

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

April 13, 2017

5:38 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 204

"An Act relating to overtaking and passing certain stationary vehicles."

- MOVED CSHB 204(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 79

"An Act relating to workers' compensation; repealing the second injury fund upon satisfaction of claims; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of specified officers and members of specified business entities for payment of workers' compensation benefits and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to proceedings before the Workers' Compensation Board; providing for methods of payment for workers' compensation benefits; relating to the workers' compensation benefits guaranty fund authority to claim a lien; excluding independent contractors from workers' compensation coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited

liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date."

- MOVED CSHB 79(JUD) OUT OF COMMITTEE

CS FOR SENATE BILL NO. 55(FIN)

"An Act relating to criminal law and procedure; relating to controlled substances; relating to sentencing; relating to protective orders; relating to restitution; relating to the period of probation; relating to revocation, termination, suspension, cancellation, or restoration of a driver's license; relating to parole; relating to the duties of the Department of Corrections and the Department of Health and Social Services; and providing for an effective date."

- MOVED CSSB 55(FIN) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: HB 204

SHORT TITLE: OVERTAKING/PASSING DOT VEHICLES

SPONSOR(S): REPRESENTATIVE(S) KAWASAKI

03/29/17	(H)	READ THE FIRST TIME - REFERRALS
03/29/17	(H)	TRA, JUD
04/06/17	(H)	TRA AT 1:00 PM BARNES 124
04/06/17	(H)	Moved HB 204 Out of Committee
04/06/17	(H)	MINUTE(TRA)
04/07/17	(H)	TRA RPT 2DP 5AM
04/07/17	(H)	DP: KOPP, DRUMMOND
04/07/17	(H)	AM: CLAMAN, SULLIVAN-LEONARD, NEUMAN, WOOL, STUTES
04/13/17	(H)	JUD AT 5:30 PM GRUENBERG 120

BILL: HB 79

SHORT TITLE: OMNIBUS WORKERS' COMPENSATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/25/17	(H)	READ THE FIRST TIME - REFERRALS
01/25/17	(H)	L&C, JUD, FIN
02/20/17	(H)	L&C AT 3:15 PM BARNES 124
02/20/17	(H)	Heard & Held
02/20/17	(H)	MINUTE(L&C)

03/01/17 (H) L&C AT 3:15 PM BARNES 124
 03/01/17 (H) <Bill Hearing Canceled>
 03/06/17 (H) L&C AT 3:15 PM BARNES 124
 03/06/17 (H) Heard & Held
 03/06/17 (H) MINUTE(L&C)
 03/08/17 (H) L&C AT 3:15 PM BARNES 124
 03/08/17 (H) <Bill Hearing Canceled>
 03/15/17 (H) L&C AT 3:15 PM BARNES 124
 03/15/17 (H) -- MEETING CANCELED --
 03/17/17 (H) L&C AT 3:15 PM CAPITOL 106
 03/17/17 (H) <Bill Hearing Canceled>
 03/20/17 (H) L&C AT 3:15 PM BARNES 124
 03/20/17 (H) Heard & Held
 03/20/17 (H) MINUTE(L&C)
 03/22/17 (H) L&C AT 3:15 PM BARNES 124
 03/22/17 (H) Moved CSHB 79(L&C) Out of Committee
 03/22/17 (H) MINUTE(L&C)
 03/24/17 (H) L&C RPT CS(L&C) NT 3DP 1DNP 1NR 2AM
 03/24/17 (H) DP: JOSEPHSON, STUTES, KITO
 03/24/17 (H) DNP: KNOPP
 03/24/17 (H) NR: WOOL
 03/24/17 (H) AM: SULLIVAN-LEONARD, BIRCH
 03/31/17 (H) JUD AT 1:00 PM GRUENBERG 120
 03/31/17 (H) Heard & Held
 03/31/17 (H) MINUTE(JUD)
 04/05/17 (H) JUD AT 1:00 PM GRUENBERG 120
 04/05/17 (H) Heard & Held
 04/05/17 (H) MINUTE(JUD)
 04/13/17 (H) JUD AT 5:30 PM GRUENBERG 120

BILL: SB 55

SHORT TITLE: OMNIBUS CRIME/CORRECTIONS

SPONSOR(S): JUDICIARY

02/10/17 (S) READ THE FIRST TIME - REFERRALS
 02/10/17 (S) JUD, FIN
 02/15/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 02/15/17 (S) Heard & Held
 02/15/17 (S) MINUTE(JUD)
 03/15/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/15/17 (S) -- MEETING CANCELED --
 03/17/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/17/17 (S) Scheduled but Not Heard
 03/20/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/20/17 (S) Moved CSSB 55(JUD) Out of Committee
 03/20/17 (S) MINUTE(JUD)
 03/22/17 (S) JUD RPT CS 5DP NEW TITLE

03/22/17 (S) DP: COGHILL, WIELECHOWSKI, COSTELLO,
MEYER, KELLY

03/28/17 (S) FIN AT 9:00 AM SENATE FINANCE 532

03/28/17 (S) Heard & Held

03/28/17 (S) MINUTE(FIN)

03/28/17 (S) FIN AT 1:30 PM SENATE FINANCE 532

03/28/17 (S) Heard & Held

03/28/17 (S) MINUTE(FIN)

03/31/17 (S) FIN AT 9:00 AM SENATE FINANCE 532

03/31/17 (S) Moved CSSB 55(FIN) Out of Committee

03/31/17 (S) MINUTE(FIN)

03/31/17 (S) FIN AT 1:30 PM SENATE FINANCE 532

03/31/17 (S) -- MEETING CANCELED --

04/03/17 (S) FIN RPT CS 3DP 3NR NEW TITLE

04/03/17 (S) DP: HOFFMAN, MACKINNON, VON IMHOF

04/03/17 (S) NR: DUNLEAVY, MICCICHE, OLSON

04/03/17 (S) TRANSMITTED TO (H)

04/03/17 (S) VERSION: CSSB 55(FIN)

04/05/17 (H) READ THE FIRST TIME - REFERRALS

04/05/17 (H) JUD

04/12/17 (H) JUD WAIVED PUBLIC HEARING NOTICE, RULE
23(A) UC

04/13/17 (H) JUD AT 5:30 PM GRUENBERG 120

WITNESS REGISTER

REPRESENTATIVE SCOTT KAWASAKI
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 204 as prime sponsor.

MERCEDES COLBERT, Staff
Representative Scott Kawasaki
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 204, answered questions.

MIKE COFFEY, Director
South Coast Region
Statewide Maintenance and Statewide Operation Director
Department of Transportation & Public Facilities (DOTPF)
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 204, offered testimony and answered questions.

CAPTAIN DAN LOWDEN

Division of Alaska State Troopers
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of CSHB 204, answered questions.

MARI MARX, Director
Division of Workers' Compensation
Department of Labor & Workforce Development (DLWD)
Juneau, Alaska

POSITION STATEMENT: During the hearing of CSHB 79, presented Amendment 7.

KIMBER RODGERS, Assistant Attorney General
Labor and State Affairs Section
Department of Law
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 79, offered a sectional analysis of Amendment 7.

COMMISSIONER HEIDI DRYGAS
Department of Labor & Workforce Development
Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 79, discussed Amendment 9.

DANNY DeWITT, State Director
National Federation of Independent Business (NFIB)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 79, discussed Amendment 9.

SENATOR JOHN COGHILL
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented SB 55, on behalf of the Senate Judiciary Committee, Senator Coghill chair.

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

POSITION STATEMENT: During the hearing of SB 55, presented a sectional analysis.

NANCY MEADE, General Counsel
Administrative Staff

Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: During the hearing of SB 55, answered questions.

ACTION NARRATIVE

[5:38:50 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 5:38 p.m. Representatives Claman, Fansler, Eastman, Reinbold, Kopp, and Kreiss-Tomkins were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

HB 204-OVERTAKING/PASSING DOT VEHICLES

[5:39:25 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE BILL NO. 204, "An Act relating to overtaking and passing certain stationary vehicles."

[5:39:47 PM](#)

REPRESENTATIVE SCOTT KAWASAKI, Alaska State Legislature, advised that under current statute, AS 28.35.185, commonly known as the "Move Over Law," drivers are required to move to the nearest lane and slow down when approaching [stationary] vehicles, such as fire, law enforcement and emergency vehicles, animal control vehicles, and tow trucks in the act of loading a vehicle. This bill includes, within those certain vehicles, the Department of Transportation (DOT) vehicles when using their flashing lights, and with workers performing road maintenance or road work. In the event a driver approaches one of these vehicles, with their lights flashing, on the highway with two or more lanes traveling in the same direction, the driver would vacate that lane and move safely into the closest lane. In the event there were fewer than two lanes traveling in the same direction, the driver would slow down to a reasonable speed.

REPRESENTATIVE KAWASAKI reminded the committee that in 2012, Robert Hammel, a DOT employee, was tragically struck and killed while laying down traffic cones to alert drivers of a stranded vehicle on the side of the roadway at Mile 88 on the Seward

Highway. He related that Mr. Hammel's name was incorporated into the committee substitute for HB 204.

REPRESENTATIVE KAWASAKI advised that the penalty under this statute would be considered a "failure to move over," and is a class A misdemeanor if personal injury resulted in a person's failure to vacate a lane or slow down. In the event a "failure to move over" did not result in personal injury it is punishable by a \$150 traffic infraction with two points assessed against the person's driver's license. He offered that this statute has been in effect since September 2005, and under this statute for the Department of Transportation & Public Facilities (DOT) there were 23 violations in 2016; 14 violations in 2015; and 53 violations in 2014. In March 2017, two South Carolina Department of Transportation safety workers were killed while working, and there is legislation across the nation dealing specifically with this issue, he advised.

[5:44:24 PM](#)

REPRESENTATIVE EASTMAN noted that the language deals solely with stationary vehicles, and asked whether there had been a discussion regarding vehicles moving at a slow speed performing some type of road work.

REPRESENTATIVE KAWASAKI answered that issue was not specifically addressed in this bill. He referred to slow moving vehicles denoted with a "slow moving" vehicle sign, and said he was unsure whether that was found in this statute.

[5:45:12 PM](#)

REPRESENTATIVE FANSLER moved to adopt CSHB 204, Version 30-LS0685\D, Martin, 4/8/17, as the working document. There being no objection, Version D was before the committee.

[5:45:38 PM](#)

MERCEDES COLBERT, Staff, Representative Scott Kawasaki, Alaska State Legislature, responded to Representative Eastman that there had been discussions with other contractors and DOT representatives, and found there currently is not a statute in place for slow moving vehicles, and she deferred to the Department of Law and the Alaska State Troopers online.

REPRESENTATIVE EASTMAN surmised that currently there is no penalty in statute.

REPRESENTATIVE KAWASAKI reiterated that he did not include language regarding slow moving vehicles within this bill.

[5:47:04 PM](#)

REPRESENTATIVE KOPP said he strongly supports this bill, and agreed that this section of title 28 deals solely with stationary emergency vehicles. He described that the issue of slow moving vehicles would require an extensive re-write because if a driver comes upon a slow moving emergency vehicle, "we don't know" which way it will travel. He commented that the law should not direct a person to try to go around the emergency vehicle because it may be more appropriate to move over and stop, such as with oncoming emergency vehicles currently. It is a different situation, he said, and should be addressed separately in the law.

[5:48:01 PM](#)

REPRESENTATIVE EASTMAN asked whether there are situations wherein a DOT vehicle would stop to render aid to an emergency situation.

REPRESENTATIVE KAWASAKI answered that Mr. Hammel was in that particular type of situation, and described that at the time a state trooper was rendering aid to a vehicle stopped on the side of the road, and he was called to a case 10 miles away on the Seward Highway. Mr. Hammel, in working alongside law enforcement, placed the traffic cones to ensure the stranded vehicle did not become a further hazard for other drivers when he was struck and killed, he related.

[5:49:20 PM](#)

REPRESENTATIVE EASTMAN opined that it was not immediately apparent that someone not performing maintenance on the road would be covered.

REPRESENTATIVE KAWASAKI replied that the language was accurate because if the vehicle was in the act of performing maintenance or road service work, that person would be covered.

CHAIR CLAMAN opened public hearing on CSHB 204.

[5:50:16 PM](#)

MIKE COFFEY, Director, South Coast Region, Statewide Maintenance and Statewide Operation Director, Department of Transportation & Public Facilities (DOTPF), advised he has been employed with the Department of Transportation & Public Facilities for 35 years, and approximately 20 years of that time involved maintenance and operations in all three regions across the state. He highlighted that every day Alaska DOT maintenance and operations personnel serve in harm's way while working on the state's highways. Throughout the state, he said, people often ignore traffic work zones, they do not obey flaggers' order causing flaggers to take evasive actions and numerous times have had to jump in a ditch to get out of the way of errant vehicles. Maintenance and operations folks perform "mobile operations" such as filling a pot hole, and he described that the vehicle pulls alongside the road with flashing lights, the maintenance crew gets out, quickly fills the pot hole, and moves on. Also, crews will lay out cones ahead of the workers establishing a work zone, and without the work zone set up these are situations where the department's employees are most vulnerable. He pointed out that nationally, more than 35,000 people are injured in work zones every year, and approximately 700 people, including 130 maintenance and operations and construction workers, are killed in work zones every year. The Alaska Department of Transportation & Public Facilities supports CSHB 204, he stated.

[5:54:25 PM](#)

REPRESENTATIVE KREISS-TOMKINS related that he had the opportunity to work with Mr. Coffey, and appreciates his commitment to the Department of Transportation & Public Facilities and the services he performs in Alaskan communities.

CHAIR CLAMAN, after ascertaining no one wished to testify, closed public testimony on CSHB 204.

[5:55:17 PM](#)

REPRESENTATIVE EASTMAN asked Captain Lowden whether it was his understanding that this legislation would affect a situation wherein a DOT employee was out of their vehicle rendering aid to a disabled motorist or a car accident victim.

[5:55:47 PM](#)

CAPTAIN DAN LOWDEN, Division of Alaska State Troopers, Department of Public Safety (DPS), pointed out that he is not a

lawyer, but surmised that because they were not doing road work, maybe not. In the event there were other emergency vehicles there, he opined, they would be covered in the sense that there would be other vehicles there that the violator would be passing. He added that in the event the employee and vehicle were there by themselves, some folks may read this bill that they were not covered.

[5:56:52 PM](#)

REPRESENTATIVE KOPP reminded the committee that the mission of the DOT is to keep Alaska moving; therefore, every single thing they do is to keep motorists moving and road service work is a "very broad" term. He related that in his plain view reading of the bill, road service work is the broadest possible term that would cover all possible work on the road to keep Alaska moving, and certainly attending to motorists in need is included.

CHAIR CLAMAN added that a disabled vehicle on the roadside is a hazard to traffic, and assisting in moving that vehicle off the road, under the narrowest view of road service work, would certainly be road service work.

[5:58:11 PM](#)

REPRESENTATIVE FANSLER moved to report CSHB 204 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 204(JUD) passed from the House Judiciary Standing Committee.

HB 79-OMNIBUS WORKERS' COMPENSATION

[5:58:41 PM](#)

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 79, "An Act relating to workers' compensation; repealing the second injury fund upon satisfaction of claims; relating to service fees and civil penalties for the workers' safety programs and the workers' compensation program; relating to the liability of specified officers and members of specified business entities for payment of workers' compensation benefits and civil penalties; relating to civil penalties for underinsuring or failing to insure or provide security for workers' compensation liability; relating to preauthorization and timely payment for medical treatment and services provided to injured employees; relating to incorporation of reference materials in workers' compensation regulations; relating to

proceedings before the Workers' Compensation Board; providing for methods of payment for workers' compensation benefits; relating to the workers' compensation benefits guaranty fund authority to claim a lien; excluding independent contractors from workers' compensation coverage; establishing the circumstances under which certain nonemployee executive corporate officers and members of limited liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Workers' Compensation Board's approval of attorney fees in a settlement agreement; and providing for an effective date." [Before the committee was CSHB 79(L&C), Version 30-GH1789\0.]

CHAIR CLAMAN advised he would move Amendment 5 to the bottom of the stack of amendments, pending the committee's discussion on Amendment 8.

[CHAIR CLAMAN passed the gavel to Vice Chair Fansler.]

[5:59:41 PM](#)

CHAIR CLAMAN moved to adopt Amendment 6, Version 30-GH1789\0.5, Wallace, 4/4/17, which read as follows:

Page 18, line 11:

Delete "or knowingly fails to report a material fact"

Page 18, line 23, through page 19, line 5:

Delete all material.

Renumber the following bill sections accordingly.

Page 19, lines 11 - 15:

Delete "An employee knowingly fails to report a material fact under (a) and (b) of this section if the employee does not disclose the receipt of unemployment or other disability benefits or other employment, and the employee knowingly receives compensation under this chapter to which the employee is not entitled because of the receipt of the other benefits or other employment."

Page 21, line 20:

Delete "sec. 38"

Insert "sec. 37"

Page 21, line 22:

Delete "38"

Insert "37"

Page 21, line 24:

Delete "38"

Insert "37"

Page 21, line 27:

Delete "sec. 38"

Insert "sec. 37"

Page 21, line 28:

Delete "38" in both places

Insert "37" in both places

Page 21, line 30:

Delete "38"

Insert "37"

Page 22, line 18:

Delete "Section 41"

Insert "Section 40"

REPRESENTATIVE LEDOUX objected for discussion.

[6:00:08 PM](#)

CHAIR CLAMAN explained that Amendment 6 responds to written concerns his office received from two or three lawyers involved in Workers' Compensation matters as to "knowingly fails to report a material fact." The lawyers noted that it could actually put providers, and others, in a position of trying to determine what is, or is not, a material fact. Chair Claman noted that this particular language was a response to an Alaska Supreme Court case, Shehata v. Salvation Army, [225 P. 3d 1106 (2010)] wherein the court found ambiguity as to whether a worker had a duty to report whether they were trying to work and whether it was paid or unpaid work. Amendment 6 creates the duty to accurately disclose the work status of the worker, and it does not create undesired duties for medical providers and others, which was the prime objection of the lawyers writing to the committee, he explained. After consultation with the department, he advised that it has no objection to Amendment 6.

REPRESENTATIVE LEDOUX withdrew her objection. There being no objection, Amendment 6 was adopted.

[6:03:53 PM](#)

CHAIR CLAMAN moved to adopt Amendment 7, written by Chair Claman, which read as follows:

Page 4, line 7, following "partnership,":
Delete "or"

Page 9, line 27, following "self-represented,":
Insert "or"

Page 9, line 28:
Delete "or by a parent of"
Insert "a parent if the party is"

Page 11, lines 26 - 27:
Delete "**if an employer controverts the employee's right to compensation**"
Insert "**of the controversion**"

Page 14, following line 23:
Insert a new bill section to read:
"*** Sec. 27.** AS 23.30.205(e) is amended to read:
(e) An employer or the employer's carrier shall notify the commissioner of labor and workforce development of any possible claim against the second injury fund as soon as practicable, but in no event later than 100 weeks after the employer or the employer's carrier has knowledge of the injury or death **or after the deadline for submitting a claim for reimbursement in (g) of this section.**"

Renumber the following bill sections accordingly.

Page 14, lines 25 - 28:
Delete all material and insert:
"(g) An employer or the employer's carrier must establish all requirements for reimbursement in this section, including notice of any possible claim and the payment of compensation in excess of 104 weeks, before submitting a claim for reimbursement to the second injury fund. Notwithstanding (a) and (b) of this section, a claim for reimbursement may not be submitted for an injury or death that occurs after

August 31, 2017, and must be submitted before October 1, 2019. An employer that qualifies for reimbursement under this section will continue to receive reimbursement payments on claims accepted by the fund, or ordered by the board, until the fund's liabilities for the claim are extinguished."

Page 21, line 20:
Delete "38"
Insert "39"

Page 21, line 22:
Delete "38"
Insert "39"

Page 21, line 24:
Delete "38"
Insert "39"

Page 21, line 27:
Delete "38"
Insert "39"

Page 21, line 28:
Delete both occurrences of "38"
Insert "39" in both places

Page 21, line 30:
Delete "38"
Insert "39"

Page 21, line 31:
Delete "29"
Insert "30"

Page 22, line 1:
Delete "29"
Insert "30"

Page 22, line 3:
Delete both occurrences of "29"
Insert "30" in both places

Page 22, line 5:
Delete "29"
Insert "30"

Page 22, following line 5:

Insert a new subsection to read:

"(d) The amendments to AS 23.30.205, added by secs. 27 and 28 of this Act, apply to notice of any possible claim and a claim for reimbursement submitted on or after the effective date of secs. 27 and 28 of this Act."

Page 22, line 18:

Delete "Section 41 of this Act takes"

Insert "Sections 27, 28, and 42 of this Act take"

Page 22, line 19:

Delete all material and insert:

"* **Sec. 44.** Section 31 of this Act takes effect September 1, 2017."

Page 22, line 20:

Delete "29"

Insert "30"

REPRESENTATIVE REINBOLD objected.

CHAIR CLAMAN related that Amendment 7 was requested by the Department of Labor & Workforce Development (DLWD), and Ms. Marx would present the amendment.

[6:04:26 PM](#)

MARI MARX, Director, Division of Workers' Compensation, Department of Labor & Workforce Development (DLWD), advised that the Department of Law (DOL) brought this issue to the attention of DLWD, and Kimber Rodger would explain the basis of its concern.

[6:04:50 PM](#)

KIMBER RODGERS, Assistant Attorney General, Labor and State Affairs Section, Department of Law, referred to Amendment 7, page 1, lines 1-13, and explained that they are technical changes to correct language issues. The real substance involves the second injury fund within Amendment 7, page 1, lines 11-22, and page 2, lines 4-14, and she advised that the idea was that they clarify some procedures and extend deadlines for phasing out the second injury fund. The new section, Section 27, ends the requirement that employers provide notice of any possible second injury fund claims because their claims could no longer

be submitted to the fund. She referred to Amendment 7, [page 2, lines 4-14], and the new subsection (g), and advised that it explains what is required to submit a claim for reimbursement to the second injury fund, such that it does not permit claims to be based on a subsequent injury or death that occurs after August 31, 2017; and requires that employers file their claims for reimbursement before October 1, 2019, and she noted that the new addition of the section required some renumbering of sections.

MS. RODGERS referred to Amendment 7, page 3, lines 25-29, and explained that it adds a new subsection to the applicability section, and clarifies that the second injury fund amendments apply to notices of any possible claim and claim to reimbursement submitted after the effective date of Sections 27 and 28, with the effective date of those sections being an immediate effective date. She advised that this is provided in Amendment 7, [page 3, line 31, and page 4, lines 1-2], where an immediate effective date is necessary so that these sections will take effect before the injury or death deadline date after August 31, 2017.

MS. RODGERS remarked that Amendment 7 [page 4, lines 4-6], provides for a new effective date of September 1, 2017 for renumbered Section 31. She explained that Section 31 amends AS 23.30.247(c) to remove a provision allowing employers to ask about a person's prior health or disability history in order to document that employer's knowledge of a pre-existing condition for a possible second injury fund reimbursement if the person was later injured at work, she explained. As of September 1, 2017, this provision will no longer be needed because "a subsequent injury or death had occurred at that time" will not qualify for a second injury fund reimbursement. Therefore, she noted, those questionnaires will no longer be necessary.

[6:08:38 PM](#)

REPRESENTATIVE REINBOLD withdrew her objection on Amendment 7. There being no objection, Amendment 7 was adopted.

[VICE CHAIR FANSLER passed the gavel back to Chair Claman.]

[6:09:02 PM](#)

REPRESENTATIVE REINBOLD moved to adopt Amendment 8, Version 30-GH1789\0.10, Wallace, 4/13/17, which read as follows:

Page 16, line 28:

Delete "three"

Insert "two"

Page 16, line 29, following "person":

Insert "is responsible for the satisfactory completion of services that the person has contracted to perform and is subject to liability for a failure to complete the contracted work, or"

Page 17, line 1, following "location":

Insert "or a business mailing address"

Page 17, line 4:

Following "person":

Insert "provides contracted services for two or more different customers within a 12-month period or"

Following "in":

Insert "any kind of"

Page 17, line 6:

Delete ";"

Insert ".""

Page 17, lines 7 - 13:

Delete all material.

REPRESENTATIVE FANSLER objected.

[6:09:12 PM](#)

REPRESENTATIVE REINBOLD stressed that her name should have been printed on Amendment 8 and asked that everyone write her name on the document "because that's a big deal to me."

REPRESENTATIVE REINBOLD explained that Amendment 8 revises [Sec. 28, AS 23.30.230(a)(11)(H), page 16, line 28], and adds provisions that an independent contractor "meet at least two of the three listed criteria" to satisfy the definition of an independent contractor. She explained that this amendment loosens the language to ensure that independent contractors are not held to strict eligibility standards that may be difficult to overcome depending on the business size, operation, and services offered. She advised that this amendment provides flexibility in determining what constitutes an independent contractor. It is important to foster small business opportunities including those offered by independent contractors

in the time of Alaska's financial uncertainty. She related that Independent contracting opportunities keep Alaskan businesses in the business of providing services and professional services to Alaskan and non-Alaskan businesses. She described Amendment 8 as a "win-win for everybody," and urged the committee's support. She then thanked Chair Claman, committee members, the National Federation of Independent Business (NFIB), and others opposing parts of a "soon to be withdrawn" amendment, and the committee staff in working closely with her office to make this a win-win for everyone.

[6:11:02 PM](#)

CHAIR CLAMAN related that the committee received letters of support from three different groups, and also support from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).

REPRESENTATIVE KOPP remarked that he fully supports the amendment.

[6:11:32 PM](#)

REPRESENTATIVE FANSLER withdrew his objection. There being no objection, Amendment 8 was adopted.

[6:11:47 PM](#)

REPRESENTATIVE LEDOUX moved to adopt Amendment 9, Version 30-GH1789\0.9, Wallace, 4/11/17, which read as follows:

Page 10, line 14:
Delete "**21st** [14TH]"
Insert "14th"

Page 10, line 17:
Delete "**21** [14] days"
Insert "14 days **or twice a month**"

Page 10, line 18, following "period."
Insert "**If the first installment of compensation due under this subsection is not paid within 14 days or a subsequent installment due under this subsection is not paid every 14 days or twice a month, a grace period will not be allowed and an additional amount will become due under (e) of this section.**"

REPRESENTATIVE FANSLER objected for purposes of discussion.

6:12:02 PM

REPRESENTATIVE LEDOUX explained that when she introduced the now adopted Amendment 2 [on 4/5/17], it provided that if [an employer or insurer] had not paid workers' compensation benefit to a worker within 14 days, no grace period would be allowed and the late benefit would be penalized under this section. Since the adoption of Amendment 2, she remarked, a representative from the National Federation of Independent Business (NFIB) pointed out that some businesses, including the State of Alaska, pay their employees twice per month and it would be difficult to change the benefits to a 14 day period within the computer systems of people paying on a bi-monthly pay period. Amendment 9 changes it to every 14 days, or twice per month, she explained.

REPRESENTATIVE REINBOLD commented that she likes the 7-day grace period aspect and she would like feedback from those being impacted.

REPRESENTATIVE LEDOUX pointed out that the 7 day grace period was already eliminated [within the adoption of Amendment 2], and Amendment 9 simply moves the time period from every 14 days to twice per month. She reiterated to Representative Reinbold that the discussion was not about the previously deleted 7 day grace period.

REPRESENTATIVE REINBOLD argued that the amendment went from 14 days to 21 days.

6:14:01 PM

CHAIR CLAMAN disagreed and advised that the amendment changes the 21 days to 14 days, [or twice per month].

REPRESENTATIVE REINBOLD after re-reading the amendment agreed that Chair Claman and Representative LeDoux were correct. She commented that she did not know whether anyone would like to testify, but she would not fight it because Representative LeDoux had the votes.

REPRESENTATIVE EASTMAN commented that he likes the idea of Amendment 9, and suggested that under its current construction, an employer could probably do what was unintended by this

amendment due to the word "or," and pay the money twice on day 30 and would be in compliance.

REPRESENTATIVE LEDOUX answered that she supposed it could be read in that manner, although, that certainly wasn't the purpose of the amendment, but Representative Eastman may have a point.

CHAIR CLAMAN referred to Representative Eastman's suggestion and said that because the employer was not paying for past time and was paying for the time going forward, that if the employee received a full month at one time the employee probably would have no objection. Although, he commented, the odds that an employer would actually choose to pay in one lump sum is pretty unlikely.

[6:17:23 PM](#)

MS. MARX answered that the language is "very broad" and is open to multiple interpretations, and the division would probably have difficulties in calculating penalties. Whereas, the division could easily calculate when penalties may be due with a set date, and every employer having the same due date. The language "twice per month," she related, could be read to be two days in one month period, a 30 day or a 31 day period.

[6:18:11 PM](#)

REPRESENTATIVE LEDOUX, noting that the division knows where the committee wants to go with this language and is aware of the problem, asked the language the division would suggest.

MS. MARX related that originally the compensation was paid within 14 days with a grace period of 7 days, meaning an employer actually had 21 days in which to pay. She opined, that the administration changed it, and the feeling is to back to the way it was before, "but changing it here." She explained. "So here, I think the intent is to pay 14 days, and 'this right here' adding twice per month, I'm not sure that that would meet that intent to pay that 14 days."

CHAIR CLAMAN pointed out that it is not an attempt to make it 14 days, it's an attempt to recognize that many employers pay twice per month. He commented that while technically a possibility, in the real world no employer would pay the entire payment for one month on the last two days of the month.

MS. MARX related that in her experience as a hearing officer, 9 out of 10 employers would follow the intent, and 1 out of 10 would construe the language against the intent, and it would happen often enough that it would be a concern. She remarked that in a perfect world, the fraud unit would not be in existence.

[6:20:49 PM](#)

COMMISSIONER HEIDI DRYGAS, Department of Labor & Workforce Development, clarified that there are different systems when paying workers' compensation benefits. Typically, it is not the employer paying the benefits - it's the insurer, and to have an insurer pay every 14 days or every 21 days is a reasonable part of its responsibilities. She commented that there are some self-insured employers in this state. The workers' compensation benefits system versus regular wages and benefits paid to working employees are completely different and, she opined, the attempt to try to fit it into an employer's version of how employees are paid may not be necessary.

[6:21:41 PM](#)

REPRESENTATIVE LEDOUX asked Mr. DeWitt's perspective on the amendment.

[6:22:05 PM](#)

DANNY DeWITT, State Director, National Federation of Independent Business (NFIB), related that he is not an expert in workers' compensation and advised that 14 days plus 14 days equals 28 days and most months have 31 days which causes math difficulties. He related that he does not have a solution but offered concern that without the grace period, it could create a significant problem for folks paying on the 1st and 15th of the month.

[6:23:10 PM](#)

REPRESENTATIVE LEDOUX remarked that as Commissioner Drygas pointed out, everyone is covered through workers' compensation insurance, or through those who might be self-insured. She commented that she did not know whether anyone was available from the workers' compensation carriers to testify, but it wouldn't appear to actually impact Mr. DeWitt's clients, and it might impact the workers' compensation insurance carrier.

MR. DeWITT explained that everything an insurance company has to do is charged in premiums which directly affects his clients. He offered concern that if a payment was made on the 14th, the next payment would be on the 28th, which means three days into the next month which puts everyone on a 54 year payment cycle, rather than a 52 year cycle.

CHAIR CLAMAN commented that Mr. DeWitt may be getting his math wrong but he wasn't going to quarrel with the math.

MR. DeWITT advised that he appreciates Representative LeDoux's intent, but it begs the question of whether the math works, which is why a grace period is necessary.

[6:25:19 PM](#)

CHAIR CLAMAN clarified that the issue Commissioner Drygas raised was that it gets referred to the workers' compensation carrier. The workers' compensation carrier is accustomed to the 14 days rule, might prefer the 14 days rule, and might prefer not to get confused by the twice per month rule, he said.

REPRESENTATIVE LEDOUX commented that at this point she was not particularly interested in Amendment 9.

REPRESENTATIVE EASTMAN noted that if 14 days poses a math problem, whether 16 days or 17 days would solve the problem.

MR. DeWITT stated that he was hesitant to respond and underlined that "I really don't know enough of the technical issues," but if forced to respond, would think that 16 days would work because it would cover one month.

REPRESENTATIVE REINBOLD reiterated that a grace period is important and then read to the committee [Amendment 9, page 1, lines 10-13].

[6:27:28 PM](#)

REPRESENTATIVE LEDOUX, in reference to Mr. DeWitt's comments and the 16 days, commented that she was unsure it was mathematically better. In response to Representative Reinbold's comments, she pointed out there is not a grace period when paying someone's salary and she could not see why there should be a grace period with workers' compensation benefits. Representative LeDoux then remarked that if she had her druthers, she would like to withdraw the amendment and as the bill progresses, that an

insurance carrier advise as to whether adopting this amendment would become a data nightmare and how to solve the data nightmare.

[6:29:05 PM](#)

REPRESENTATIVE LEDOUX withdrew Amendment 9.

[6:29:14 PM](#)

CHAIR CLAMAN asked Representative Reinbold, in light of the committee action on Amendment 8, whether she preferred to not offer Amendment 5.

REPRESENTATIVE REINBOLD related her appreciation with the AFL-CIO, NFIB, Chair Claman's office, and the passage of Amendment 8, and opined that the parties came to a "great compromise," and said she would not to make a motion to adopt Amendment 5.

[6:29:52 PM](#)

REPRESENTATIVE LEDOUX noted that the department did not weigh in on Amendment 8, and asked whether the department accepted the committee's action.

CHAIR CLAMAN advised that Commissioner Drygas gave him a "thumbs up" to indicate that the department was good with Amendment 8.

REPRESENTATIVE LEDOUX stated that she was both impressed and amazed that this was accomplished and thanked everyone who worked on this bill to come up with a "win-win for everybody."

REPRESENTATIVE KOPP commented that this is a "great example" of the public and private sector working together toward the common goal of taking care of employees.

[6:30:56 PM](#)

REPRESENTATIVE FANSLER moved to report CSHB 79, Version 30-GH1789\0, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 79(JUD) passed out of the House Judiciary Standing Committee.

SB 55-OMNIBUS CRIME/CORRECTIONS

[6:31:26 PM](#)

CHAIR CLAMAN announced that the final order of business would be CS FOR SENATE BILL NO. 55(FIN), "An Act relating to criminal law and procedure; relating to controlled substances; relating to sentencing; relating to protective orders; relating to restitution; relating to the period of probation; relating to revocation, termination, suspension, cancellation, or restoration of a driver's license; relating to parole; relating to the duties of the Department of Corrections and the Department of Health and Social Services; and providing for an effective date."

[6:32:01 PM](#)

The committee took an at-ease from 6:32 p.m. to 6:34 p.m.

[6:34:24 PM](#)

SENATOR JOHN COGHILL, Alaska State Legislature, advised that SB 55 was borne out of the recommendations from the Alaska Criminal Justice Commission, and it is mostly technical and conforming in nature. He noted that SB 54 contains policy calls and has taken on a life of its own. This bill is based on issues the Department of Law (DOL) brought to the Alaska Criminal Justice Commission wherein the commission put something in one statute, and through the amendment process there was not a conforming change, and this bill conforms those changes, he explained. The goal is to be as "technically clean" as possible during this session, which would help both the DOL, Department of Transportation & Public Facilities (DOTPF), Division of Motor Vehicles while hammering out some of the policy call questions. Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature] was a large omnibus crime package with many amendments, and it is now necessary to line up the statutes.

[6:36:56 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, offered a sectional summary and advised that Sections 1, 2, and 3, of the bill all do the same thing. He explained that in 2015, the Alaska Criminal Justice Commission recommended that the felony theft threshold be raised, which is the dividing line between misdemeanor theft and felony theft. The commission had advised to not only raise that threshold but to link it to inflation so the legislature would not have to act in the future on that issue. However, with Senate Bill 91 having 193 sections there were some drafting errors, and this

drafting error occurred when the drafter inadvertently, in three instances, linked the higher amount of grand larceny, \$25,000, to inflation adjustment. He opined that this was an inadvertent result of a floor amendment in the House of Representatives, last year.

[6:37:56 PM](#)

MR. SHILLING advised that Section [3] of the bill relates to drug possession, and as recommended by the commission in 2015 a simple drug possession shall be a misdemeanor, with exceptions to that recommendation.

REPRESENTATIVE LEDOUX offered that she doesn't understand why adjusting for inflation would be considered a technical amendment because it appears to be a fairly substantive change.

MR. SHILLING responded that the commission and Senator Coghill consider it a technical change because the commission never recommended that that the higher amount be linked to inflation. He explained that it is the sponsor's understanding that there was never an intention to link \$25,000 to the inflation adjustment.

REPRESENTATIVE LEDOUX said that if he was adjusting for inflation, why there was never an intention to link \$25,000 to the inflation adjustment.

[6:39:25 PM](#)

CHAIR CLAMAN opined that this was the subject of a floor amendment and was a compromise to adjust for inflation at the lower level, but not at the higher level.

REPRESENTATIVE KOPP explained that the lower level determines the first level of felony when moving from misdemeanor to felony, and that the broad agreement was that \$25,000 would probably always be a class B felony throughout "our lifetime and the next lifetime." The lower level is more sensitive to the market, inflation, the actual value of items most frequently stolen, and that the market is sensitive because it is a lower amount moving from a misdemeanor to a felony theft, he said. Whereas, the higher amounts are actually not as sensitive to the threshold they are attached to on the felony scale. There will always be felonies, he reiterated, but the lower level is moving from misdemeanor to felony, and the debate was around when something should go from a misdemeanor to a felony.

REPRESENTATIVE LEDOUX disagreed with this being the result of a House of Representative floor amendment because she did not recall any of those floor amendments actually passing.

CHAIR CLAMAN agreed with Representative LeDoux and advised that he believes it was not a subject of a House of Representatives floor amendment, it was actually a function of the amendments offered in the House Judiciary Standing Committee last year.

6:41:25 PM

REPRESENTATIVE LEDOUX asked whether it was Chair Claman's recollection that the committee meant to do this in the House Judiciary Standing Committee, in which case it was not a technical amendment.

CHAIR CLAMAN suggested that it was a technical amendment because the House Judiciary Standing Committee "did it, but we did it in most sections," and Mr. Shilling explained that there were a few sections that appeared as though they were drafted erroneously. Therefore, he said, this is conforming the statute to the intent of the bill as it came through committee.

6:42:18 PM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, clarified that the language being eliminated was, "adjusted for inflation as provided in AS 11.46.982" and explained that AS 11.46.982 specifically reads that the judicial council will only adjust for inflation the \$250 amount and the \$1,000 amount. She pointed out that the Judicial Council does not have authority anywhere to address the \$25,000 amount, so that really was a case of the drafters going through, and each time they saw something added "adjusted for inflation," but erroneously doing it for the dollar amount that was not authorized.

6:43:10 PM

MR. SHILLING advised that Section 4 of the bill relates to drug possession, and as recommended by the Alaska Judicial Commission, Senate Bill 91 made simple drug possession a misdemeanor, with exceptions such as, felony forms of possession in the law. Unfortunately, he said, those changes inadvertently created some overlapping penalties, specifically for possession of less than one ounce of a schedule VIA controlled substance.

This section eliminates those overlapping penalties, and accommodates for the fact there are felony forms of drug possession referenced in other statutes and it simply needs to be referenced in Section 4 as well, he explained.

[6:44:05 PM](#)

REPRESENTATIVE LEDOUX inquired as to "overlapping penalties."

MR. SHILLING referred to CSSB 55(FIN), Version T, page 3, lines 3-6, which read as follows:

(4) under circumstances not proscribed under AS 11.71.030(a)(3), 11.71.040(a), 11.71.040(a)(4), [AS 11.71.040(a)(3)] or 11.71.060(a)(2) [11.71.060(a)(2)(B)], possesses any amount of a schedule 1A, IIA, IIIA, IVA, VA, or VIA controlled substance.

MR. SHILLING explained that this statute makes simple possession of drugs a class A misdemeanor, and it makes possession of schedule 1A, IIA, IIIA, IVA, VA, or VIA substance a class A misdemeanor. However, he pointed out, another statute has another penalty for possession of less than one ounce of a schedule VIA substance. He explained there is a statute that makes it a class B misdemeanor for someone to possess less than one ounce of a VIA controlled substance, and another statute simultaneously makes it a class A misdemeanor.

REPRESENTATIVE LEDOUX surmised that there are inconsistent penalties.

MR. SHILLING answered in the affirmative, and offered that the sponsor chose to default to the class B misdemeanor, which was the law prior to Senate Bill 91.

[6:45:19 PM](#)

REPRESENTATIVE REINBOLD referred to previous testimonies referencing the State of Texas and asked Mr. Shilling to describe how similar or different the drug issues are in Senate Bill 91 in Alaska versus Texas.

MR. SHILLING pointed out that he is not an expert on the sentencing frameworks of other states, but generally when speaking of Texas it was spoken of as being one of the first

conservative states to embark on these types of criminal reform efforts.

REPRESENTATIVE REINBOLD related that she would like to speak to the committee at a later time as to the differences in Texas because many times people have been misled, and stressed considerable concern regarding Section 4.

[6:46:52 PM](#)

MR. SHILLING advised that Section 5 relates to victim notification. Senate Bill 91 created a new requirement of the court by requiring that information regarding sentencing be given to the victim, thereby, giving the victim an opportunity to update their contact information with the Victim Information and Notification Everyday (VINE) system. However, the language was not written in a manner that would accommodate for the fact that many victims simply do not show up to court and; therefore, the court system has been out of strict compliance with the statute. Oftentimes, he commented, victims do not want to be part of these hearings, and because it is not the court's role to maintain a contact list of victim information, it would be inappropriate to require the court to seek out these victims and provide this information. Instead, he explained, the language "if practicable" was added in recognition that many victims do not show up to court.

[6:48:01 PM](#)

REPRESENTATIVE REINBOLD asked permission to read "Section 24" of the constitution.

CHAIR CLAMAN stated that the committee did not need Representative Reinbold to read from the constitution while moving through the bill sectional, and she would have an opportunity during the committee comment segment of the bill hearing.

CHAIR CLAMAN, in response to Representative Reinbold's continuing argument, stated that the committee would move through the sectional summary at this time.

[6:48:50 PM](#)

MR. SHILLING clarified that the requirement to provide information to victims did not exist prior to Senate Bill 91. He explained that it is a piece of information the sponsor

strongly believes should be assessable to victims, and it was established in law last year. He further explained that had they identified a need for the language "if practicable," it would have been changed last year.

[6:49:09 PM](#)

MR. SHILLING explained that Secs. 6, 7, 8, 9, and 10, all have to do with the suspended entry of judgment (SEJ). Last year the commission recommended a diversionary tool called a "suspended entry of judgment (SEJ)" which resembles a "suspended imposition of sentence (SIS)". The SEJ was established under Senate Bill 91, and was intended to operate a bit differently than the SIS wherein a conviction would not be entered for defendants granted an SEJ, thereby, avoiding some of the consequences resulting from a conviction. He explained that Section 6 provides for an array of authorities for the court system, and is the general statute authorizing the court system to impose community work service, fines, and sentences of imprisonment. Section 6 makes it explicitly clear that the court does have the authority to impose a suspended entry of judgment (SEJ).

[6:50:17 PM](#)

MR. SHILLING turned to Section 7, and advised that this section is necessary to bring the suspended imposition of sentence (SIS) and suspended entry of judgment (SEJ) closer into alignment. It ensures that when a restitution order is made as a requirement under an SEJ, that the responsibility to pay that restitution does not go away or disappear when that individual successfully completes an SEJ, and their case is discharged. The requirement to pay restitution remains just as it does under a suspended imposition of sentence (SIS).

[6:50:51 PM](#)

REPRESENTATIVE REINBOLD requested an explanation of the difference between an SEJ and an SIS.

MR. SHILLING explained that [under an SEJ] a judgment is never entered, the individual is truly not convicted, the case does not appear on CourtView, and they can legally write on an employment application that they have never been convicted of a crime. He pointed out that this is designed for first time, low risk offenders, and deferred to the Department of Law or the Alaska Court System for any additional questions.

6:51:40 PM

MR. SHILLING advised that Section 8 deals with an SEJ, and explained that it was unclear in the SEJ statutes whether a brief prison stay could be imposed, similar to what can occur under an SIS. He related that practitioners had requested clarification as to whether there was an option of imposing a brief period of imprisonment for individuals going through an SEJ. He clarified that the commission never intended "shock incarceration," for example, to be used under an SEJ and if the commission had, it certainly would have recommended the appropriate language. The commission felt it was prudent to clarify in statute that incarceration may not be imposed as a condition of probation under a suspended entry of judgment (SEJ).

6:52:35 PM

REPRESENTATIVE REINBOLD paraphrased that "the court may not impose a sentence of imprisonment under this section," and asked for additional information as to this language tying the hands of the court.

MR. SHILLING explained that it was not the intention of the commission to impose shock incarceration under an SEJ.

6:53:20 PM

SENATOR COGHILL reminded the committee that under the suspended entry of judgment (SEJ), the judgment is still there and the idea is to get the person into treatment. The person must complete that treatment in order to have that judgment suspended and set aside. He described it as an accountability measure because in order for the judgment to be set aside, the person must complete the program requirements.

CHAIR CLAMAN noted that with an SEJ, the court made the decision to suspend entry of judgment and send the person to a treatment program. Therefore, the court decides at the very beginning of the process whether it will give the person that opportunity. The court's hands are not tied, he pointed out, this is simply recognizing that a court decided to give a person that chance to rehabilitate and not have a conviction.

SENATOR COGHILL described it as a methodology tool that a court may or may not use.

[6:54:32 PM](#)

REPRESENTATIVE REINBOLD paraphrased "the court may not impose a sentence of imprisonment under this section," and expressed concern that many times funding and/or programs are not available in certain areas, and in those instances what would be the next step.

SENATOR COGHILL answered that the court may use the programs if they are available, and if they are not available, the chances are a court would not suspend an entry of judgment because it couldn't practically follow the rules.

[6:55:25 PM](#)

REPRESENTATIVE EASTMAN referred to [Section 8] and asked how broadly or narrowly imprisonment was defined, and if the court decided a person needed to be hospitalized for a certain amount of time whether that falls under imprisonment.

MR. SHILLING commented that he was unaware whether there was a definition for imprisonment in Title 12, and opined that when the word "imprisonment" is used, it refers to incarceration at a Department of Corrections (DOC) facility. He explained that different terms such as, home confinement and electronic monitoring are used when referring to something other than a hard bed facility within the DOC.

[6:57:01 PM](#)

MR. SHILLING explained that Section 9 also has to do with a suspended entry of judgment (SEJ), and under existing law if a person successfully completes probation under an SEJ, the court may discharge the person and dismiss the proceedings any time after one year from the date of the original probation. He related that practitioners were confused by this language as to whether it referred to the start date, end date, or at what point in the probation term was being discussed. He clarified that because probation terms are longer than one single day, it is an increment of time and it makes sense to add the language "was imposed," which is a grammatical issue to clarify that the statute was referring to the start date of the term of probation. Also, he said, this section clarifies that a person is not convicted if they successfully complete an SEJ.

[6:57:58 PM](#)

REPRESENTATIVE REINBOLD referred to an SEJ, and asked whether the person was ever convicted, and paraphrased: "a person who is discharged in this section may not be convicted of a crime." She said she wanted to look at the full ramifications from the beginning to the end with regard to that sentence.

MR. SHILLING explained that under an SEJ, the person is never convicted and this language makes it crystal clear that that person is not convicted.

[6:58:37 PM](#)

REPRESENTATIVE REINBOLD said, "Yet, he or she has to do probation and a whole bunch of other things," and something was missing. She commented that if they are not convicted, why are they on probation.

MR. SHILLING responded that a person faces many consequences associated with being charged with a crime and are required to perform community service, fines, or treatment, for example. However, he said, the uniqueness of an SEJ that sets it apart is that the person is not truly convicted and, thereby, avoids the consequences that follow a conviction.

[6:59:26 PM](#)

REPRESENTATIVE REINBOLD surmised that the person actually committed the crime and this is a way to erase the offense, but argued that people have the right to know whether someone actually committed a crime and see it listed on CourtView.

REPRESENTATIVE REINBOLD asked Mr. Shilling to explain who would know about the SEJ, wherein the person actually committed the crime but was not convicted.

MR. SHILLING explained that this is exactly how an SEJ works, the person is not convicted and as a result their record does not appear on the CourtView criminal record.

REPRESENTATIVE REINBOLD argued, "But, they committed it."

[7:00:40 PM](#)

CHAIR CLAMAN explained to Representative Reinbold that she was exactly correct, under the criminal justice reform efforts an SEJ is a tool the court can use for someone who admits to committing a crime, to give them an opportunity to rehabilitate

themselves. He related that he fully understands Representative Reinbold does not agree with that part of the criminal justice reform efforts, and her distaste is clear.

REPRESENTATIVE REINBOLD said this is an issue that has been "of great alarm" and she wanted to put it on record.

CHAIR CLAMAN assured Representative Reinbold that it was clearly on record.

[7:01:21 PM](#)

REPRESENTATIVE KOPP explained to Representative Reinbold that suspended entry of judgment (SEJ) means there is no written official record of the conviction. He explained that the defense, prosecution, [and judge] must all agree that the conviction could be set aside if a whole host of conditions were fulfilled on probation. He pointed out that the legislature determined that a person was not eligible for an SEJ when involving crimes against a person, sexual assault, violent crimes, and almost any serious offense. The whole purpose behind this is to allow first time offenders a chance to avoid that initial conviction which could put them in the death spiral of un-employability for the rest of their lives, he related. In the event someone violates that probation they lose their ability for that SEJ, and it will be a conviction. He described it as a refined process.

[7:03:26 PM](#)

MR. SHILLING advised that Section 10 is a continuation of the previous conversation regarding a suspended entry of judgment (SEJ). It uses the words "convicted of" and "convicted" in three instances, and because the person had not been convicted, it made sense to refer to the charge rather than the conviction. The fourth replacement of the words "convicted of" with "is charged with" is for a different reason, there are a number of exceptions, and a number of individuals are not eligible for an SEJ. Under current law, a person convicted of a crime of domestic violence is not eligible, "with convicted being past tense" leads some practitioners to believe that might be referring to a previous conviction of domestic violence. He stressed that the sponsor wants to ensure that someone who is "currently, right now," being charged with domestic violence would not be eligible for an SEJ.

[7:04:38 PM](#)

MR. SHILLING explained that Section 11 eliminates overlapping probation term lengths because Senate Bill 91 established maximum probation term lengths. For example, he said, one of the maximums was 15 years for a felony sex offense, and 10 years for an unclassified felony under Title 11, and there are felony sex offenses that are also unclassified felonies under Title 11. He explained that there is an ambiguity about which maximum probation term lengths would apply, and this section clears up that ambiguity.

[7:05:19 PM](#)

MR. SHILLING pointed to Sections 12 and 13, and related that they do the same thing. Senate Bill 91 raised the maximum fine amount that could be imposed for a class A misdemeanor from \$10,000 to \$25,000, and opined this was part of the aforementioned House of Representatives amendment, but he would perform research.

CHAIR CLAMAN said he was certain that amendment came out of the House Judiciary Standing Committee and not from the floor of the House of Representatives.

[7:05:51 PM](#)

MR. SHILLING remarked that these two statutes require certain information to be on the protective order form, and these sections talk about what the penalties might be for violating a protective order. He noted that the form says that one of the possible penalties would be a fine up to \$10,000 except that is no longer the maximum fine, and these two sections simply update the information on the form to specify that the maximum fine can be up to \$25,000.

[7:06:19 PM](#)

REPRESENTATIVE REINBOLD asked whether the money goes to the court system, the general fund, or whether it was restitution.

MR. SHILLING responded that he does not know the answer to that question, and this is just a technical change that conforms Alaska's fines statutes with the protective order statutes in Title 18.

MS. MEADE answered that all fines for all crimes go straight into the general fund.

[7:07:19 PM](#)

MR. SHILLING said that Section 14 has to do with license revocations and this section removes a reference to the type of dismissal that would serve to meet the requirements of this section, and removing this reference to prejudice is appropriate. The intent of this policy is to return the license to the individual if they have been acquitted or their case dismissed regardless of whether the dismissal was with or without, prejudice. This simply removes the reference to prejudice and gets back to the intent of that policy, he noted.

[7:07:52 PM](#)

MR. SHILLING explained that Section 15 is a new addition into SB 55 from the Senate Finance Committee. In 2015, the Alaska Criminal Justice Commission recommended that municipalities be prohibited from having greater punishments under municipal ordinances that go beyond the punishments for similar offenses described under state law. Senate Bill 91 enshrined that recommendation in statute, but afterwards it came to the sponsor's attention that folks were interpreting the language to not only apply to crimes, but also non-criminal offenses and traffic infractions. He noted that this has had the effect of limiting significant revenue sharing for the Municipality of Anchorage, for example, and creating an inability to collect greater fines for traffic infractions. This section simply changes the statute to apply only to criminal offenses, he explained.

[7:09:06 PM](#)

REPRESENTATIVE REINBOLD asked whether this is similar to HB 223.

CHAIR CLAMAN responded "identical."

[7:09:17 PM](#)

MR. SHILLING referred to Section 16, and advised that the Alaska Criminal Justice Commission recommended that agencies be required to collect specific data on key performance measures, to analyze the data, prepare reports for the legislature, to continue to make recommendations, and play an oversight role for the next five years. Due to an apparent oversight, the bill missed an important data point that does need to be reported to the commission relating to earned compliance credits, he said.

[7:09:58 PM](#)

MR. SHILLING said that Section 17 has to do with the Alcohol Safety Action Program (ASAP), and this section aligns two bills that were passed around the same time. Senate Bill 165 [passed in the Twenty-Ninth Alaska State Legislature] made minor consuming alcohol a violation and provided that the fine for this violation may be reduced if that juvenile successfully participated in ASAP. Senate Bill 91 limited the types of offenses that could be referred to ASAP, in order to accommodate for the fact that Senate Bill 165 felt strongly about sending these juvenile offenders to ASAP, this section of the bill adds those two juvenile offenses to the list of offenses that not only the court can refer to ASAP, but the ASAP can accept.

[7:10:58 PM](#)

MR. SHILLING advised that Section 18 eliminates the notification requirement for a parole hearing that will never occur. He explained that this is a statute that says that individuals who have committed a crime against a person or committed arson in the first degree, and become eligible for an administrative parole that notification should be sent to the victim. However, he pointed out, those individuals are just not eligible for administrative parole; therefore, no notification would ever need to be sent and it is being repealed here.

[7:11:34 PM](#)

MR. SHILLING noted that Sections 19 and 20 are the applicability provisions with respect to the entire bill. Section 20 clarifies that any decision made by the Board of Parole prior to January 2017, is not somehow invalidated by the passage of a certain section of Senate Bill 91, he explained.

[7:11:55 PM](#)

MR. SHILLING related that Section 21 provided for an immediate effective date of all of the sections of Senate Bill 91.

CHAIR CLAMAN noted that it is his intention to move the bill from committee today.

REPRESENTATIVE REINBOLD objected to moving the bill as this is the bill's first presentation and public safety is government's number one mandate.

7:13:04 PM

REPRESENTATIVE REINBOLD referred to the Constitution of the State of Alaska, Article 1, Section 24, which read as follows:

Section 24. Rights of Crime Victims Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process; the right to timely disposition of the case following the arrest of the accused; the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication.

REPRESENTATIVE REINBOLD remarked that it is important to keep the constitution at close hand, and expressed concern with the technical changes.

7:14:48 PM

CHAIR CLAMAN opened public testimony on SB 55. After ascertaining no one wished to testify, closed public testimony.

7:15:28 PM

CHAIR CLAMAN advised the committee that his office had received "only one amendment," which was from Representative Reinbold and it was received after 12:00 noon, which was after the deadline for receiving amendments. He pointed out that the subject of "those amendments" was addressed in two other bills, SB 54 and HB 228, which are Representative Reinbold's bills. For both of those reasons he ruled those amendments out of order and they would not be considered, he stated.

[7:15:57 PM](#)

REPRESENTATIVE EASTMAN said he was curious about Chair Claman's last statement, and commented that, obviously, not all of the bills that come before the committee will pass, and asked how the fact that the information was in another bill would keep the committee from putting an amendment on this bill today.

CHAIR CLAMAN explained that when "we have the exact thing" that has already been referred to a different committee, it takes that work away from that committee. The amendment was also late and for both of those reasons the committee would not hear the amendment, he said.

CHAIR CLAMAN, in response to Representative Eastman, answered that his view as committee chair is that the bill needs to be moved out of committee.

[7:16:53 PM](#)

REPRESENTATIVE REINBOLD expressed her disappointment and said that her amendment being ruled out of order was unnecessary and she objected to her concerns not being heard.

[7:17:58 PM](#)

REPRESENTATIVE KOPP said, "Good bill, Mr. Chairman, let's move it."

REPRESENTATIVE EASTMAN referred to Section 15, and asked whether there had been discussion, "as we're tightening down" on what municipalities can do because the change essentially encourages municipalities to put higher costs on citations, and asked what was driving the desire for those higher costs.

MR. SHILLING responded that the Alaska Criminal Justice Commission never recommended that this limitation be imposed on municipalities in a manner that restricted them from doing their own thing when it came to non-criminal offenses. He expressed that it was simply not what the commission recommended, and when this language was in Senate Bill 91, the sponsor thought that it did what the commission had recommended. After the bill was signed it was determined that the language did not follow the commission's recommendation, thus the change.

[7:19:24 PM](#)

REPRESENTATIVE FANSLER moved to report CSSB 55, Version 30-LS0119\T out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE REINBOLD objected.

[7:19:40 PM](#)

A roll call vote was taken. Representatives LeDoux, Fansler, Kopp, Kreiss-Tomkins and Claman voted in favor of passing CSSB 55 out of committee. Representatives Eastman and Reinbold voted against it. Therefore, CSSB 55(FIN) passed out of the House Judiciary Standing Committee by a vote of 5-2.

[7:21:10 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 7:21 p.m.