature could repair the situation would be to pass a law or make an amendment. He continued that the process to go through allowing the commissioner to manage the budget was long and detailed. He reiterated that budget process was a better place to deal with the issue through intent language. He furthered that if after several years the department was not listening, perhaps it would be appropriate to put something in statute. He did not believe there was evidence the legislature had told the department to look at a 75-caseload average or that the department had not been following intent. He believed they were skipping a key step in the process.

Co-Chair Seaton viewed the process outlined by Representative Pruitt as the reverse of what he believed it should be. He thought it meant public safety would be risked. He also believed it meant they would have to find that the state had high recidivism, look for a cause, and determine the issue the amendment meant to address was the cause. He continued that after multiple years of a higher crime rate the issue would then be addressed. He thought a logical standard with flexibility for temporary, extraordinary circumstances was the best approach. He believed acting proactively rather than retroactively was prudent. He stressed the importance of supervision of parolees and other. He thought the issue should be looked at from both sides. He thought the amendment would prevent higher crime rates.

Representative Pruitt stated that the amendment would not change funding for the current year. He stated that if the legislature had the ability to appropriate in the upcoming budgetary cycle, it could take the policy and go forward. The amendment did not make structure changes immediately. He spoke to much discussion about the need to use evidence-based research regarding the criminal justice system reform. He stated the amendment was not based on evidence. The amendment would set a number that he believed was arbitrary. He stated it would limit the budgetary process and the legislature's ability going forward. He thought it appeared the legislature was trying to take some of the onus off itself for decisions it needed to make in the future.

1:49:33 PM

Representative Wilson wondered why the effective date was delayed until 2020 if it was a public safety concern. She believed the committee had communicated to DOC that the commissioner needed to look at the topic. She suggested having the commissioner to come back during the budget process in the upcoming session. Her biggest concern was about putting the amendment in statute, given the difficulty of changing statute. She returned to the delayed effective date of 2020 and wondered why it made sense to let crime persist at a high rate for two more years if that was the logic. She pointed out there could be a scenario where the department had success at caseloads of 80, but the amendment changed the number to 75 later.

Representative Kawasaki responded that when SB 91 had passed there had been specific provisions that went into effect at specific dates. He explained the reason for the July 1, 2020 effective date. He detailed that if SB 91 continued on its current course, the probation and parole population would increase in FY 18. He furthered that an increase of 600 was anticipated in the following year; therefore, the change was not yet needed. He stated that the amendment would save money. There were eight positions in the Probation Division that were yet to be filled. There was not a reason in the current year for a supplemental to add the provision in, but there was a future obligation that would occur if SB 91 continued on its way. He added that the amendment used the original SB 91 fiscal notes.

1:52:11 PM

Representative Wilson expressed confusion about the effective date. She stated the amendment would force a change and not necessarily get the intended results. She thought the amendment would mean that even if the department was having success at caseloads of 80, it would be forced to add more officers to reduce caseloads in the future.

Representative Kawasaki provided wrap up on the amendment. He discussed that SB 91 was about rehabilitation and reentry. He stated that according to many studies, including the recent Reduced Caseloads Improve Probation Outcomes published in the Journal of Crime and Justice, increases in probation officer interactions and smaller caseloads could reduce recidivism by roughly 30 percent. He underscored it was an incredible number of individuals who would be diverted from jail and crime. Unlike individuals in pretrial who were innocent until proven guilty, the individuals coming out of jail were either on probation or parole. He stressed that the individuals coming out from jail under SB 91 and SB 54 were let into the communities across the state. Probation officers were the first line of defense to ensure the individuals were adhering to their conditions of release. He reasoned that when a person had to supervise 150 people, it would not help anyone, and it would not keep streets safer. The amendment sought to ensure a minimum level of oversight from public safety over people who had committed crimes. He stressed it would be silly and dangerous to provide insufficient funds. The

amendment did not need funding in the current budget because there were currently some vacancies. He emphasized that when the law fully came into effect, there would be more and more people on probation and parole; more and more people who had committed crimes, would be back on the streets. The individuals needed supervision and the legislature owed it to the public to ensure they were supervised to the fullest extent.

Representative Wilson MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Kawasaki, Ortiz, Gara, Grenn, Guttenberg, Seaton, Foster
OPPOSED: Pruitt, Thompson, Tilton, Wilson

The MOTION PASSED (7/4). There being NO further OBJECTION, Amendment 9 was ADOPTED as AMENDED.

1:56:37 PM

Co-Chair Foster noted that Amendment 16 would replace Amendment 11.

1:56:53 PM
AT EASE

2:01:03 PM
RECONVENED

Co-Chair Foster relayed that Amendment 10 would be heard next. Amendment 11 would be withdrawn and replaced by Amendment 16, which would be heard following Amendment 15. Additionally, Amendment 12 would be heard after Amendment 16.

Representative Pruitt MOVED to ADOPT Amendment 10, 30-LS0461\T.4 (Bruce/Martin, 10/27/17) (copy on file):

> Page 1, line 5, following "license;":
> Insert "relating to driving while license canceled, suspended, or revoked;"
>
> Page 18, following line 11:
> Insert new bill sections to read:

"* Sec. 26. AS 28.15.291(a) is repealed and reenacted to read:
(a) A person is guilty of a class A misdemeanor if the person
(1) drives a motor vehicle on a highway or vehicular way or area at a time when that person's driver's license, privilege to drive, or privilege to obtain a license has been canceled, suspended, or revoked in this or another jurisdiction; or
(2) drives in violation of a limitation placed on that person's license or privilege to drive in this or another jurisdiction.

* Sec. 27. AS 28.15.291(b) is repealed and reenacted to read:
(b) Upon conviction under (a) of this section, the court
(1) shall impose a minimum sentence of imprisonment
(A) if the person has not been previously convicted, of not less than 1O days with 1O days suspended, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;
(B) if the person has been previously convicted, of not less than 10 days;
(C) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoke under circumstances described in AS 28.15.181(c)(l), if the person was driving in violation of a limited license issued under AS 28.15.20l(d) following that revocation, or if the person was driving in violation of an ignition interlock device requirement following that revocation, of not less than 20 days with 10 days suspended, and a fine of not less than $500, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;
(D) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.18l(c)(2), (3), or (4), if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, or if the person was driving in violation of an ignition interlock device requirement following that revocation, of not less than 30 days and a fine of not less than $1,000;
(2) may impose additional conditions of probation;

(3) may not
(A) suspend execution of sentence or grant probation except on condition that the person serve a minimum term of imprisonment and perform required community work service as provided in (1) of this subsection;
(B) suspend imposition of sentence;
(4) shall revoke the person's license, privilege to drive, or privilege to obtain a license, and the person may not be issued a new license or a limited license nor may the privilege to drive or obtain a license be restored for an additional period of not less than 90 days after the date that the person would have been entitled to restoration of driving privileges; and
(5) may order that the motor vehicle that was used in commission of the offense be forfeited under AS 28.35.036."

Renumber the following bill sections accordingly.

Page 32, line 28:
Delete "and"
Page 32, line 29, following "Act":
Insert";
(10) AS 28.15.291(a}, as repealed and reenacted by sec. 26 of this Act; and
(11) AS 28.15.29l(b), as repealed and reenacted by sec. 27 of this Act"

Page 33, line 11:
Delete "sec. 34"
Insert "sec. 36"

Page 33, line 12:
Delete "sec. 34"
Insert "sec. 36" 14
Page 33, line 13:
Delete "Sections 10, 11, and 26"
Insert "Sections 10, 11, and 28"

Page 33, line 14:
Delete "sec. 50"
Insert "sec. 52"

Co-Chair Seaton OBJECTED for discussion.

Representative Pruitt explained that the amendment had been brought to him by law enforcement officers. He detailed a provision in SB 91 lowered the sentences for driving with a suspended license to a violation (except DUIs); the amendment would revert sentencing back to the pre-SB 91 structure. He spoke about issues officers found when pulling people over. He used an example of a person passed out at a stop light - the officer had found a gun in the vehicle. He explained that an officer would not have found the gun if the person had not been passed out. An officer could suspect a DUI and pull a person over for swerving and failing to use a turn signal. There was usually some infraction that allowed an officer to pursue something further. He furthered that officers could get up to a person's window and recognize the driver was a "bad guy." Previously, officers had the ability to dig deeper if the person had a suspended license. He continued that it had been very effective pertaining to drug dealers - when an officer discovered a person had a suspended license, they typically could look in the person's car because they were about to detain the individual. The ability had been taken away when SB 91 had reduced the offense to a citation. He stated that officers felt that a vital tool had been removed from their tool belts. He stated that DUIs were a different circumstance and the individuals were not bad people, they had made bad decisions. He stated that the individuals the amendment addressed were bad people. The officers would like the opportunity to dig deeper, but the tool had been removed.

2:06:16 PM

Vice-Chair Gara wondered if the amendment would create a second crime for the same conduct. He spoke to his understanding that a driver's license was required to get insurance. He stated that if a person did not have a valid driver's license they did not have insurance. He wondered if the amendment would turn one crime into two crimes - the crime of driving without insurance and driving with a suspended license.

Representative Pruitt replied he would have to refer to statute.

2:07:22 PM
AT EASE

2:07:58 PM
RECONVENED

Representative Pruitt remarked that another committee member had indicated the offense was a misdemeanor. He recalled that in a car accident situation when a person did not have their insurance card on them, it did not necessarily mean they had committed a misdemeanor. He explained that a person usually had 10 to 15 or so days to provide proof of insurance. He explained that the police officers needed the tool to be able to continue the discussion at the time of pulling a person over.

Vice-Chair Gara noted there were two ways to drive without insurance: one was forgetting your insurance card, which was not a crime, but received a fix-it ticket; and the other was to knowingly drive without having insurance. He furthered that liability insurance was necessary in the event of hurting another person in an accident. It was his understanding that a person without a license could not have valid insurance. He thought the amendment would create a second crime for the same conduct - the person driving with a suspended license and without insurance. He stated it was a class A misdemeanor to drive without a valid insurance policy.

Representative Pruitt clarified that the amendment did not create anything new, it would merely revert to the law prior to SB 91. He answered that if a person was a "bad guy" and only wanted to be left alone, they would not divulge to an officer they were driving without insurance. He stressed that once the individual was gone, there was not the opportunity to pursue or continue an analysis to determine whether the individual may be someone to pull off the streets. He did not know that the discussion about insurance and timing was irrelevant - he believed the individual would not divulge the information. He did not believe an officer would hold a person to ensure they were not lying.

Vice-Chair Gara wanted to double check the issue. He believed the amendment would create two crimes for the same conduct. He spoke to the concern that a police officer would not know if an individual did not have insurance and did not believe it was accurate. He mentioned the scenario Representative Pruitt had highlighted about an officer stopping a person and discovering they had a weapon in the

car. He believed when an officer discovered a person had a suspended license, it was probable cause to think the individual did not have valid insurance. He thought an officer would have the ability to pursue the crime at that point. He thought the committee would need further advice on the amendment.

2:13:23 PM

Representative Pruitt shared that the police officers he had spoken to would not go on record out of fear they would lose their jobs. He would like to have them testify about their experience, but they would not. He furthered that the individuals had seen their colleagues punished for talking to the legislature. He would have to look into whether driving without insurance would allow the officers to do the same thing.

Representative Wilson suggested hearing from the department. She reiterated the question posed by Vice-Chair Gara.

WALT MONEGAN, COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY, answered that typically when a police officer made a traffic stop the officer asked for a driver's license, registration, and insurance. The officer's computer would indicate if a person did not have a license. He explained that a citation would be issued if the individual did not have one of the items. The only time an officer could search the car was if they were invited to. If a person did not have their license a citation was issued and the interaction ended.

Representative Wilson remarked that she frequently read in the paper about the high number of individuals driving without licenses. She did not know whether the incidents were tied to a DUI. She asked if it was sufficient to give individuals a citation or whether the amendment would be useful for public safety.

Commissioner Monegan replied that he had multiple thoughts about the amendment. He stated he certainly wanted to assist with keeping people from going to jail for tiny things. He discussed that police officers were typically vigilant about watching for scofflaws. He furthered that if he pulled a person over for not having a license day after day, they would be receive citations and be liable for

fines. He questioned whether it made a person a better driver or the public safer; it was something he did not recall being discussed by the commission. He believed it was worthy of discussion by the commission. Officers did not like to see people flaunting the law, but the other part of the issue was trying to find balance. There were individuals "who were young enough, just got all of the points, didn't understand what it all meant, and now they have their license revoked." He asked whether they should go to jail and did not believe so.

Commissioner Monegan continued that part of the concern expressed by police officers was there were people officers recognized who may be doing nefarious things. Officers could pull them over, but if the officer ever found out the individual was suspended, it was an arrestable offense. He furthered it would be argued in court that if the officer knew about the suspension, whether they should act immediately. He continued that officers did not go looking for DWLS [driving with a license suspended] or DWR [driving while revoked], they encountered them. When officers encountered the offenses, it provided them with a tool to dig deeper. He reiterated it was usually debated in court afterwards. He understood the argument being made, but he believed it would probably be better debated at the commission level.

2:20:52 PM

Vice-Chair Gara was trying to determine whether driving without valid insurance was a misdemeanor. Commissioner Monegan believed the ticket was around $250; it was not an arrestable crime. Typically, if a person went to the court with their insurance, the citation was dismissed.

Vice-Chair Gara stated that it was a different insurance issue. There was situation where a person had insurance but did not have proof of insurance on hand. He understood a person received a citation and could provide the proof of insurance later on. He wondered about a case where a person did not have valid insurance, which was a danger to the public. He wondered if it was a crime.

Commissioner Monegan responded that in either situation a person would receive a citation. There would not be an arrest because officers would take people at face value. He detailed they were not going to call an insurance agency in

the middle of the night or on a weekend to determine a person's coverage. In a situation where a person did not have insurance, the court would find them guilty and they would have to pay the fine; the offense was not jailable.

2:23:33 PM

Vice-Chair Gara had been informed that driving without valid insurance was a crime. He provided an example of a person without insurance hurting another person in a car accident. He furthered that if a police officer knew that driving without insurance was a crime and the officer discovered a person did not have a license and subsequently determined they did not have valid insurance, there may be probable cause to arrest the person for driving without valid insurance. He queried if a person did not have a valid license, it meant their insurance policy had been canceled. He believed it was the case, but did not know.

Commissioner Monegan replied that the law required a person to have insurance; however, the car could be someone's parents' or a friend's. There were many variations on the normal protocol for officers. Prior to his retirement from the Anchorage Police Department, the protocol had been to issue a citation. He continued it was determined later in court whether a person had insurance; if the person had insurance, the citation was usually dismissed. He did not argue that it was not against the law, because if that were the case the police would have no authority to take any action.

2:26:23 PM

Representative Guttenberg provided a scenario where an insurance company found out that a person's license had been revoked and subsequently their insurance was not valid during that period. He believed it was a safe assumption to make. He knew that his personal (mainstream) insurance company would suspend his insurance coverage if his license was revoked for a period of time. He continued that an officer knew the difference between not having a license or having a licensed revoked or suspended. He elaborated that even if he was current on payments and had a valid insurance card, the company would not honor anything that happened to him during that period. He believed a trooper pulling a person over with a revoked license could safely assume they had no insurance coverage.

Representative Pruitt believed the committee was assuming that it understood the contract between the owner of a vehicle and their insurance company. He did not believe that was possible to assume. He stressed that a person driving with a suspended license may be in a car that was not theirs. He asked members if they knew the insurance had an agreement stating that an insurance policy is no longer relevant if a person had a suspended license. He underscored a police officer could not make the assumption. He thought they were getting into an area that required caution. He underscored that officers did not have 100 percent understanding that a civil contract between an insurance company and the vehicle owner was as other committee members had stated. He believed they were running down a rabbit hole that was preventing the committee from discussing the issue at hand (the ability to provide officers with needed tools).

Mr. Skidmore remarked that the confusion over the issue was easily understood. He had been a prosecutor for 20 years and it had taken him some time to figure out how it all worked. He began with AS 28.22.011, which required the operator or vehicle owner to have insurance. He referred to AS 28.22.019, which specified that a motorist was supposed to provide insurance when stopped by an officer; if the person did not provide proof of insurance at the time, it was an infraction resulting in a penalty up to $500. He explained it was the way law enforcement primarily addressed someone without insurance; however, not having insurance was a crime under AS 28.90.010, which addressed penalties under Title 28. He read from Title 28:

> It is a misdemeanor for a person to violate the provision of this title, unless the violation is by this title or other law, declared either to be a felony or an infraction.

Mr. Skidmore elaborated that failure to provide proof of insurance was an infraction; however, failure to have insurance was a misdemeanor.

Vice-Chair Gara asked if it was a Class A or B misdemeanor to not have valid insurance.

2:33:19 PM

Mr. Skidmore replied it was neither. There was a third class of misdemeanor called non-classified under AS 28.90.010(b). A non-classified misdemeanor meant there were specific penalty provisions that fall outside of what happens to a Class A or Class B misdemeanor. The offense was punishable by a fine not to exceed $500 and by imprisonment of up to 90 days.

Vice-Chair Gara wondered whether an officer would have probable cause to assume an individual did not have valid insurance if the individual had a suspended license.

Mr. Skidmore replied that he had not encountered the hypothetical scenario presented. He relayed that failure to have proof of insurance resulted in an automatic license suspension. Prior to any criminal justice reform, the failure to have insurance was more easily managed through enforcement efforts through a driving with license suspended. He did not want to assume it was a logical conclusion that a person did not have insurance if they did not have a license.

2:36:18 PM

Co-Chair Seaton referred to the conviction portion of the amendment beginning on [page 1] line 13, subsections (A) and (B). Subsection (A) pertained to a person who had not been previously convicted, while subsection (B) pertained to an individual who had been previously convicted. He referenced a discussion earlier pertaining to changing a penalty for a circumstance where a person who committed a crime had been convicted of a different crime previously. He asked if the language in Amendment 10 pertained to a person who had been convicted of the same crime previously.

Mr. Skidmore answered that the provisions dealing with driving with license suspended in Amendment 10, page 1, lines 14 through 23 all related to whether a person had been previously convicted of driving with a suspended license (not any other crime). Subsection (C) beginning on page 1 addressed whether a license had been suspended for a DUI crime. The amendment would revert to the law prior to any criminal justice reform. If a person had not previously been convicted of driving with a license suspended, the penalty was 10 days, with 10 days suspended. If a person

had previously been convicted of driving with a license suspended, the penalty was 20 days, with 10 days suspended. He explained the scenarios pertained to situations where the revocation was based on a points revocation as opposed to a license being suspended or revoked because of a DUI conviction. There was a separate mandatory minimum for DUI convictions.

2:39:02 PM

Co-Chair Foster recognized Representative Matt Claman in the audience.

Representative Grenn stated that in SB 91 the two reasons a license could be suspended had been separated, including sentencing. He observed that the amendment put them back together.

Mr. Skidmore agreed. He detailed that Amendment 10 would completely roll back the provisions of SB 91 that said certain types of driving with license suspended would be handled as a violation or infraction.

Representative Grenn wondered if the amendment sponsor had any research or data on the number of people it may relate to in terms of a jail sentence of up to 10 days.

Mr. Skidmore responded that research conducted by DOL suggested that the misdemeanor caseload for driving with license suspended accounted for about 17 percent of all misdemeanors prosecuted by the department prior to criminal justice reform. He did not have detail on whether the individuals were first or multiple time offenders or if they had a DUI.

Representative Grenn surmised that the number was significant.

Mr. Skidmore answered that taking 17 percent of the approximately 24,000 to 25,000 referrals would provide a ballpark figure.

2:41:30 PM

Co-Chair Seaton asked to hear from Ms. Di Pietro on the estimated number of bed days that would be impacted by the amendment.

SUZANNE DI PIETRO, DIRECTOR, ALASKA JUDICIAL COUNCIL and STAFF, ALASKA CRIMINAL JUSTICE COMMISSION, answered that the commission had devised estimates when SB 91 policy of making non-DUI-related driving with license suspended crimes non-criminal had been discussed. The commission had developed estimates of the number of bed days that would be saved for DOC per month. The estimates started out lower in the first year and increased in subsequent years. In 2017, the estimated yearly bed impact was 272. The estimates for 2018 and 2019 were around 36 beds per month. She noted the figure could be multiplied by 30 to get an estimated impact. She continued that DOC had testified the previous day about its marginal rate; the number of bed days could be multiplied by the marginal rate (either per year or per month) to determine a cost estimate.

Co-Chair Seaton asked if Ms. Di Pietro had the figures.

Ms. Di Pietro answered that she had multiplied by $41.40 (which she did not believe was the precise rate) by 36 individuals and had come up with $1,491. She believed it would be best to talk to DOC about the fiscal impact. She explained that the commission predictions had been focused on the bed impact.

2:44:18 PM
AT EASE

3:02:26 PM
RECONVENED

Commissioner Williams relayed that the department had reviewed the numbers over the break. Based upon the assumption of what had been taken out (the number of people going to jail for the offense pre-SB 91) about 36 people per day were in custody for the offense, multiplied by $42/day, equaled almost $550,000 in additional bed costs (taking the marginal rate into account). The amount represented the approximate cost of moving the offense from a violation to the prior offense of a Class A misdemeanor.

Co-Chair Seaton referred to the violations resulting in jail bed time. He remarked there was a per bed cost, but also a social cost. He was trying to figure out how mixing high-risk offenders with low-risk individuals and how jail time for the latter individuals impacted their employment,

housing, and other. He asked if the department worried about the items.

Commissioner Williams had not been on the commission at the time the recommendation had been made. He believed the change [made in SB 91] made sense for a variety of reasons. He continued that the marginal rate for prison beds was $42/day and the overall rate was close to $150/day (and more in some locations). The beds were expensive, and it was necessary to decide how to use them. He referenced a program called Three Days Matters (in prison) - after three days in prison a person could lose their job, housing, social networks, and other. There were concerns anytime a person was put in prison for generally lower-level, lower risk offenses because of the other peripheral damage that got done in terms of support networks. He continued that the offenses addressed by the amendment were the kind that he would be as concerned about why the commission had made the recommendation. He reiterated that prison beds were expensive and should be used for high-risk people and people doing dangerous things; it was desirable to try alternatives for other things. He understood the criminal justice theory about why the change had been made in SB 91.

3:07:07 PM

Co-Chair Foster recognized Representatives Geran Tarr and Gabrielle LeDoux in the audience.

Representative Wilson asked understood the offense was on the low end; however, she emphasized that the individuals were behind the wheel of a car and why their license had been suspended was not known. She wondered how it was determined that a jail bed was not worth the cost versus a person driving recklessly and putting others in danger.

Commissioner Williams responded that he had not looked at the underlying data, but he had heard from another commission member that half of the people got to their current standing by virtue of points (non-DUI related citations). The reason could include speeding or a number of other things. He continued that criminalizing the offenses was a policy call. He explained there were financial and societal costs associated with the decision. He surmised that in some cases it would be desirable to have an offender in jail, but in many cases he supported developing other alternatives that did not involve jail

time. He mentioned the "rub-off" effect of having a not-so-bad person hanging out with a bad person. He stated it was the theory and the reason DOC tried to avoid it whenever possible.

Representative Pruitt MOVED to ADOPT conceptual Amendment 1 to Amendment 10. The conceptual amendment would change the language "10 days with 10 suspended" on page 1, line 17 to "5 days with 5 suspended." Additionally, it would change "80 hours" to "40 hours" on line 18.

There being NO OBJECTION, conceptual Amendment 1 to Amendment 10 was ADOPTED.

Vice-Chair Gara stated there was a presumption that a criminal was a bad person. He shared that in his career as an attorney he had represented the owner of an auto shop called Chevy Heaven. He detailed that the man had a string of DUIs in the 1980s - so many that his license was suspended for around 40 years. The individual would fix a person's car and would test drive it - troopers would pick him up and take him to jail and the judge would tell him he had to put him in jail due to a mandatory minimum for repeat offenses of driving without a valid license. The judge understood the man had done nothing wrong in his recent life. Under the amendment, he believed repeat offenders received a minimum of 20 days and a minimum of 30 days under some circumstances. He did not believe he could vote for the amendment as written. He had a problem with the mandatory minimums. He continued that they did not consider who the person was, what they did for a living, or whether their business would be destroyed. He believed it was necessary to individualize justice.

Vice-Chair Gara continued that additionally, he did not have a great sense from the sentencing commission about why it had recommended changing the provision in SB 91. Under SB 54, if a person was driving without a license due to a DUI it was a Class A misdemeanor and was a jailable offense. He stated it was the non-DUI conduct that would cause a person to lose their license under the amendment. He wondered how to distinguish between a person who lost points towards their license for driving 90 miles per hour versus a person who lost points rolling through a stop sign when no one else was within a half mile; he had received two of the tickets. He reiterated that he could not vote for the amendment in its current form and could not vote

for it without the knowledge from the sentencing commission. He had to vote based on his only experience, which involved a very good man who was going to jail for 10 to 20 days at a time. The law had since changed, but he did not know the other examples at present.

3:13:55 PM

Representative Pruitt addressed the DUI component of the amendment. He clarified that the amendment did not change anything in current law pertaining to DUIs.

Representative Wilson stated that she found the discussion "almost insane." She elaborated that one minute they were talking about an amendment pertaining to public safety and the next minute they were talking about the number of people who may in a prison bed. She believed everyone could give examples like the one provided by Vice-Chair Gara. However, there were also examples where people without a driver's license chose to get in a car and drive recklessly; the individuals caused damage and death. She underscored they were not talking about people stealing things from a grocery store; they were talking about a situation where a person could get into a vehicle that could potentially kill someone. She suggested getting rid of the law requiring driver's licenses if legislators did not think people needed licenses. She furthered that everyone could drive without a license and they would be ticketed if they did not know how to stop at a stop sign or follow the speed limit. She continued that a license meant a person had done the training to be able to drive and that they had the understanding that following certain rules was required. She stated that why they would say that some people needed to follow the rules and others did not made no sense.

Representative Wilson continued that a person did not lose all their points at one time - they had to do several things to make it happen. She noted that the newspaper in Fairbanks showed there were many people driving without a license. She did not know whether the occurrences involved a DUI. She referenced a document showing that 1,408 were point suspensions and 1,987 were without mandatory insurance. She reasoned that if a person without insurance hit her car she would have to pay. She stressed that the individuals could be potentially dangerous. She did not believe the crime was minimal. She stated it was only a low

crime if an officer pulled someone over and found they did not have a license - in a situation where no one had been hurt. She asked about a major crime where a person with no license hit a family of five on their way to church. She emphasized that driving without a license was a big deal. She reiterated that vehicles could kill someone. She believed it was a substantial public safety issue. She stated that the only time it was not a big deal was when an officer pulled someone over and they were scared enough not to drive again. She wondered about a situation where a person without a license and insurance hit and killed the family next door. She understood the individual would be charged with another crime, but she questioned whether it could have been prevented by addressing it the first time the person had been pulled over.

Representative Wilson supported the amendment. She did not want to see more people in jail, but she did not want to be the one to agree to only giving a person a citation. She thought they would not pay the ticket anyway because their license had already been revoked. She thought the amendment provided a tool for officers to utilize. She reasoned that one of the biggest reasons for SB 54 was to help DOL and DPS.

Co-Chair Seaton opposed to amendment. He stated that the amendment would cost $500,000 per year. Additionally, Alaska had very little public transportation in most areas and individuals with a suspended license had very few options if they were working. The committee had heard from DOC that mixing low-level, nonviolent individuals with violent criminals was not a way to improve public safety; it decreased public safety over time. He continued that the amendment did not have the flexibility of zero to five days in jail. He stressed that the amendment would mean a minimum of five days in jail.

3:19:36 PM

Representative Pruitt provided wrap up on Amendment 10 as amended. He believed the committee needed to be cognizant of the discretion of officers. He explained that an officer would have the discretion to determine whether there were certain things they may bring forward. He agreed the amendment established a minimum jailtime, but he believed it was important to recognize the discretion of an officer still existed. He stressed that the amendment provided a

huge tool for police officers. He shared that the issue had been repeatedly brought to his attention by police officers as being detrimental to the safety of the public.

Co-Chair Seaton MAINTAINED his OBJECTION.

A roll call vote was taken on the motion to adopt Amendment 10 as amended.

IN FAVOR: Pruitt, Thompson, Tilton, Wilson, Grenn
OPPOSED: Gara, Guttenberg, Kawasaki, Ortiz, Foster, Seaton

The MOTION to adopt Amendment 10 as amended FAILED (5/6).

3:22:21 PM

Representative Pruitt WITHDREW Amendment 11 (copy on file). There being NO OBJECTION, it was so ordered.

Co-Chair Foster relayed that Amendment 16 took the place of Amendment 11 and would be heard after Amendment 15. Amendment 12 would be rolled to the bottom.

3:23:12 PM

Co-Chair Seaton MOVED to ADOPT Amendment 13, 30-LS0461\T.33 (Martin, 11/1/17) (copy on file):

> Page 1, line 6, following "program;":
> Insert "relating to the Alaska Criminal Justice Commission;"
>
> Page 29, following line S:
> Insert a new bill section to read:
> "* Sec, 47. AS 44.19.647 is amended by adding a new subsection to read:
> (c) In addition to the information required under (a) of this section, the commission's annual reports submitted to the governor and the legislature in 2018, 2019, and 2020 must include the following infom1ation on sentences imposed under AS 12.55.135(m) for disorderly conduct under AS 11.61.110:
> (1) an analysis of terms of sentences by various demographic groups, including ethnic groups; and
> (2) whether different demographic groups receive disproportionately longer terms of sentences."

Renumber the following bill sections accordingly.

Page 32, following line 16:
Insert a new bill section to read:
"* Sec, 50. AS 44.19.647(c) is repealed December 31, 2020."

Renumber the following bill sections accordingly.

Page 33, line 14:
Delete "sec. 50"
Insert "sec. 52"

Representative Wilson OBJECTED for discussion.

Co-Chair Seaton reviewed the amendment with a prepared statement:

Amendment 13 directs the Alaska Judicial Commission to report to the legislature for the next three years on whether the length of sentences for disorderly conduct is unequally applied to different demographic groups. The commission has already indicated that they have access to this type of data and could prepare annual reports of this direction to include this specific data analysis for those reports. This is addressing the concern of disproportionate sentencing.

Co-Chair Seaton WITHDREW Amendment 13 because the committee had adopted a previous amendment going to 24-hour hold. There being NO OBJECTION, it was so ordered.

3:24:17 PM

Co-Chair Seaton MOVED to ADOPT Amendment 14, 30-LS0461\T.31 (Glover/Martin, 11/1/17) (copy on file):

Page 33, following line 12:
Insert new bill sections to read:
"* Sec. 50. The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT; NOTIFICATION TO REVISOR OF STATUTES.

(a) Section 47 of this Act takes effect only if, on or before July l, 2018, the director of the division of

legislative finance provides notice to the revisor of statutes under (b) of this section.

(b) The director of the division of legislative finance shall, on or before July 1, 2018, notify the revisor of statutes if the Thirtieth Alaska State Legislature passes an appropriation bill that is enacted into law that makes an appropriation to the Department of Health and Social Services for the alcohol safety action program for the fiscal year ending June 30, 2019, that is at least 50 percent greater than the amount appropriated to the Department of Health and Social Services for the alcohol safety action program for the fiscal year ending June 30, 2018.

* Sec. 51. If, under sec. 50 of this Act, sec. 47 of this Act takes effect, it takes effect July 1, 2018."

Renumber the following bill sections accordingly.

Page 33, line 14:
Delete "sec. 50"
Insert "secs. 51 and 52"

Representative Wilson OBJECTED for discussion.

Co-Chair Seaton explained the amendment with a prepared statement:

Amendment 14 delays the effective date of the expansion of referrals to the ASAP [Alcohol Safety Action Program] program to July 1, 2018, which is the start of the next fiscal year. It also makes the expansion of referrals conditional upon the legislature increasing the funding of ASAP by 50 percent. SB 91 limited ASAP referrals to only a few specific misdemeanor offenses, but it greatly increased the intensity of the case management services the program provides. The change to include referrals to all misdemeanors would return to numbers of referrals to pre-SB 91 levels with no reduction in the service requirements. Judging by past numbers they can expect referrals to increase by approximately $3,000, which is 50 percent of the current caseload, but given the review of the types of misdemeanors in the courts right now, this increase could even be

greater and more like $4,000. We have already anecdotally heard that there has been success with the new more intensive case management, but it is unrealistic to expect the program to succeed doubling or pulling up by 50 percent with no additional funds. It's also important that this change be delayed. It's a delayed effective date because the courts will need some time to update their referral forms, but those cases are available for all cases - it doesn't matter when those cases or crimes occurred.

Representative Wilson had been disappointed in the presentation [the committee had heard from ASAP] and had hoped that someone would take out the other amendment. She remarked that the group was not monitoring; it was making referrals, but was not following up on those referrals. She surmised the amendment would allow the legislature to have more discussion on what the program was doing. She agreed that if the program would receive more people, it should have more funding; however, she did not know why the legislature should send more people or more funding to a program that could not provide any numbers or data on who it was helping. She stated that unfortunately many individuals with DUIs went to the program. She believed the amendment would be better than the current scenario where the number of referrals would increase, but funding would not. She mentioned giving the program more time to see if the regulations worked and the agency could come back to the legislature with the information. She asked for verification that the participant numbers would remain as they were under SB 91 if the funding was not provided. She believed it would mean an amendment added by the House Judiciary Committee would be invalidated.

Co-Chair Seaton replied in the affirmative - if the funding did not come through to make the program effective it would be kept as is under SB 91, which anecdotally they heard was more effective. He agreed that much more monitoring was needed. The committee had spoken with the agency and believed the agency understood that more monitoring was needed.

Co-Chair Seaton referenced discussion the previous day that in the past the program had included minors consuming alcohol. However, since the offense was a violation and not a misdemeanor, it was no longer available for referrals. He believed it should be available for minors consuming

alcohol - he believed the individuals needed help the program provided. He MOVED to ADOPT conceptual Amendment 1 on page 32, line 1 to insert "or under AS 04.16.049 or AS 04.16.050," which would include minor consuming for ASAP referrals. There being NO OBJECTION, it was so ordered.

3:29:55 PM

Representative Wilson hoped that the subcommittee chair (Vice-Chair Gara) would get the data in the coming session. She WITHDREW her OBJECTION.

There being NO further OBJECTION, Amendment 14 was ADOPTED as AMENDED.

3:30:49 PM

Representative Pruitt MOVED to ADOPT Amendment 15, 30-LS0461\T.2 (Bruce/Martin, 10/28/17) [note: due to the length of the amendment it is not included here. See copy on file for details].

Co-Chair Seaton OBJECTED for discussion.

Representative Pruitt reviewed the amendment. He discussed that two things done in SB 91 related to theft. First, the threshold between a misdemeanor and felony had been increased from $750 to $1,000. Additionally, an inflation proofing provision had been added. He pointed out that the $750 threshold had been raised two years earlier. He believed they had doubled down. He mentioned that the inflation aspect had been straightened out and clarified earlier in the meeting. He referred to the $1,000 threshold and stated that inflation was looked at every five years and had been 19 percent in the U.S. He thought it was quick movement upwards - on $1,000 it would be $190 over ten years. He knew that some people argued criminals did not consider the value of things; however, he believed criminals were smarter than they were given credit for. He believed the amendment would implement another tool to try to address people stealing things (i.e. shoplifting, burglary, and other). The amendment would reduce the threshold back to $750 and would leave inflation proofing in place. He reminded the committee that it [the $750 threshold] was something the legislature agreed to a couple of years before the passage of SB 91. He stated it had been a hard-fought battle and he believed more time should be

given. Eventually, the amount would increase due to inflation proofing.

3:33:11 PM

Vice-Chair Gara opposed the amendment. He stated that every time there was a different audience they had to address an issue again. He clarified that the amendment did not pertain to burglary - it only had to do with theft. He detailed that burglary (breaking into someone's home) was a Class B felony that was jailable under current law and SB 54. He elaborated that jailtime for a first-time offense could be up to two years or longer if a person had prior felonies. Robbery (stealing from someone and endangering them) was also a Class B felony. The amendment pertained only to theft. He questioned whether thefts should be turned from a jailable misdemeanor to a felony with more jailtime. Currently it was a first-time Class A misdemeanor for stealing something worth $750. A jail sentence for a first-time offense was 0 to 30 days and for a repeat offense the time increased to 0 to 1 year.

Vice-Chair Gara reiterated theft cases did not involve threatening or hurting anyone or breaking into their home. He stated it was a policy call to determine how long a person should be in jail for stealing something worth $750 where they had not threatened anyone. He stated the amendment would result in putting a person in jail for up to a year for theft of something worth $750 and no prior offenses. He believed it meant the state would be paying for extra jailtime with no benefit to public safety. He did not think there was a benefit to public safety for potentially putting a person with no prior offenses in jail for up to 1 year for theft. He restated that the offense was currently jailable as a misdemeanor. He did not believe in turning everything into a felony.

3:35:49 PM

Co-Chair Seaton spoke against the amendment. He stated that the committee had been told by the commission [Alaska Criminal Justice Commission] that longer prison stays did not reduce recidivism any more than shorter stays. The amendment would increasing stays on individuals stealing something between $750 and $1,000. He pointed out that in 1978 the amount had been set at $500, which would be $1,824 in current dollars with inflation. He stated that they were

not currently keeping up with inflation. He did not believe it made sense to decrease the threshold to capture more people for longer sentences when the threshold was half or less proportionately than the same value in 1978. He stated that an inflation proofing report came out every five years rounded to the nearest $50; it would be some time until that report came out again. He did not support decreasing the threshold from $1,000 to $750.

3:37:35 PM
AT EASE

3:37:49 PM
RECONVENED

Representative Pruitt provided wrap up on the amendment. He stressed that it was the number one issue. He stated that people were not demanding a repeal of SB 91 because of murder thresholds; it was because the sense of safety due to car break-ins and a feeling that things were happening at a higher level. He understood that the amount had not been moved at the same rate of inflation since the 1970s. He remarked that $750 put Alaska in the middle of the other states - some were at $1,000 and Nevada was at $650 (moved up recently from $250). He underscored that criminals were smarter than they were given credit for; they understood the thresholds and the ramifications. One of the items in the amendment pertained to writing a bad check. He pointed out that people knew there was a difference between writing a $749 check and a $750 check or $999 check and a $1,000 check. He believed people's concerns needed to be considered. He reasoned that if the legislature wanted to ensure the public would not be demanding more, the legislature needed to take their concerns into account. He concluded their concerns were about things taking place on their back doorsteps.

Co-Chair Seaton MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Pruitt, Thompson, Tilton, Wilson, Kawasaki, Ortiz
OPPOSED: Gara, Grenn, Guttenberg, Seaton, Foster

The MOTION PASSED (6/5). There being NO further OBJECTION, Amendment 15 was ADOPTED.

3:41:30 PM
AT EASE

4:16:53 PM
RECONVENED

Co-Chair Foster relayed the committee was on Amendment 16.

Representative Pruitt MOVED to ADOPT Amendment 16, 30-LS0461\T.36 (Martin, 11/2/17) (copy on file):

Page 18, following line 11:

Insert a new bill section to read:
"* Sec. 26. AS 33.05.020(h) is amended to read:
(h) The commissioner shall establish by regulation a program allowing probationers to earn credits for complying with the conditions of probation. The credits earned reduce the period of probation. Nothing in this subsection prohibits the department from recommending to the court the early discharge of the probationer as provided in AS 33.30. At a minimum, the regulations must
(1) require that a probationer earn a credit of 30 days for each 30-day period served in which the defendant complied with the conditions of probation;
(2) include policies and procedures for
(A) calculating and tracking credits earned by probationers;
(B) reducing the probationer's period of probation based on credits earned by the probationer; and
(C) notifying a victim under AS 33.30.013;
(3) require that a probationer convicted of a sex offense as defined in AS 12.63.100 or a crime involving domestic violence as defined in AS 18.66.990 complete all treatment programs required as a condition of probation before discharge based on credits earned under this subsection."

Renumber the following bill sections accordingly.

Page 27, following line 15:
Insert a new bill section to read:

"* Sec. 45. AS 33.16.270 is amended to read:

Sec. 33.16.270. Earned compliance credits. The commissioner shall establish by regulation a program allowing parolees to earn credits for complying with the conditions of parole. The earned compliance credits reduce the period of parole. Nothing in this section prohibits the department from recommending to the board the early discharge of the parolee as provided in this chapter. At a minimum, the regulations must

(1) require that a parolee earn a credit of 30 days for each 30-day period served in which the parolee complied with the conditions of parole;

(2) include policies and procedures for

(A) calculating and tracking credits earned by parolees;

(B) reducing the parolee's period of parole based on credits earned by the parolee and notifying a victim under AS 33.30.013;

(3) require that a parolee convicted of a sex offense as defined in AS 12.63.100 or a crime involving domestic violence complete all treatment programs required as a condition of parole before discharge based on credits earned under this section."

Renumber the following bill sections accordingly.

Page 32, line 28:
Delete "and"

Page 32, line 29, following "Act":
Insert ";
(10) AS 33.05.020(h), as amended by sec. 26 of this Act; and
(11) AS 33.16.270, as amended by sec. 45 of this Act"

Page 33, line 11:
Delete "sec. 34"

Insert "sec. 35"

Page 33, line 12:
Delete "sec. 34"
Insert "sec. 35"

Page 33, line 13:
Delete "26"
Insert "27"

Page 33, line 14:
Delete "sec. 50"
Insert "sec. 52"

Co-Chair Seaton OBJECTED for discussion.

Representative Pruitt relayed that Amendments 12 and 16 were in a similar vein. He requested leniency during his description process. He shared that the concept had come to him from an individual who worked with individuals in treatment and the rehabilitation process. The individuals were primarily sex offenders and domestic violence offenders. The individual had expressed concern that the creation of earned time credits during parole, gave the ability for an individual to complete or be finished with parole prior to the completion of their treatment. He questioned whether a person would voluntarily complete their treatment once they were no longer required to be in the program as part of their parole. He did not believe it would happen. He stressed that a loophole had been created for people needing treatment at the highest levels. He communicated that 18 other states had enacted the earned time credit; 7 had carved out sex offenders from the provision (including Arizona, Texas, and Maryland). He highlighted Texas that had been the model when the Alaska had begun to work on criminal justice reform. He explained that the earned credit in Texas did not apply to sex offenders.

Representative Pruitt explained that the amendment would prevent a person from lowering their good time to a time that was lower than the time it would take them to do their treatment. A different amendment he would offer was modeled after Texas law and would not allow earned credit for sex and domestic violence offences. He wanted to have a conversation in committee about what was acceptable. He stressed that the issue was vital. He emphasized that the state must require a person to complete the treatment they were directed to do. He stressed that sex offenses and domestic violence were some of the most heinous crimes. He referenced the Me Too movement and explained that people were started to wake up to what was taking place. He believed the committee must pass one of the amendments. He underscored that the state could not allow people to not go through treatment. One of his amendments would carve the individuals out completely from earned time and the other

amendment allowed earned time, but not below the timeframe needed for treatment to take place.

4:23:05 PM

Representative Guttenberg stated the issues were a great concern to him. He wanted to hear about commission findings on programs and how they worked best with the specific population of individuals.

Ms. Di Pietro discussed the reason behind the earned compliance credit recommendation from the commission. She referred to research showing people change their behavior in response to incentives, often more so than in response to sanctions. The goal was to get the individuals to comply with the conditions of their probation and complete their required treatment. She likened earned time to a carrot - if an individual followed the requirements they would not have to be under onerous probation supervision as long as they would if they did not comply. She addressed Representative Guttenberg's question pertaining to programs a person could or should be doing to earn compliance credits. The first category in the amendment related to people who had been convicted of a sex offense. She stated it was a difficult population to talk about. She relayed that DOC had sex offender programing called a containment model. Sometimes the individuals received the treatment in prison or in the community under close supervision. There was University of Alaska Justice Center, DOC, and national data showing that offenders convicted of a sex crime who went through treatment and the containment model supervision had one of the lowest recidivism rates in Alaska. Additionally, when the individuals recidivated, it tended not to be with a new sex crime.

Ms. Di Pietro elaborated that the programs were effective and DOC had been very thoughtful and careful with its program design pertaining to sex offender treatment. The amendment also pertained to domestic violence. Programs for people who commit domestic violence crimes were called batterer intervention programs. To be a state-sanctioned program, it was necessary to receive the designation from the Council on Domestic Violence and Sexual Assault (CDVSA) under DPS. There were regulations outlining the qualities and requirements a program needed to qualify. She believed the statutory program length was 24 weeks, but she was not certain. Many programs went to 52 weeks.

4:28:01 PM

Representative Guttenberg remarked it was easy to lump sex offenders into one large group and classify them as horrible people. However, he stated it was not the reality of the situation. He stated there were individuals that should be locked up forever and he assumed they were not eligible for early release or treatment. For more minor offenders he wondered about the success rate. He believed the amendment specified a person had to complete treatment prior to getting [credits].

Ms. Di Pietro answered that anyone serving their sentence was not out on probation. There would be many sex offenders serving long-term prison sentences who were not out on probation. Most of the individuals would eventually be released after the end of their sentence. There were others serving less lengthy sentences. She did not fully understand the question.

Representative Guttenberg asked for verification that Amendment 16 would not give an individual any good time until they completed a domestic violence program.

Ms. Di Pietro clarified that the amendment stated a person could not receive earned compliance credit.

Representative Pruitt corrected that the individual could earn the credit, but it could not be taken below the time it would take to complete treatment.

4:30:32 PM

Representative Grenn stated that the amendment lumped domestic violence and sex offenses together. He referenced Representative Pruitt's testimony that Texas had a carve out just for sex offenses. He stated that perhaps there were other states that had a carve out for both or for domestic violence only. He wondered about the effects of putting the two together and wondered if it was appropriate.

Ms. Di Pietro replied that it was a policy call. The commission had not been looking at Texas when it established its recommended policy on earned compliance credits. The commission had been looking at what seemed

right for Alaska. She did not remember discussions about particular types of offenders. She believed it had been assumed the incentive would apply to all types of offenders.

Representative Grenn remarked that the statute designating who could be charged for domestic violence was broad and it was a very different crime than sex offenses. He believed he was glad the two groups of offenders had been included, but he was wondering about the effect.

Representative Ortiz stated that the amendment made a case that currently a person could be able to walk away from the system without finishing treatment. He wondered if that had been the commission's intent and if the scenario could potentially occur.

4:33:12 PM

Ms. Di Pietro replied that part of the issue hinged on the policies the department had developed. She stated the intention of the commission was "it was a month to month thing." At the end of the month a probation officer determined whether a person had been in compliance with their conditions of release including whether they were going to treatment and paying their restitution. Once a person did that they received a month off. However, if the person was not in compliance the next month they did not receive another month off. She addressed details of how long a treatment program in the community may be. She explained that some people did treatment in prison, including many sex offenders. She stated it would be a question for the commission about what kinds of batterer intervention programs they had in prison - she believed there were some. Some of the treatment happened in prison and some happened in the community. She did not recall a discussion about probation terms being shortened to the extent that an individual did not have time to finish their required programming.

Representative Ortiz asked if Ms. Di Pietro concurred that potentially there could be a scenario where a person could walk away from their treatment program.

Ms. Di Pietro replied it would have to be a pretty short probationary period. She remembered discussion about maximum and minimum probationary periods. For example,

there was a 15-year minimum probationary period for a sex offender. She believed it would be long enough.

Representative Ortiz asked for verification Ms. Di Pietro believed it would be long enough for an individual to finish treatment.

Ms. Di Pietro concurred.

Co-Chair Foster recognized Representatives Ivy Spohnholz, Geran Tarr, and Andy Josephson in the audience.

4:36:33 PM

Vice-Chair Gara noted he had some concerns with a prior version of the amendment and appreciated the amendment sponsor taking another look. He stated there were two types of circumstances where a person's treatment program may go longer than their parole. His understanding of Amendment 16 was that a person's earned credits could not cut their probation to the extent that the probation became shorter than a treatment program. He asked for verification that a domestic violence offender had a shorter probationary period than a sexual felony case.

Ms. Di Pietro answered that it was difficult to answer related to domestic violence due to the myriad situations that could occur under AS 18.66.990.

Vice-Chair Gara provided a scenario where a person was on probation for 5 years and had a treatment program that lasted 5.5 years. He surmised that a court could not force a person to finish the treatment program after their probation ended. He asked for verification that Amendment 16 did not impact the scenario.

Ms. Di Pietro agreed that the situation Vice-Chair Gara provided could happen currently.

Vice-Chair Gara stated that the amendment did not extend a person's probationary period; therefore, a person's probation could expire prior to their completion of a treatment program. The amendment would not let credits shorten a person's probation period to the extent that they would complete probation prior to finishing treatment.

Ms. Di Pietro answered that the regulations the commissioner would promulgate regarding earned compliance credits would require that a probationer complete all treatment programs before discharge based on credits earned under the subsection. She explained that a probation officer may agree that a person had done everything they were supposed to do but they would not give them the month-to-month credit because they had not yet finished their program. She stated the commissioner would have to amend the policy to work out details.

Vice-Chair Gara understood that the credits would not shorten a probation period to be less than the time it took to complete a treatment program. He referred back to the scenario where a person was on probation for 5 years and had a treatment program that lasted 5.5 years. He surmised that under Amendment 16, a person's probation would still be over in 5 years even though they had not finished their program.

Ms. Di Pietro agreed.

4:40:48 PM

Co-Chair Seaton stated that the purpose of early compliance credit was to get probationers started on the right track and to have incentive (day-for-day or month-for-month credit) to make sure they were in compliance in the first 6 months to 1.5 years (or more). He detailed that data showed individuals who had been in compliance for the first part of their probation would likely not recidivate later on. He was concerned that requiring an alcohol treatment program and 3 years of Alcoholics Anonymous (AA) or a similar program would mean any earned credits would not apply. He believed a number of the programs had an active treatment segment and a tail segment to ensure the person continued, but they had not yet completed the program. He was concerned that a person would lose compliance because individuals would learn that if alcohol was involved in a crime there would be a longer probationary tail, meaning credit did no good. He thought it would negatively impact early compliance in probation and parole. He thought it was something that may be lost inadvertently. He did not think the amendment should look at the after care or longer-term follow up care that a number of programs entail, otherwise it would defeat the purpose.

Co-Chair Seaton was also concerned about domestic violence. There could be two brothers living in a household who got in a fight and alcohol was involved. He explained it could be a domestic violence charge and would mean a person could not earn credit. He thought the person may have to go to AA for a long period of time and he believed it could be an unintended consequence for the segment of the population.

4:44:06 PM

Representative Thompson provided a scenario where someone was sentenced to "x" number of years with "x" number of probation years and sex offender treatment. He stated that the probation could be over, but the expectation was for a person to complete the treatment program. He wondered if it would be a violation of conditions of release if the person did not finish the program.

Representative Pruitt deferred the question to DOC.

Commissioner Williams answered to hear the question again.

Representative Thompson complied.

Commissioner Williams answered the scenario would not be a violation of release. He detailed that failure to complete a program or failure to follow a program expectations would probably remove the individual from the earned compliance credit category. Whether or not DOC would revoke on that may be a separate thing.

Representative Thompson took the earned credits out of the scenario. He provided a scenario where a person's probation had ended but they had not yet completed the program. He asked if it was a violation of their conditions of release.

Commissioner Williams answered it was a more complex question. He spoke about a scenario he had witnessed. He detailed that sometimes there were waiting lists for sex offender treatment. A person could be on a waiting list for 1 to 1.5 years for outpatient sex offender treatment. He clarified that in no way was the issue about trying to cut a former sex offender a break. He had met with individuals who were waiting to go through treatment; those individuals were in limbo. He questioned where the blame resided (on the individuals, the system, DOC, or other). He struggled with the issue - it was one thing if an individual did not

want to comply, but it was another thing if the state had no way for them to comply.

4:48:31 PM

Representative Wilson underscored that the individuals the amendment addressed had committed a horrible crime. She elaborated that the state had chosen to make combating domestic violence a number one priority. Additionally, data showed that when sex offenders did not receive treatment they were likely to recidivate. She reasoned that the amendment was merely requiring individuals to finish treatment. She thought the availability of a 30-day credit may mean individuals would be more apt to take it if available in the institution. She believed the more the state could put in place to ensure treatment programs were completed, the better. She referenced the scenario by Co-Chair Seaton about two brothers fighting and was sure it happened, but it did not constitute most cases. Most of the calls were related to men beating up women repeatedly. She stressed the severity of the issue. She thought it would be detrimental if the state decided to give offenders 30-day credit for good behavior and hope the individual would not beat a woman up again if they did not finish treatment.

Representative Wilson believed Amendment 16 still followed what the commission wanted. She stated it was still an incentive. She agreed about the waitlists, but the individuals committed the crime [and should deal with the repercussions]. She stressed that people chose to commit the crime, which mostly occurred against women. She understood that men could be victims as well. She wanted to make sure treatment was completed prior to letting a person off probation. She believed the individuals needed the extra incentive. She stressed there were many hurt Alaskans prior to individuals being charged. She discussed that victims were scared to testify. She merely wanted the individuals to finish their treatment prior to receiving credits.

4:52:05 PM

Vice-Chair Gara agreed with the concept of the amendment. He understood not allowing the credits to make the probation shorter than the core program. He referenced Co-Chair Seaton's point about after care programs such as AA, which some people went to for the rest of their life. He

asked if there were other after care programs that may go on for a long period.

Commissioner Williams deferred the question to another department.

4:53:32 PM

QUINLAN STEINER, DIRECTOR, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION, introduced himself and noted he was also a member of the Alaska Criminal Justice Commission. He asked Vice-Chair Gara to restate the question.

Vice-Chair Gara complied.

Mr. Steiner stated his understanding of the question.

Vice-Chair Gara clarified the question. His understanding of Amendment 16 was that a person could not use their earned credits to make their probationary period shorter than their program. Leaving credits aside, there could be a circumstance where a probationary period could conceivably be shorter than the treatment program. In that circumstance, the probationary period would end. The amendment specified that a person could not use credits to shorten their probationary period to be shorter than their treatment program.

Mr. Steiner answered that the amendment set up a situation where someone could comply with their full probation and never be offered a program due to a waiting list and never receive any of the earned compliance credits because they were never offered the program (or offered the program so late that it pushed out their release date and effectively made it unlikely they would ever receive any credits). There used to be orders that judges would issue requiring people to complete treatment in jail, which resulted in the revocation of individuals' mandatory parole for failure to complete the treatment, but the treatment had not been offered. Therefore, the requirement had shifted to participating in treatment if it was made available. In that case, if a person was kicked out of treatment for failure to participate, it would constitute a violation. Establishing a hard rule in the amendment meant that a person could be ordered to complete treatment, but they may not have time, particularly with sex offender treatment

which was not necessarily a set number of weeks (it was a process that could go on for some period of time). He explained that it set up a situation where someone would earn something, but not get the benefit. The commission had discussed, and research showed that guaranteed benefits for compliance enhanced compliance and the reductions in recidivism. The concept was the basis of the earned compliance credit.

4:56:43 PM

Vice-Chair Gara asked if Mr. Steiner had concerns with Amendment 16 as written.

Mr. Steiner believed the amendment would result in situations where people would earn their compliance credits but not receive the benefits.

Vice-Chair Gara asked if it was more desirable for a person to complete the program than earn compliance credits.

Mr. Steiner replied responded that the goal was for individuals to complete their program, but if the incentive was taken away, the success rates may decline.

Vice-Chair Gara stated that currently compliance credits could mean a person finished probation prior to completing treatment. He reasoned that the incentive to start treatment was provided, but there was no probation to give a person the incentive to complete the program.

Mr. Steiner answered that it was the scenario of the in-custody order. At present, orders required people to participate when offered. He believed data showed that participation even without completion provided a recidivism reduction benefit. It was a trade between incentive and completion. He believed it would be worth weighing how much additional benefit it would bring. There was benefit in participation alone. He stated that sometimes things could go on beyond probationary periods.

4:58:50 PM

Representative Grenn stated that the heart of the amendment was asking a person to complete treatment. He referenced a report that broke down the commission's goals in SB 91 and moving forward; a substantial part of the goal pertained to

reinvestment into treatment, such as victim services and violence prevention. The report addressed why the services were needed, why it was important in Alaska, and all the different programs available for victim services and violence prevention. He spoke to the importance of asking a person to complete a program and what it communicated to the public. He wanted to hear the reason for combining sex offense and domestic violence in the amendment. He was glad the two were included but wanted to hear from the amendment sponsor about the benefits from his perspective. He explained that if he had to pick between someone not receiving the benefit of their earned credits and someone finishing treatment, he would prefer someone finish their treatment.

Mr. Steiner answered that if someone was not given the opportunity to earn something they were entitled to if given the opportunity, they could have a claim they should receive it anyway. A person could argue that they had been denied an opportunity in a due process claim. They could argue that they had been required to complete treatment to earn credits, but the treatment had never been offered. They could argue to the court they were entitled to the credits because they had complied with what had been made available to them (and it had not been the treatment program that the state required them to complete). He believed the claim would have merit.

Representative Grenn wondered about eliminating them completely. He did not want to do that and agreed that the carrot was better than the stick in many cases.

Mr. Steiner answered it was a balance and one of the solutions to a balance was requiring participation. He furthered that if someone willfully failed to participate they would not earn a credit, but they would earn the credits if they participated. He explained there would still be a benefit if a person made it three-quarters of the way through the program. He reiterated his earlier testimony that data showed there was a benefit to treatment even without completion. He stated that completing a program may not be the end of anything - it was a process.

Representative Grenn surmised there was benefit from merely participating in a program.

Mr. Steiner believed the data showed a significant benefit for participation.

Representative Grenn asked if there was more benefit for completing the program. Mr. Steiner answered that could not recall whether there was additional benefit for completion of sex offender treatment or any other program.

5:02:52 PM

LAURA BROOKS, DEPUTY DIRECTOR, HEALTH AND REHABILITATION SERVICES, DEPARTMENT OF CORRECTIONS (via teleconference), answered that even when a person participated in sex offender treatment, but did not complete treatment, they showed a decrease in recidivism to 44 percent compared to 63 percent for the general population.

Vice-Chair Gara tended to favor the amendment, with one large exception highlighted by Co-Chair Seaton. He spoke to his understanding that the treatment programs would not last a full probation period, but there were additional follow up programs such as AA. There was the core program he believed the amendment intended to address. He believed Co-Chair Seaton did not want follow-up programs to count. He asked if there were follow-up programs for sex offenders that may take many years - an equivalent of AA.

Ms. Brooks responded that DOC had two types of sex offender programs. The institutional sex offender programming (e.g. in Lemon Creek Correctional Center) was considered a residential treatment program, which was 18 to 24 months of intensive daily treatment with treatment plans, individual and group therapy, confrontational awareness, and other. Whereas programming in communities had originally been designed as an aftercare program like what Vice-Chair Gara referred to. She detailed it was outpatient model where offenders attend weekly groups and had individual sessions. The outpatient model was a containment model, which included cognitive behavioral therapy in conjunction with supervision by specialized probation officers and the administering of a polygraph. The way DOC determined that a person was "treatment complete" was the development of an individualized treatment plan by the offender and provider when the individual entered treatment. The treatment plan was amended throughout the course of treatment in a community. For example, sometimes when a polygraph came back there needed to be significant changes made to the

treatment plan because there were indications that something was not working well. When the offender completed the plan requirements the provider determined along with the probation officer and case manager whether the offender was ready to be treatment complete.

5:07:26 PM

Vice-Chair Gara asked for verification that the aftercare program was part of the successful treatment requirement. Ms. Brooks answered in the affirmative.

Representative Wilson thought the court set an individual's treatment requirements as part of their sentencing. She asked if it was DOC that set the parameters.

Ms. Brooks answered that typically there was an order from the court or Parole Board specifying that an individual was ordered to complete sex offender treatment. She detailed that DOC did a number of risk assessments on the offender to determine the most appropriate course of treatment and how to prioritize them. For example, the program in Lemon Creek was for the highest risk sex offenders (those who were the highest risk to reoffend, highest risk for violence, and other). Those individuals took priority and DOC tried to get them into the much more intensive treatment program versus others who may participate in treatment in the community. The orders [from the court or Parole Board] did not specify the type of treatment to provide; the determination was made by DOC based on the various risk assessments.

5:09:16 PM

Representative Wilson asked for the difference in recidivism between a person who completed a treatment program and a person who finished part of a program. She highlighted the 44 percent recidivism rate for individuals who participated in a program but did not complete it. She did not want to take the odds.

Ms. Brooks replied that the national recidivism rate for sex offenders who had completed treatment was around 5 percent for sex crimes. The rate in Alaska was between 3 and 4 percent.

Representative Wilson surmised it was the difference between the 44 percent recidivism rate provided earlier for individuals who had participated in a program, but not completed one.

Ms. Brooks clarified that the 44 percent [recidivism rate] pertained to all crimes, not only sex crimes. She detailed that a person who had partially completed sex offender programming received cognitive behavioral therapy that addressed many things in addition to deviant thoughts related to sex crimes. The individuals received significant treatment related to criminal thinking errors and other types of issues.

Representative Wilson agreed with Representative Grenn's earlier testimony. She was willing to take the chance that someone would claim they should receive the credit if it meant a 3 to 4 percent recidivism rate on two of the most egregious categories of crime. She remarked that the state had made domestic violence and sexual assault a major priority. She believed the amendment sponsor had included the two categories because the state had been fighting them together. She did not believe there would be many cases where people someone would run out of time when they were given the opportunity. She hoped that the reinvestment component [of criminal justice reform] would mean additional treatment programs. She thought it sounded like there were quite a few offered in [DOC] institutions already. She believed that as more people found they would receive credit for completing a program it would help. She did not believe women should have to keep fearing their aggressors.

5:12:39 PM

Representative Guttenberg thought debate over the amendment had been valuable, but he thought the incentive was needed. He believed the issue was recidivism rate. He thought both the carrot and stick were needed to drive the recidivism rate down. He was concerned about comments made by Mr. Steiner. He thought the amendment may result in legal situation where individuals were credited regardless. He wanted to ensure the state had the resources available to do the programs. Part of the reinvestment coming out of the commission was the importance of the carrot, which drove the recidivism rate down as well. He agreed that a 3 to 4 percent recidivism rate was good, but he wanted to drive it

down farther. He was thinking about the victims in the remaining recidivism rate. He stressed it was not about being soft on crime or letting people out for good time. He underscored it was about driving the recidivism rate down and increasing public safety. There was no golden bullet in completing a program. He stressed that something miraculous did not occur when a program was finished. The committee had heard in the past that people would rather go to jail than complete treatment programs due to the rigorous nature of the programs. He believed that at the end of the day when the numbers were compiled - the carrot and the stick, the early out, and the earned credits - the lowest recidivism rate occurred when providing the earned credit. He did not want the individuals on the street if they were going to be a problem, but driving down the recidivism rate was the most important thing. He stated that whether it was 1 or 2 percentage points with the amendment, it was enough for him. He stated, "I don't think we need to go there."

5:15:12 PM
AT EASE

5:58:35 PM
RECONVENED

Co-Chair Seaton MOVED to ADOPT conceptual Amendment 1 to Amendment 16 (copy on file):

Insert page 1, line 19

Following "subsection" insert ",if the program is made available to the probationer in time to be completed."

Insert page 2 line 18

Following "subsection" insert ",if the program is made available to the parolee in time to be completed."

Representative Wilson OBJECTED.

Co-Chair Seaton explained the insertion on page 2, line 18 was a conceptual amendment to conceptual Amendment 1. There being NO OBJECTION, it was so ordered.

Co-Chair Seaton explained that if a program was offered in time for a person to complete the program, completion of the program would be required. If the program was not

offered in time, the individual would need to fully participate in the program, but it would not eliminate the earned compliance credit from being available to the person. The goal was to have full participation and the earned compliance credit was to facilitate active participation in the program as soon as it was available. If the program was not offered in time for a person to complete it, it should not be a penalty because he wanted to maintain the incentive.

6:02:33 PM

Representative Pruitt provided a hypothetical scenario where an individual had a 5-year probationary period. He elaborated that there was a 3-year program available to the individual. He continued that when they started probation they discovered there was a 2-year waiting list for the program. He believed the likelihood of the individual deciding to voluntarily participate in and finish the program was pretty low if the individual could get out after 2.5 years. He surmised the individual would not try to be a part of treatment if it was easier to provide the carrot. He stated there had been much discussion about the effectiveness of the carrot or incentive. He asked about the success of a person who went through treatment versus a person who did not.

Ms. Brooks answered that there was recidivism data that spoke to the efficacy of a program. The recidivism rate for sex offenders who did not complete treatment was approximately 17 percent; if treatment was completed the number dropped to about 3 percent. She continued that 30 percent of the individuals who partially completed sex offender treatment committed new (non-sex offense) crimes versus 44 percent for individuals who completed treatment. She stated there was definitely a benefit to having the individuals complete treatment when available.

Representative Pruitt asked for a restatement of the last statistic.

Ms. Brooks replied that the recidivism rate for a new sex offense was about 3 percent for individuals who completed treatment versus 17 percent for individuals who only did partial treatment.

Representative Pruitt did not support the conceptual amendment. He considered whether the carrot [incentive] or treatment was more important. He believed the numbers provided showed that treatment was critical for reducing recidivism, much more so than any incentive the state could provide. He believed Amendment 12 that would exempt individuals [convicted of sex offenses or domestic violence] should be exempted completely (as in Texas and other locations). He believed it would be a better benefit to the individual to ensure they had the opportunity to go through treatment (than accepting the proposed conceptual amendment). He underscored that the numbers showed that treatment worked for people in the particular circumstance. He wanted the committee to consider whether the individuals should be completely exempt from the credit.

Representative Thompson spoke against the amendment. He believed the conceptual amendment to Amendment 16 created a loophole for the offender to game the system. He furthered it allowed individuals to realize if they bowed out of a program there would not be another program available until they finished their probation. He wanted to see individuals complete treatment programs.

6:08:28 PM

Representative Grenn asked if there were programs in place that were paid for by the individual.

Ms. Brooks replied that the department paid for sex offender treatment for many offenders. Whether the department would pay depended on a variety of factors. The bulk of treatment was paid for by the department.

Representative Grenn referenced programs that were paid by the individual. He asked what happened when an individual could not pay, but treatment was a condition of probation.

Ms. Brooks answered that individuals would still receive treatment regardless of their ability to pay. Weekly groups for treatment were paid for in full by DOC and monthly individual treatment sessions were paid for by DOC for about the first six months; after that time it was expected the offender would be able to take ownership in treatment and pay. In cases where a person lost their job or had other financial hardships the treatment went to a sliding fee scale and if the individual had significant financial

hardship they would not be removed from the program for inability to pay.

6:10:37 PM

Vice-Chair Gara explained that the conceptual amendment did not do anything that was not already happening. He elaborated that at present if a program was not made available to someone, they received credit because they were following their other conditions of parole. He stated there were a number of other conditions of parole. In addition to laying your hands off other people, individuals may be required to go to job training and/or alcohol and drug abuse treatment. He furthered that by giving incentive for people to follow their orders, they achieved the other conditions. Under any version of Amendment 16, if a program was not available in time, a person would not do the program. He explained that all the conceptual to Amendment 16 would do was eliminate a "bait and switch" for people who were following all other conditions of probation or parole. The conditions may include no drinking alcohol, staying away from a victim, and other. He understood the completion of a program was beneficial, but it could not be completed if it was not available.

Vice-Chair Gara continued that the conceptual amendment asked individuals to follow every rule of probation and parole, otherwise they would lose the credits. He did not believe the state should punish people for something they could not have. He stated that Alaska was a large state that was underserved in terms of treatment programs. He anticipated that in most cases all of the programs a person needed to complete would be available; but in some cases, they were not available in time. If the treatment program was available, the individual would be required to participate.

Representative Wilson spoke in strong opposition to conceptual Amendment 1. She wanted to know when they would address the victim. She believed people were saying "don't punish people." She stressed that the individuals were responsible for doing something to someone else by choice. She emphasized that the individuals had decided to commit some of the worst possible deeds and the committee was worried about whether or not they would receive 30 days extra credit for good behavior. She asked the committee to consider the issue from the victims' standpoint. She

expressed confusion about the amendment because it specified "if the program is made available in time to be completed." She provided a scenario where a person had a probation period of 5 years without the good time. She stated a person could complete a 3-year program if they were on a waiting list for 2 years. Alternatively, she wondered if the amendment would require a person to complete a program in the first 2.5 years because it considered what the time would be assuming they received the 30-day credits for good behavior. She believed it was a problem and did not know what it meant.

Representative Wilson believed the conceptual amendment would water the law down. She emphasized that it was about the victims. She stressed that it was not merely about punishment, but about recidivism. She highlighted the 3 percent recidivism rate [for people who completed sex offender treatment] versus 17 percent [for people who partially completed sex offender treatment]. She asked if other members would want to take the chance of being in the 17 percent. She thought 3 percent was bad enough to know that a victim could be molested in some way; at 17 percent the odds were even better that a person would be molested, which were not the odds she wanted. She observed that the committee was only talking about whether the offender was treated equally. She reasoned that the offender had made a choice. The victim had not. She reiterated her question about the time completed and how it would be calculated. She underscored there were many victims in Alaska. She did not want to water Amendment 16 down.

6:18:06 PM

Co-Chair Seaton supported the conceptual amendment. remarked that the committee had been talking about the opportunity for a person to go through treatment and the incentives for people who actively participate in treatment. He stated that taking away the ability for a person to receive earned credit (because it was not offered until too late to complete before probation or parole ended) removed the incentive for a person to actively participate in treatment. He did not believe it was a good way to protect the public. He stated that comparing statistics between a person who dropped out of treatment with a person who completed treatment was different than a person who participated in treatment and left the program because they received good time and finished their parole.

He explained that it did not mean they were discontinuing treatment. He explained the conceptual amendment would mean they had incentive to continue. He reasoned that taking away incentive to participate in the program meant that active participation was less likely. He thought maintaining incentives was smart. He did not believe eliminating incentives because programs were not offered in a timely manner was the right way to go.

Representative Pruitt spoke in opposition to the conceptual amendment. He asked for verification the committee prefer to give offenders good time credits and put them out on the street without finishing treatment. He stated that in that the difference between the 3 and 17 percent rate was 14 additional victims. He stated the people would be unsupervised and outside the state's control. He thought the state should do everything it could to find a program. He provided a scenario with a 5-year timeframe where a person could be under that timeframe or find a program that may shorten it. If the program was not available, the state still had the chance to keep the individuals under supervision for the whole timeframe.

Representative Pruitt reminded the committee that Alaska was different than other states; Alaska's constitution had Article 1 Section 4, which included the rights of victims. The conceptual amendment would gut the intent of Amendment 16. He detailed that other states that Alaska had used as its guide to judicial reform did not have the opportunity for earned credits for individuals in the categories addressed by Amendment 16. Amendment 16 was his compromise, but he considered withdrawing the current amendment and offering Amendment 12. He reasoned that it may be better to keep the individuals supervised the entire time if the committee was going to have concern about whether or not the individuals received due process and that credits may not be offered to them. He expressed that he was fighting for victims of some of the most heinous crimes. He implored the committee to oppose the passage of the conceptual amendment.

6:23:59 PM

Representative Grenn thought the conceptual amendment went too far. He referred to testimony from Mr. Steiner about incentives and from Ms. Brooks about the importance of completion of a program. He thought there was something to

be said for both. He believed a carrot was necessary to incentivize completion. He remarked that not all treatment programs were made available around the state. He had difficulty with the portion of the amendment specifying "in time to be completed." He noted that Representative Thompson had pointed out a potential loophole, which he believed veered away from the intent of the amendment for individuals to complete the program. He believed the goal was for individuals to have the greatest success in life going forward, which appeared to mean the completion of a program.

Co-Chair Seaton believed the state needed to preserve the carrot and the stick. He thought the conceptual amendment did not appear to get around some of the issues. He WITHDREW the conceptual amendment.

Co-Chair Foster recognized Representative Jonathan Kreiss-Tomkins in the audience.

Vice-Chair Gara addressed Amendment 16. He stated that the whole legislature worked to protect victims of sexual assault and to protect people from sexual assault. He stressed that Alaska had some of the highest jail sentences in the nation for sexual assault and repeat sexual assault. He underscored there was much more the state needed to do. He would not accuse anyone in the building of being soft on sexual assault. There had been efforts by DOC to ensure people coming out of jail did not repeat offend. He shared that he had worked on domestic violence cases, which was not at the level of severity of sexual assault, but it was still horrible. There was almost always an order prohibiting an offender from going near the victim again; if they did, their probation was over and they returned to jail. He recognized the work of others in the room who were champions for doing more outside the criminal system to prevent sexual assault, including Representative Tarr. He believed the legislature had worked very hard to ensure individuals who engaged in some of the most horrific crimes were punished. Every time he had always voted to provide resources to individuals in the community working to prevent sexual assault and protect victims. He believed the nation and state had significant work to do.

Co-Chair Seaton WITHDREW his OBJECTION.

Representative Guttenberg OBJECTED. He stressed the need for a rational voice and real numbers to reduce recidivism. He wanted fewer victims and smart criminal justice. He did not want to merely lock people away in a dark cell, because it would not improve people's lives. The Alaska Criminal Justice Commission had done significant statistical work on causes and what worked and did not. He wanted to see the recidivism rate decreased "into the ground." He spoke to the purpose of addressing recidivism. He thought the commission's recommendations were powerful tools the legislature should not walk away from. He did not believe anyone in the room was soft on sex offenders. The committee members had different opinions. At the end of the day, he believed facts and numbers should drive policy.

6:32:23 PM

Representative Pruitt agreed that the numbers were needed. He stated that the numbers dictated that the state needed to ensure people were completing treatment. He stated that for every 100 offenders there were 14 victims [when treatment was not completed].

Representative Guttenberg MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Tilton, Wilson, Gara, Grenn, Kawasaki, Ortiz, Pruitt, Thompson, Foster
OPPOSED: Guttenberg, Seaton

The MOTION to adopt Amendment 16 PASSED (9/2). There being NO further OBJECTION, Amendment 16 was ADOPTED.

6:34:35 PM

Representative Pruitt WITHDREW Amendment 12, 30-LS0461\T.13 (Martin, 10/28/17) (copy on file).

6:35:08 PM
AT EASE

6:38:51 PM
RECONVENED

Co-Chair Foster reported that the bill had six fiscal notes the committee had discussed the previous day. The committee

had replaced the DOC population management (institution director's office) fiscal note [OMB Component Number 1381]. Additionally, one fiscal note had been added by the committee for the DOC commissioner's office [OMB Component Number 694]. He asked staff to address the committee.

BRODIE ANDERSON, STAFF, REPRESENTATIVE NEAL FOSTER, explained the House Finance Committee for the Department of Corrections fiscal note, OMB Component Number 1381. The note included a $1.4 million increment in FY 18; beginning in FY 19 through FY 23 there was an annual $2.9 million increment. The fiscal note was informational only and had been modified to request 67 percent of the of the estimated maximum funding needed as outlined in the analysis section. The department believed the range of funding needed to implement this bill is between $1.6 million and $4.3 million. The request should be adequate for the first year to ensure the department could carry out the cost impacts of the bill. He detailed that FY 18 provided funding for approximately half the fiscal year (January to July). The attached analysis and the Marginal Rate Billing Rate Calculation was provided by the department. The discussion had been about the marginal rate and how much to fund it at. He reiterated that the note was informational only and explained the funds would need to be added to a future appropriations bill. He reported that the Office of Management and Budget and the Legislative Finance Division would ensure the appropriate funds were allocated accordingly.

Mr. Anderson highlighted the second fiscal note, OMB Component Number 694. The note was from the House Finance Committee for DOC, Office of the Commissioner. The intent of the informational note was a place holder reflecting intent to add one-time funding of $2 million to the Office of the Commissioner for treatment and rehabilitation services for FY 19. He specified that $1 million was intended for population management community residential centers and $1 million for the health and rehabilitation services and substance abuse treatment program. The intent was to begin the process of funding adequate treatment within DOC.

6:42:35 PM

Representative Wilson asked what part of the bill the fiscal notes related to. She assumed OMB Component Number 1381 replaced a previous indeterminate note.

Mr. Anderson agreed. He specified that OMB Component Number 1381 identified a cost instead of indeterminate.

Representative Wilson asked how the 67 percent had been derived. Mr. Anderson answered that in order to come up with figures for the fiscal note, roughly two-thirds of the difference between the $1.6 million and $4.3 million was $2.9 million. He elaborated it was 67 percent of the estimated marginal rate cost (shooting for a bit above half the difference).

Representative Wilson asked for verification that the 67 percent was a cost range and was not necessarily based on a number of inmates they assumed would be coming to corrections.

Mr. Anderson replied agreed.

Representative Wilson assumed OMB Component Number 694 was a new fiscal note. She noted there had been money for abuse treatment programs in SB 91. She asked if the $2 million in the fiscal note would go to a specific program or treatment in general.

Mr. Anderson responded that the $2 million would be spread across the two different treatment and rehabilitation programs and services provided within DOC.

Representative Wilson stated that most of the treatment had been included in SB 91 and should have been in the budget. She assumed the fiscal note pertained to new treatment that SB 91 did not cover. She knew that CRCs [community residential centers] had new contracts that brought money savings. She was trying to determine what new programs the funding would go towards that had not been in the last year's budget.

6:45:34 PM

Mr. Brodie deferred the question to DOC.

Commissioner Williams asked for a restatement of the question.

Representative Wilson complied. The fiscal note listed $1 million for population management/community residential centers and $1 million for health and rehabilitation services/substance abuse treatment programs. She had received information from DOC showing money left over for treatment. She asked what new treatment the $2 million would go to.

Commissioner Williams replied that it was the first time he had seen the fiscal note. He did not have an articulated plan he felt comfortable talking about. He clarified that DOC had not requested the fiscal note, but there were items he had been working on independently that he could use the money on such as vocational training. He noted he had also been working diligently with fish processing plants. He reiterated that the department had not requested the funding and had not established a plan for the funds.

6:47:33 PM

Representative Wilson apologized to Commissioner Williams because she thought DOC had requested the fiscal note. She asked to hear from the author of the fiscal note to understand where the $2 million figure had come from.

Co-Chair Seaton answered that much of the reinvestment money was not happening because there was a net negative in the department. He elaborated that the purpose of the fiscal note was to ensure there was money allocated for lowering recidivism through treatment and other programs. The note was directed at the commissioner's office with the specific direction to go to programs aimed at reducing recidivism.

Representative Wilson thought the marijuana tax funds were directed to reduce recidivism. She asked how much had been collected and where the funding had gone.

6:49:38 PM

AMANDA RYDER, ANALYST, LEGISLATIVE FINANCE DIVISION, answered that in FY 18 the Department of Revenue was expecting about $5.3 million in recidivism reduction funding. She detailed that $6 million had been appropriated and the legislature had included backstop language that if revenue was insufficient, UGF would backfill the gap. She

believed it was in DPS. She reviewed the $6 million appropriation that was to be divided into $2 million to DOC, $2 million to DPS, and $2 million to DHSS. She specified that all of that funding was being expended in the departments; the funds were for substance abuse treatment and other reinvestment appropriations from SB 91. The fiscal note [OMB Component Number 694] was an addition. She reminded the committee that the fiscal notes currently under consideration were informational only. The funding would have to come to the committee as a one-time increment in next year's budget. The committee would have to approve any additional expenditures and DOC would submit a plan if the governor chose to include the $2 million in the governor's budget.

Representative Wilson surmised that DOC should not begin using the money because it had not been allocated. She asked for verification that the funds would only become available if they were included in the governor's budget for the next fiscal year.

Ms. Ryder agreed. She specified that the governor had to submit the request for $2 million and the legislature would have to decide whether to approve it.

Representative Kawasaki appreciated having something other than an indefinite fiscal note for the population management. He surmised the 67 percent number was as good a guess as any. He noted that an amendment had been passed earlier that reduced the felony threshold for theft. He asked if it was included in the fiscal note before the committee.

Mr. Anderson answered it was his understanding that the note would have to be updated prior to going to the House floor.

Representative Kawasaki surmised that if the bill passed there the committee could expect an updated fiscal note reflecting the $500,000 increment resulting from a change to the felony threshold.

Mr. Anderson deferred to DOC regarding its marginal rate calculations.

6:54:11 PM

Ms. Wilkerson requested to hear the question again.

Representative Kawasaki complied. The committee had passed an amendment that reduced the felony threshold for theft. There had been discussion about the potential cost using the marginal rate plus the number of people in prison, which he believed was about $500,000.

Ms. Wilkerson replied that the $500,000 figure was correct. The department would need to revise the fiscal note to reflect amendments passed by the committee.

Representative Kawasaki stated that under SB 91 there was supposed to have been substantial savings from diversionary programs. He noted that the Pretrial Division was not up and running yet and savings were anticipated in the area the following year. He added that things had ended up costing more than expected. He asked if the $2 million was to backfill funds that had been anticipated to be used for reentry, rehabilitation, and recidivism reduction.

6:56:30 PM

Mr. Anderson replied that he did not have the answer at the time.

Representative Kawasaki stated that the committee had heard from the Alaska Criminal Justice Commission discussing the need for the money for numerous things. The commission had suggested it would have been advantageous if the legislature had forward funded the reentry, rehabilitation, and recidivism components because savings would result from those areas. He suspected it was the reason the fiscal note had been brought before the committee.

Representative Wilson was fairly certain the legislature had fully funded with UGF because marijuana [tax] had not taken off the ground at the time. She believed it had been explained to the legislature that it would take time for all of the regulations to be written and for the state to begin collecting [the tax]. She believed the legislature had forward funded [items in SB 91].

Vice-Chair Gara had heard from colleagues on both sides of the aisle and from public testimony that not enough money was being put into making certain people coming out of jail were not criminals. He provided examples including

substance abuse treatment for people with alcoholism and drug problems, and job reentry services (transitioning people into housing, job training, and work). He spoke to making the choice for people to come out of jail who would not recidivate. He stressed the goal of SB 91 and SB 54 to protect the community by making sure people did not commit crimes when they came out of jail. The prior bill [SB 91] included a larger fiscal note for treatment services and job training. During the course of things over $2 million of the money started disappearing. He agreed that the legislature had underfunded the part that was supposed to protect the community. The current fiscal note would fund the amount. He believed it was a bipartisan consensus that being cheap on crime would endanger the community. He stressed the need to do everything the state could so that people coming out of jail went to work instead of burglarizing homes. He stated the fiscal note was consistent to remedy what happened with SB 91 when the money began disappearing as the bill traveled through committees prior to its passage.

Representative Wilson clarified that it was not about supporting or not supporting. She merely wanted to know where the money went. She had asked DHSS over three weeks earlier where the money went that it had received for treatment programs. She was still waiting for an answer. She believed everyone merely wanted to know where the appropriated money had gone. She thought everyone was concerned if the money had run out and programs were unable to continue. She noted that DOC had put its programs back in place - they had gone through a lag time where their provider left and they had to find a replacement - she knew there was money in DOC for that purpose. She was merely speaking about the numbers and was not debating the need. She wanted to know where the current money had gone and where the holes were to ensure they were being filled.

7:01:40 PM

Co-Chair Seaton believed they all recognized that they were trying to promote public safety. The goal was to help with the recidivism problem, meaning there were fewer offenders. He stated they felt that directing funds to the programs operated through the commissioner's office was the appropriate place instead of the legislature defining exactly what the programs would be. He surmised that they all understood public safety and reducing crime rates would

not be free. The fiscal note provided a suggestion for the department and governor to include the amount in the budget. He wanted the administration to know the legislature was supportive of reducing recidivism.

Representative Kawasaki relayed that he was looking at the fiscal notes from SB 91. He detailed that much of it had been predicated on a number of generated savings from a reduction of offender population. He furthered that because it happened at a slower rate, the generated savings of $4.5 million in FY 17 and $11.9 million in FY 18 had not come to fruition. He surmised the generated savings anticipated for FY 19 would be off considerably as well. He stated the reason there was not sufficient money for treatment, recidivism reduction, and reentry programs was because population management ended up costing more.

7:04:53 PM

Co-Chair Seaton MOVED to REPORT HCS CSSB 54(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

Representative Tilton OBJECTED. // she believed the bill had not gone far enough to fix the problems. She agreed that SB 91 had not caused all of the crime problems. She agreed that treatment was needed. She knew that the perception of SB 91 had emboldened criminals. She had done a ride along and had heard criminals say things like "give me my ticket, I'll be back on the street in a half an hour." She stated that crime was rising and // She spoke to public asking for a repeal of SB 91. She had heard the same thing in many public testimony locations. She referred to articles she had on hand as examples (copy not on file). She had heard the Attorney General Lindemuth say it was an experiment. She was not willing to experiment. She stated that victims could be any woman or person. She appreciated the efforts.

7:10:27 PM

Vice-Chair Gara stated that public safety was paramount // He stated that violent crime had been rising even though they had increased the sentences // People committing violent crimes were being substantially punished. // Sentences had been increased for the most violent crimes. He stated that burglary had been and would continue to be a

jailable offense. // sexual abuse of a minor punishment had been increased under the current bill.

7:17:14 PM

Representative Grenn shared that he had spent the past several months diving in to the issue to understand. // He shared that he had done ride alongs // He had gone door to door to talk to neighbors. The public perception of what SB 91 had done to communities was real. There was a feeling that there had been a shift in public safety. When he talked to individuals about how to make things safer // SB 54 was helping to chip away //.

7:21:04 PM

Representative Guttenberg asked members to refrain from texting during other members' comments.

Representative Wilson believed SB 54 began in the right direction, but she believed most Alaskans did not feel safer. // She thought it appeared that the victim was put on the back burner. She stated that the victims should be the number one concern. // She believed everyone had a common goal of increasing public safety.

7:26:20 PM

Representative Guttenberg made comments on the bill. // He stated that during the two days of public testimony there were clearly people who were afraid and wondering about the safety of their families. There was another group of people who testified from Haven House and others with addiction issues. The individuals had been successful due to treatment programs. He stated that the message had been clear that to address crime, treatment was paramount. Some people may say the legislature was being soft on crime, but that was not the point. He did not recall ever having enough treatment beds - it had always been an issue. He believed they had come a long way with the bill. There was always more to do.

7:30:52 PM

Co-Chair Seaton believed it was necessary to recognize that reducing recidivism was stopping future crime. He stated that the bill was not an experiment, it was applying

evidence based criteria to address the state's crime problem. // it put economic stress // the opioid epidemic was putting huge stress on society. He noted that it was important to consider that the legislature had reduced the budgets for the Department of Public Safety and other. He believed it was important when considering amendments that financing was not changed that impacted public safety. He believed they were all working for public safety; what had been done in the past was not working.

7:33:46 PM

Representative Tilton MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Gara, Grenn, Guttenberg, Kawasaki, Ortiz, Pruitt, Thompson, Foster, Seaton
OPPOSED: Wilson, Tilton

The MOTION PASSED (9/2). There being NO OBJECTION, it was so ordered.

HCS CSSB 54(FIN) was REPORTED out of committee with a "do pass" recommendation and with two new fiscal impact notes from the House Finance Committee for the Department of Corrections; one new indeterminate fiscal note from the Department of Health and Social Services; one new zero fiscal note from the Alaska Judicial System; one new zero fiscal note from the Department of Law; one new zero fiscal note from the Department of Public Safety; and one previously published zero note: FN3 (DHS).

Co-Chair Seaton MOVED to give Legislative Legal the ability to make technical and conforming //

Co-Chair Foster discussed the schedule for the following week.

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RECESSED

7:36:00 PM