

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

October 16, 2017

10:04 a.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair (telephonic)
Representative Jonathan Kreiss-Tomkins (telephonic)
Representative Gabrielle LeDoux
Representative David Eastman (telephonic)
Representative Chuck Kopp
Representative Lora Reinbold
Representative Charisse Millett (alternate)

MEMBERS ABSENT

Representative Louise Stutes (alternate)

OTHER MEMBERS

Representative Dan Saddler (telephonic)
Representative Charisse Millett
Representative Geran Tarr
Representative Andy Josephson
Senator Click Coghill
Senator Berta Gardner

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
Representative Charisse Millett
Representative Louise Stutes

COMMITTEE CALENDAR

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."

HEARING ONLY - House Judiciary Standing Committee was not in possession of SB 54 at the time of this hearing.

WITNESS REGISTER

BRAD MYRSTOL, Ph.D
UAA Associate Professor/Interim Director
University of Alaska Anchorage Justice Center
Anchorage, Alaska

POSITION STATEMENT: During the hearing of SB 54, offered a PowerPoint titled, "Crimes Known to Police (Alaska)."

CAPTAIN SEAN CASE, Acting Deputy Chief
Anchorage Police Department
Anchorage, Alaska

POSITION STATEMENT: During the hearing of SB 54, testified as to the Anchorage Police Department, and answered questions.

REPRESENTATIVE GERAN TARR
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: During the hearing of SB 54, asked questions.

ROB HENDERSON, Deputy Attorney General
Central Office, Criminal Division
Department of Law
Anchorage, Alaska

POSITION STATEMENT: During the hearing of SB 54, presented "SB 54 Highlights" and answered questions.

ACTION NARRATIVE

[10:04:03 AM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 10:04 a.m. Representatives Claman, Kopp, LeDoux, Reinbold, Millett (alternate), Fansler (telephonic), and Eastman (telephonic) were present at the call to order. Representative Kreiss-Tomkins (telephonic) arrived as the meeting was in progress.

INVITED TESTIMONY REGARDING SB 54

[10:04:52 AM](#)

CHAIR CLAMAN advised that the first committee of referral for SB 54 is the House State Affairs Standing Committee, and the House Judiciary Standing Committee is its second referral. Therefore, this meeting is solely an informational meeting to hear presentations from individuals discussing the impacts of SB 54. As chair of this committee, he said it was important to meet in Anchorage and give Anchorage community members the opportunity to attend in person. He reiterated that this is solely an informational meeting regarding SB 54, and the committee would not take public testimony. The invited speakers are as follows: Brad Myrstol, Associate Professor and Interim Director of the UAA Justice Center; Captain Sean Case, Acting Deputy Chief, Anchorage Police Department; and Rob Henderson, Deputy Attorney General, Department of law, he advised.

[10:06:26 AM](#)

BRAD MYRSTOL, Ph.D, UAA Associate Professor/Interim Director, University of Alaska Anchorage Justice Center, advised that his presentation titled, "Crimes Known to Police (Alaska)" would involve the Uniform Crime Report data compiled monthly during 2014 to 2016. This information was originally compiled in response to a request from Representative Gabrielle LeDoux during a committee meeting last week to provide more detailed information on a shorter timeframe. During the past few years, the Department of Public Safety (DPS) published statewide crime total information, on a month-to-month basis, in its Crime Alaska Report, and this presentation will present that data at the state level on a month-to-month basis. The data sources for the computation of the rates included in this presentation include as follows: crime count information taken from publicly available and published documents on crime in Alaska; and the population data used to compute crime rates taken from the Alaska Department of Labor & Workforce Development (DLWF), he explained.

[10:08:21 AM](#)

DR. MYRSTOL turned to slide 2, titled, "Larceny Thefts (Alaska), and oriented the committee to the slides as follows: the vertical axis on the slides is the actual crime rate computed as crime known to police per 100,000 population; the horizontal axis has two levels of labeling, located at the bottom is 2014, 2015, 2016 of which are the years of reference, and immediately above is a series of letters highlighted with a green overlay

representing the first letter of each month. Importantly, he noted, with the monthly crime rates, the actual magnitude of the crime rate is substantially lower than "what you would see in typical annualized crime rate data" because this aggregates by each month. He explained that in an annualized crime rate there is the sum total for the entire year divided by the population, and this presentation is a monthly total divided by that same population. Therefore, he said, there is a large shift in terms of the magnitude of the crime rate itself, but the trends provide important information.

DR. MYRSTOL noted the vertical graying reference line demarcating the implementation of Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature] in July 2016, which is just a point of reference. Finally, he explained, the red dash line is a visual reference providing the average trends through the data.

[10:10:51 AM](#)

DR. MYRSTOL turned to the specifics of slide 2, pointed to the three marked humps and advised it is a clear indication of a seasonal effect in the monthly crime rate. During late summer, early fall, the larceny theft rates in the past three years peak at that time with a sharp drop-off following that period. Consistent with that seasonal trend, during the six-month post-Senate Bill 91 period, there is a considerable drop off in the larceny theft rate in the statewide totals. He commented, that is fully consistent with what was seen in the prior two years in terms of the seasonal drop off and, notably, it did not flatten out or increase.

[10:11:46 AM](#)

DR. MYRSTOL turned to slide 3, titled "Burglaries (Alaska)" and reiterated that these represent the amount of burglaries known to police per 100,000 population statewide for each month beginning in January 2014 and extending through December 2016. He pointed to a seasonal trend in this data, and advised that although it is more difficult to see with the naked eye, essentially the seasonal trend remains the same by peaking in late summer and early fall, and dropping off at the early winter months period. The drop off in the post-Senate Bill 91 period is consistent with the seasonal effect seen during the prior two years, and he noted that within the burglary rate depicted here in a three-year period, there is a fairly consistent increase over time.

[10:12:42 AM](#)

DR. MYRSTOL turned to slide 4, titled, "MV Thefts (Alaska)" and said it is month by month, January 2014 through December 2016. He pointed out that there is a different pattern in this data, of which he said he alluded to during his testimony last week with respect to the behavior of motor vehicle thefts across the state and various jurisdictions he reviewed, and now reflected in statewide data. The long and short of it with respect to this particular slide, he explained, beginning at late winter, early spring 2015, the trend of motor vehicle thefts changed. He commented that it appears there is a seasonal trend similar to what is seen in the other property crimes, and beginning 2015 things changed markedly. During the post-Senate Bill 91 period there was an increase of motor vehicle theft on a month-to-month basis, but that is a continuation of a trend that began approximately one year prior. He noted a significant difference in overall patterning as compared to preceding burglaries and larceny thefts.

[10:15:07 AM](#)

DR. MYRSTOL turned to violent crimes beginning with slide 5, titled, "Homicide (Alaska)" and said the reference points are January 2014 through December 2016. Most notable, relative to the others, is the amount of variance around the trend, he offered. Homicides have an extremely low base rate phenomenon and there is a lot of variation on a year-to-year basis, as well as the month-to-month basis. In general, he explained, overall within this three-year period, there is a roughly flat trend with a variability upwards and downwards depending upon the month with a slight decrease from July 2016 to December 2016.

[10:15:59 AM](#)

DR. MYRSTOL turned to slide 6, titled "Forcible Rape (Alaska)" the month-to-month crime rate trend between January 2014 through December 2016, and noted a slight increase overall from point to point, from beginning at a time series at the end of the time series, with fluxuation above and below the (indisc.) throughout. During July 2016 to December 2016, once again there is a slight decrease in the overall rate on the month-to-month basis for statewide totals, he said.

[10:16:39 AM](#)

DR. MYRSTOL turned to slide 7, titled "Robbery (Alaska)" and noted a fairly consistent increase overall in the trend from January 2014 through December 2016, with a slight downturn between July 2016 and December 2016.

[10:17:09 AM](#)

DR. MYRSTOL turned to slide 8, titled "Assault (Alaska)" and advised that this data represents the assaults per 100,000 population known to police month-by-month January 2014 through 2016. He pointed to a fairly consistent increase overall from January 2014 through December 2016, and in looking at the specific period July 2016 through December 2016, there is a slight decrease in that crime rate.

[10:17:46 AM](#)

DR. MYRSTOL turned to slide 9, titled "All Crime Rate (Alaska)" and said that all of the previous slides of crime rates are presented on slide 9, and the biggest takeaway of this slide is to show the relative magnitude differences for two offenses relative to the other five. He said that with respect to property offenses, larceny theft is at the top and it varies from year-to-year. He pointed to property crimes computed in the Uniform Crime Report (UCR), and said that oftentimes overall property crimes trends track closely and parallel larceny theft trends, and it is a similar situation with respect to assaults and its relationship to violent crime rate totals, wherein violent crimes aggregated with the significant majority of all violent crimes known to police and compiled in the UCR, are assaults.

[10:18:53 AM](#)

DR. MYRSTOL turned to slide 10, titled "Summary" and explained that for each of the seven crime categories depicted in the previous slides, the crime rate per 100,000 population in July 2016, and the crime rate per 100,000 population in December 2016, and the final column, is a simple percent change between those two crime rate computations in that particular six-month period.

[10:19:44 AM](#)

DR. MYRSTOL responded to Representative LeDoux that he does not have statistics for 2017, and explained that typically the Uniform Crime Report data published in Crime in Alaska are

published on a six-month delay. The 2016 data was released approximately one month ago, and he would expect the 2017 data to be publicly available roughly this time next year.

REPRESENTATIVE LEDOUX commented that it appears in 2016, people living in Anchorage "it didn't have the feeling of not being safe" as it appears to have in 2017. She asked whether he has statistics separating areas of the state.

DR. MYRSTOL responded that he does not, and offered that the DPS performs great work and publishes the monthly data for the statewide totals, but the jurisdictionally specific data on the month-to-month basis is not publicly available.

REPRESENTATIVE LEDOUX noted his statement that the statistics are not publicly available and asked whether it exists.

DR. MYRSTOL answered the he could not speak for DPS as he does not maintain its Uniform Crime Report Program. Although, he said, it compiles data as it receives data, but it is a voluntary program. Therefore, police agencies provide their data to DPS at different paces depending upon their individual resources, and some agencies may not be able to submit their 2017 data until the close of 2017. Whereas, he noted, other departments with more resources may be able to provide data on a quarterly or monthly basis. The summary account data that is collected on a month-to-month basis is compiled on a monthly basis, he said.

[10:22:39 AM](#)

DR. MYRSTOL, in response to Representative Reinbold, advised that the population data was received from DPS and is used as the population metric with a computation of the rate.

REPRESENTATIVE REINBOLD asked whether he used FBI reports and actual reported crime known to the Anchorage Police Department.

DR. MYRSTOL responded that the data in this particular presentation represent statewide totals, and these are the sum total of all agencies for the entire state, by month, as reported to the DPS.

[10:23:44 AM](#)

REPRESENTATIVE REINBOLD referred to the summary [slide 10] and asked whether larceny theft is down 30 percent.

DR. MYRSTOL explained that the rates for that particular offense statewide, and the difference between July 2016 rate and December 2016 rate, is a decline of 30.6 percent.

REPRESENTATIVE REINBOLD asked whether Dr. Myrstol was saying that during that six-month snapshot overall theft was down in the state by 30 percent.

DR. MYRSTOL replied, "I would not."

REPRESENTATIVE REINBOLD asked him to describe what is happening in the state with regard to theft.

DR. MYRSTOL responded that the accumulation of the increase in larceny theft, often represented in annual totals, had accumulated prior to the implementation of Senate Bill 91.

REPRESENTATIVE REINBOLD asked whether any crime was redefined in any manner in Senate Bill 91.

DR. MYRSTOL answered that he is not qualified to speak to the legislation in terms of the particular crimes that were changed.

REPRESENTATIVE REINBOLD related that it is important to be certain they are measuring the same issues because crimes were reclassified or redefined.

[10:25:25 AM](#)

REPRESENTATIVE CLAMAN interjected that Dr. Myrstol has collected three categories based on crime statistics which are largely theft, burglary, and motor vehicle theft. In the event the question is whether the definition of what data is being collected changed from 2014 to 2016 is a different question than Representative Reinhold's question asking about specific statutes that were passed or not passed in Senate Bill 91 and other legislation. He commented that he was unsure of her question.

REPRESENTATIVE REINBOLD asked whether any crimes were redefined or reclassified in Senate Bill 91, and if the rules were changed in any manner that the outcomes would be different.

DR. MYRSTOL answered, "Yes."

[10:26:36 AM](#)

REPRESENTATIVE KOPP explained to Representative Reinbold that homicide, forcible rape, burglary, robbery, and assault did not change and were not redefined. The dollar threshold of larceny theft changed, and he opined that motor vehicle theft was not addressed in that legislation. He offered appreciation that the municipality tightened up the law on that, which makes it easier to prosecute people who participate based on criminal negligence (audio difficulties) versus an intentional knowledge, will be good for public safety.

[10:27:32 AM](#)

REPRESENTATIVE LEDOUX asked Dr. Myrstol to define larceny theft.

DR. MYRSTOL responded, in general, the FBI definition of larceny theft is a personal taking of property. For example, there is a clear distinction in the FBI categorization and classification of larceny theft as distinct from burglary and robbery. There is a thick coding manual that each agency uses to classify according to FBI rules, he said.

[10:28:15 AM](#)

REPRESENTATIVE LEDOUX asked whether shoplifting would come under the definition of larceny theft.

DR. MYRSTOL clarified that he should not have said personal property, but rather private property. He explained that larceny theft is actually a specific subcategory of larceny theft. For example, he noted, when he testified before the Finance Subcommittee last week, he presented specific shoplifting data as a subcategory of larceny theft within the categorization.

[10:28:53 AM](#)

REPRESENTATIVE LEDOUX asked whether Dr. Myrstol has shoplifting data.

DR. MYRSTOL answered in the affirmative.

DR. MYRSTOL, in response to Representative LeDoux, advised that he did not have the shoplifting data with him today.

REPRESENTATIVE LEDOUX noted interest in the statistics with respect to the shoplifting offense because it is the issue

legislators are hearing about from local stores in their communities.

DR. MYRSTOL advised he would provide the statistics to the committee.

[10:29:44 AM](#)

REPRESENTATIVE CLAMAN noted there are the state definitions and also the three FBI definitions, larceny theft, burglary, and motor vehicle theft. He asked whether there are any theft offenses in Alaska that are not included within those three FBI categories.

DR. MYRSTOL opined, "No," and deferred to the Uniform Crime Reporting Program folks at the Department of Public Safety (DPS). However, he further opined, there has been no change in the FBI definitions of those crimes as they are categorized and coded for 2016.

[10:30:25 AM](#)

REPRESENTATIVE REINBOLD described Representative Kopp "as a huge proponent of Senate Bill 91," and said she would like Representative Kopp to define how larceny theft changed, and to explain how store after store dramatically complains about theft with a 98 percent increase.

[10:31:34 AM](#)

REPRESENTATIVE CLAMAN stated that Dr. Myrstol is testifying, and he expressed that the purpose of the committee hearing was not to interrogate Representative Kopp, who was not a member of the legislature when Senate Bill 91 passed. He stated he would not ask Representative Kopp to respond to Representative Reinbold, and advised that Rob Henderson, Deputy Attorney General, would testify later in the hearing and may better be able to answer her question about criminal code definitions.

REPRESENTATIVE REINBOLD said "He said it was redefine larceny theft. I wanted to clarify he's the one that brought it up."

DR. MYRSTOL asked that Representative Reinbold repeat the question.

[10:32:25 AM](#)

REPRESENTATIVE REINBOLD said that Representative Kopp stated "something about larceny theft. I wanted to give him the opportunity" to state whether larceny theft was redefined which Dr. Myrstol said is the taking of personal property. She asked how to explain "the "vast -- what we're seeing in the newspapers, which we're seeing on the news, which is here today versus your statistics" that it has dropped 30 percent, and how to explain this discrepancy.

DR. MYRSTOL clarified that the difference is based upon what law enforcement reported. He stressed the importance of understanding the nature of the data, and its strengths and limitations for any particular data source being used. The data, as aggregated in crime in Alaska, are what police departments are telling the Department of Public Safety (DPS), and have brought to its attention. Therefore, he said, the crime rate is computed for these statewide totals as the sum total of all offenses within a particular category as defined by the FBI and divided by the total population, and that is how that rate is computed. He commented that with respect to the decline for larceny theft, based on the two prior years, would be perfectly predictable because it is a seasonal effect. The trend would have suggested there would be a marked decline following the late summer, early fall of 2016, which would be his jumping off place, he said. He then referred to [slide 2], larceny theft, noting a decline in 2016, and said it was fairly predictable assuming that that seasonal effect is robust in the data. He apologized that he did not have month-to-month data available that extends back into a farther period of time where the data could be modeled more rigorously. He reiterated that his first explanation would be it is a seasonal effect wherein there is more theft in the summer. The mechanisms of that may be any number of things, number of tourists, greater influx of people into the state, kids out of school, and many hypotheses could be offered with respect to the particular dynamics of the seasonal effect. He said that with respect to the decline, he attributed it to seasonality and the trend.

[10:35:15 AM](#)

CHAIR CLAMAN explained that the committee is on a tight schedule and would take one or at the most two more questions.

[10:35:23 AM](#)

REPRESENTATIVE REINBOLD stated she would like a yes or no answer, and asked whether the definition of theft was changed in any manner or reclassified in Senate Bill 91.

DR. MYRSTOL answered, "Yes."

REPRESENTATIVE REINBOLD asked for an explanation ...

CHAIR CLAMAN interjected that Representative Kopp has the last question.

[10:35:46 AM](#)

REPRESENTATIVE KOPP noted that the data Dr. Myrstol brought forth was good, and the dollar amount of theft was changed in that a class B misdemeanor is now less than \$250; class A misdemeanor is \$250 all the way up to just under \$1,000; and \$1,000 or more is a felony. He referred to what was said to be his philosophical position, and advised that he is personally committed to fighting crime, supporting victims, and protecting taxpayer dollar accountability in every dollar spent on public safety. He stressed the importance of always speaking about good justice policy, good reforms, and that it is never believed "we have finally arrived, and we never have to look at something again," and always be willing to examine the data. He thanked Dr. Myrstol for his good data and suggested that DPS provide an update of more recent data.

[10:37:22 AM](#)

REPRESENTATIVE CLAMAN referred to the question about the change in the theft level, and explained that "what was a A misdemeanor was a B misdemeanor was a felony in theft." He asked whether that changes the data collected.

DR. MYRSTOL deferred to DPS, and opined that to his knowledge there is no redefinition in the UCR definitions of larceny theft. How the statutory provisions enacted via Senate Bill 91, and the reclassification of particular offenses, may not have impacted how particular offenses were counted in the post-Senate Bill 91 period, he explained, but he could not say with any definitiveness there was zero impact.

[10:38:40 AM](#)

CAPTAIN SEAN CASE, Acting Deputy Chief, Anchorage Police Department, noted that the Anchorage Police Department is in

full support of the passage of SB 54 as it addresses some of the issues currently being seen that are identified as problems. The first issue is violating conditions of release, and changing it to a criminal offense is beneficial to the Anchorage Police Department. Currently, he explained, when law enforcement arrests someone and the judge orders conditions of release, the person can essentially not follow those conditions and no penalty is associated in the event the person violates those conditions. He offered that changing it to a criminal offense with possible jail time is a general deterrence in criminalizing violations of conditions of release. Also, he said, SB 54 puts a penalty back into thefts under \$250 as Anchorage business owners have been vocal about the dramatic increases in thefts, trespass, and assault. He related that giving law enforcement the opportunity to arrest folks with multiple theft counts and place them in custody can not only cut down on the thefts but also cut down on folks returning to the businesses and trespassing.

10:40:56 AM

CAPTAIN CASE referred to thefts under \$250, and noted that businesses are simply not involving the police department which is one of the reasons shoplifting numbers stay the same, except that businesses are showing an increase in those types of crimes. Business owner have advised law enforcement they do not call because they do not believe it would be beneficial, he advised.

CAPTAIN CASE referred to class C felony under SB 54, and advised that the change is beneficial because law enforcement has seen increased vehicle theft. He pointed out that vehicle thefts did not start increasing in response to Senate Bill 91, and that the increase in vehicle thefts started prior to SB 91. Nevertheless, he said, there is an increase, and the penalty for first-time vehicle theft, first-time assault in the third degree, and first-time burglary of a business all have no jail time, except that the law changes under SB 54. The Anchorage Police Department believes that will be impactful for those crimes, particularly burglary and vehicle theft.

10:42:27 AM

REPRESENTATIVE LEDOUX asked whether there were additional fixes he would recommend in SB 54.

CAPTAIN CASE responded that criminal justice reform is an ongoing process and based on what is heard in the community, this is a good first step. He opined that the question of what else can be done becomes a larger conversation because there are things in Senate Bill 91 that are scheduled to take effect in January [2018] and its successes will be seen in the future. Generally speaking, he noted, there are some things that can be done in addition to SB 54, but the thing to do immediately is pass this legislation and see what kind of impact this has, and then continue to address criminal justice reform in Alaska from that point forward.

CHAIR CLAMAN pointed out that Captain Case is a member of the Alaska Criminal Justice Commission, and is a regular attendee at all meetings.

[10:43:31 AM](#)

REPRESENTATIVE LEDOUX noted that SB 54 could be amended with respect to other issues, and asked what other issues he might suggest.

CAPTAIN CASE stressed the need for substance abuse treatment facilities and mental health treatment facilities in the State of Alaska, combined with the need to try to divert those involved in criminal activity at the street level rather than weeks and months later in the criminal justice system, particularly those with mental health issues or substance abuse issues. Thus, he pointed out, when folks get involved in the prosecution phase there is the ability to impact some of these offenders early on, which will yield higher results in the long run.

[10:44:31 AM](#)

REPRESENTATIVE REINBOLD advised that police officers are frustrated and discouraged, and that the overall belief is that they do not like Senate Bill 91. Representative Reinbold reiterated her ongoing concern with Senate Bill 91, described the upward turn in crime, and asked whether police officers want a repeal of Senate Bill 91.

CAPTAIN CASE said he would not speak for the officers, and agreed there is some frustrations with the officers on the street. People need to understand that police officer's sign up to have some sort of impact on issues related to crime in the street. He noted that when hiring police officers, generally,

the first thing they say is that they want to perform this job to help people, and the way they have helped people for years is using the law to put people in jail and protecting those who cannot protect themselves. When the rules are changed that creates some disenfranchisement, which does not mean the traditional model of policing or criminal justice in the state has to remain the same. Law enforcement can still benefit the people of Alaska by changing the way "we go about our business." Currently, he pointed out, the problem is that the state is in that in-between stage, not all of criminal justice reform is in place, and a lot of officers are not yet at the next step because the next step is not even an option.

[10:47:20 AM](#)

REPRESENTATIVE REINBOLD reiterated that the people "and cops" are beyond frustrated and asked whether Captain Case believes the bail schedule has had an impact on the levels of crime being ...

[10:48:00 AM](#)

REPRESENTATIVE CLAMAN interjected that Captain Case did not attend this hearing to discuss the bail schedule, and for Representative Reinbold to focus on the matters Captain Case is available to testify.

REPRESENTATIVE REINBOLD reiterated the current events happening in public safety, and commented that the judiciary branch made dramatic changes to the bail schedule wherein people receive a slap on their hand if they do not show up for court.

[10:49:00 AM](#)

REPRESENTATIVE GERAN TARR, Alaska State Legislature, referred to the confusion about the implementation of justice reform on the side of officers, such that they hear they can no longer arrest someone. She clarified that it is not that officers cannot arrest someone, it is what takes place after that arrest, wherein the person is issued a summons to court versus previously having jail time. She suggested that a missing component is education for law enforcement about these changes, and noted that officers do not have a continuing education requirement as required for other professions on an annual basis. She asked how this information should be communicated with law enforcement to prevent missing pieces where the law has

been changed and the officers receive the full information about those changes in their day-to-day work.

10:50:50 AM

CAPTAIN CASE responded that some of the confusion starts when new legislation is introduced that affects the officer on the street, and then there are three to four versions after several months. The officers receive the information on version one, launch down that path, and six-months later there is the legislation that actually passed. He related that three things happened, as follows: the loop is not closed on the original bill; they already have it in their mind as to what this is all about; and many changes to Senate Bill 91 which was complex and complicated enough, but then it actually goes down to the street and it becomes time for the user to fill out paperwork "and hand it in boxes, and stuff most people don't think about." The system is very complex, he described, and a minimum of three agencies are involved with every person law enforcement puts handcuffs on and escorts to jail because those three agencies collect different records, keep different records, and track different records, so it becomes complicated and complex.

CAPTAIN CASE acknowledged there is not a state requirement for law enforcement and continuing education due probably because it would bankrupt small agencies throughout the state if they were required to perform continuing education when they only have two officers. He said he agrees that a better job must be undertaken in educating officers and making sure they are on the same sheet of music. Once the education process begins, he pointed out, the Anchorage Police Department needs to have a few more stakeholders at the table so it can understand how the process works from start to finish. Otherwise, inevitably, it will train the officers on how to perform a task, they go out and perform the task, and three months later the officers advise that everything they were told to do was completely wrong, ineffective, and does not work. The problem will be something downstream with a different agency that caused the original train to run amuck so there needs to be better coordination when training officers, he said.

10:53:11 AM

REPRESENTATIVE TARR commented that on the legislative side, that must be a lesson learned in terms of making big changes and the implementation timeline. There is a necessity in making sure the legislature accommodates a period of time to get the

information out to the officers. She commented that this is something the legislature will hopefully learn from this experience, how to improve that issue even with the changes in 54, how to make sure this is clearly communicated, and that everyone is on the same page.

CAPTAIN CASE answered that the immediate implementation portions of Senate Bill 91 caused a lot of problems, and a lot of officer's call prosecutors or district attorney offices to advise they are not sure what to do with this because it was literally different yesterday than today. Typically, he advised, the answer the officers would receive is that they would try to give the best answer they could, but they were in the same position as the police officers, and that could be improved in the future.

[10:54:31 AM](#)

REPRESENTATIVE JOSEPHSON asked Captain Case to explain how assault in the third degree was changed under Senate Bill 91.

CAPTAIN CASE responded that SB 54 is specific on changing the jail time of a first-time class C felony, and it also lists specific offenses which primarily are operating influence offenses that those do not impact, as it relates to SB 54. He explained that is the only differentiation about the first-time class C felonies.

[10:55:38 AM](#)

REPRESENTATIVE JOSEPHSON opined that "assaults were supposed to be unimpacted" and after a review in the spring of 2016 he realized that was not entirely accurate, "but that is what we were told." He asked that if someone commits an assault in the third degree and it is their first-class C felony, whether they cannot be jailed.

CAPTAIN CASE deferred to Rob Henderson, Department of Law.

REPRESENTATIVE KOPP answered that one of the discrepancies is the difference between statutory definition of offense and penalties.

[10:57:03 AM](#)

REPRESENTATIVE MILLETT opined that Senate Bill 91 redefined all class C felonies, except unclassified felonies, in some manner

whether it was sentencing or the definition of the crime. She described the confusion for the public and law enforcement is based on the fact there was so much definition change and penalty change that it became an overarching reasoning that it is a class C felony and "you're just not going to go to jail," the penalties remain the same for unclassified felonies.

There is a perception in the public that all class C felonies changed when there is still a portion of unclassified that had no distinct changes. She asked whether there is a specific change predominantly needed outside of the class C felony changes, such as the "sober law" and being able to hold an intoxicated individual until they are no longer intoxicated.

CAPTAIN CASE responded that that is probably the biggest impact in law enforcement currently. For example, a police officer comes in contact with someone who committed a misdemeanor crime while under the influence, previously the police officer had the ability to book those folks into jail until they were sober, or a sober adult could pick them up, which allows for a cooling off time. He said that in the event someone is driving under the influence or commits a disorderly conduct offense and law enforcement has contact with them and gives them a summons to appear, but because they cannot be held in jail and are extremely intoxicated, the police may have a secondary contact with them later on either as a victim or in committing a new offense. These folks are not particularly in the best frame of mind when they committed the crime in the first place and alcohol is probably a contributing factor, except, when law enforcement does not have the ability to remove some of those individuals and put them somewhere to sober up and make better decisions, it is a problem. That is probably the biggest impact officers are seeing on the street, watching folks under the influence leave the scene without law enforcement's ability to intervene.

[11:00:52 AM](#)

REPRESENTATIVE MILLETT asked that in the case of domestic violence where the person is intoxicated, whether currently police can hold someone who has committed a domestic violence assault because it is under an unclassified felony.

CAPTAIN CASE agreed, and he said that domestic violence is different ...

CHAIR CLAMAN interjected that domestic violence is a mandatory arrest.

CAPTAIN CASE answered in the affirmative.

11:01:18 AM

CHAIR CLAMAN referred to a shoplifting offense prior to justice reform efforts and since the passage of Senate Bill 91, and asked whether businesses called in every shop lifting event to the police or whether many businesses just did not call police even before justice reform began.

CAPTAIN CASE said he would venture a guess that there is under-reporting of everything all of the time.

11:01:47 AM

REPRESENTATIVE LEDOUX surmised that SB 54 does not change anything with respect to whether the police department can hold someone who is drunk.

CAPTAIN CASE answered in the affirmative.

REPRESENTATIVE LEDOUX surmised that that is something additional Captain Case would like to see in SB 54.

CAPTAIN CASE replied that it would be beneficial to law enforcement, and it is not necessary for SB 54 right now.

11:02:34 AM

REPRESENTATIVE LEDOUX asked whether any other change to SB 54 may be beneficial to law enforcement, other than the mental health programs he mentioned previously.

CAPTAIN CASE responded (indisc.) at this time.

REPRESENTATIVE LEDOUX inquired as to whether there was anything else "out there" that Captain Case may be considering.

CAPTAIN CASE answered that the Alaska Criminal Justice Commission and others throughout the state are performing a lot of work, which is a much longer conversation. There is nothing that could be passed immediately and have an immediate impact, and he commented that Representative LeDoux was asking a "very complex, multi-tiered question" and there was not a simple response.

CHAIR CLAMAN surmised that the Anchorage Police Department was not advocating any amendments to SB 54 at this point.

CAPTAIN CASE answered in the affirmative.

[11:04:13 AM](#)

REPRESENTATIVE REINBOLD continued to express her concern with Senate Bill 91, and that if the property is under \$250, a person could steal "one hundred thousand times and you can't have a day in jail." Currently, she said, a class C felony, which is theft of a firearm, vehicle theft, animal cruelty, PFD theft, and the list of class C felonies goes on, and as long as the person does not have a prior conviction they cannot have a day in jail.

CHAIR CLAMAN interjected that Representative Reinbold was not asking a question. He explained that SB 54 actually changes the status and makes it so the very crimes she was describing would actually have penalties and it sounded like support for SB 54. He asked that she ask a question of the witness.

REPRESENTATIVE REINBOLD asked whether Captain Case would prefer theft to be "back-classified" to pre-Senate Bill 91, and have harsher penalties with jail time for theft.

REPRESENTATIVE CHAIR CLAMAN said he would narrow Representative Reinbold's question to be, whether Captain Case proposes a different treatment of theft than that proposed in SB 54 as a change from what was approved in Senate Bill 91.

CAPTAIN CASE answered, "No."

[11:07:17 AM](#)

ROB HENDERSON, Deputy Attorney General, Central Office, Criminal Division, Department of Law, turned to slides 2-3, and explained that the 13 member Alaska Criminal Justice Commission brings a unique and specific skill set to the table, and it is charged with evaluating criminal justice issues, what works and what does not work. In 2015, the Alaska Criminal Justice Commission found that Alaska's prison population was growing at an unsustainable rate, and the state could not continue in the same manner as in the past. He noted that two out three inmates returned to prison within three years, a 66 percent recidivism rate, and there was an overreliance on incarceration. The commission has long discussed, and continues to discuss at length, that long periods of incarceration have a criminogenic

effect on offenders, and to find alternatives to incarceration when appropriate. He advised that criminal justice reform is supported by the Department of Law and this administration, and the state needs to continue moving in the direction of criminal justice reform. Senate Bill 91 was not working as designed once it was implemented into practice, he acknowledged, and SB 54 is designed to address those issues.

[11:10:46 AM](#)

MR. HENDERSON turned to slide 4, and reiterated there were unintended consequences related to Senate Bill 91 because it needed more flexibility. Absolutely necessary, he advised, is that law enforcement, prosecutors, and judges have flexibility when addressing some of these issues because sentencing is an individualized process. At the time a judge imposes any type of sentence, it is required by case law, statute, and the Constitution of the State of Alaska to consider five contemplations, as follows: rehabilitation; isolation; deterrence of offender after release; deterrence of others; and community condemnation and reaffirmation of societal norms. These are basic principles in criminal law, and basic principles every judge is required to go through and announce on the record when they impose a sentence as the judge goes through and decides how each principle furthers the defendant's rehabilitation. In addition to State v. Chaney "the Chaney factors," judges are required to balance both reformation of the offender against the need to protect the public and the rights of victims. These two things will always be at odds, there will be a tension, this is the goal of every judge imposing a sentence, he explained.

[11:13:04 AM](#)

MR. HENDERSON turned to slide 5, and pointed out that every situation is different, every offender, every circumstance, even the same offender who commits the same offense because they will come in under different circumstances, so sentencing must be individualized. The factors listed on slide 5, are specific factors judges will assess when imposing a sentence, and are in addition to the criteria of the Chaney factors, as follows: acceptance or denial of responsibility, an offender who accepts responsibility should be treated differently under the law than an offender who refuses to take responsibility for their actions; the same as with substance abuse wherein someone is asking for help; prior criminal activity, and he said he intentionally did not say "prior criminal convictions" because

criminal convictions are limited, it is specific, requires that the person move all the way through the criminal justice process, and obtain a conviction - a judge is permitted, under certain circumstances, to assess, evaluate, and give weight to a person's prior criminal activity even though they had not yet been convicted because judges will always give consideration to the victim, their family, and how this offense affected this community; judges will consider how the defendant acted after the offense in post-offense behavior; and the motivation for criminal behavior. Someone motivated by money should be treated differently than someone motivated by a substance abuse issue. These are not the only items judges will consider, he said.

[11:16:09 AM](#)

MR. HENDERSON turned to slide 6, and explained that at the very core of SB 54, it tries to balance all of these things together, and does not depart from the idea and mindset that criminal justice reform is necessary and appropriate. He said to balance that against the recognition that judges, prosecutors, and law enforcement need more tools, and that tool is discretion, the ability to assess each case individually.

[11:16:45 AM](#)

MR. HENDERSON described the three main highlights of SB 54 class C felony offenses as follows: petty theft; theft in the fourth degree; and violation of conditions of release (VCOR). The three terms he said he will continue to use are active time, suspended time, and probationary time. He explained that active time is that period of incarceration the judge can impose immediately upon finding a person guilty at sentencing. Suspended time is the period of incarceration that will be withheld from imposition on the condition the person follows their probation conditions, and in the event they fail to follow their probation conditions, violate that probation, the court then has the authority to impose a portion of that suspended time. Probation term is the length of time a person will be held under the supervision of the Department of Corrections (DOC), they will have a probation officer, or the court system if they are on "informal misdemeanor probation."

[11:18:31 AM](#)

MR. HENDERSON turned to slide 7, and explained that SB 54, with regard to class C felony offenses, changes the presumptive range from what it is now, which is zero to 18 months suspended

probation, to zero to one year. Under the former law, the presumptive range for class C felony offenses was zero to two years, and a judge could impose a sentence of both active and suspended time anywhere between zero to two years depending upon the circumstance of the offense. Under current law, it was changed to zero to 18 month suspended time under a term of probation. Under SB 54, the range is zero to one-year period of incarceration, and the zero to one-year period can be active time, suspended time, and most likely a combination of both. He explained that suspended time and probation is key to achieving all of the sentencing factors he previously listed because prosecutors want individuals on probation, on supervised release. There are few offenders in which the prosecution will say "flat time" because the way prosecutors achieve all of those sentencing goals and finds the balance between deterrence, isolation, rehabilitation, and such, is that the prosecutor asks the judge to impose some active time and some suspended time, and keep that over the defendant's head and put them on probation. He advised that it is key that all offenders be released from incarceration under some form of supervision, and the range of zero to one year of incarceration gives the prosecutors and the judges the ability to tailor the sentence to the individual offender. This bill also authorizes judges to order residential treatment, which is important because residential treatment is akin to incarceration under the law. In the event the judge wanted to incentivize or order the person to treatment, for instance 60-90 days of inpatient residential treatment, the judge had to have the authority to impose actual jail time and make that a condition of probation. He explained that SB 54 allows the judge to order residential treatment, if appropriate.

[11:22:44 AM](#)

MR. HENDERSON explained that first felony conviction does not necessarily mean first conviction, and every offender and re-offense is different. He further explained that someone may have a misdemeanor criminal history or an old felony criminal history, and all of those things indicate that person should be treated differently than someone with no criminal history. Zero to one year allows the judge to treat offenders differently, he said.

[11:23:27 AM](#)

MR. HENDERSON turned to slide 8, and advised that the second key component of SB 54 is theft under \$250, and under state code,

theft in the fourth degree is also known as petty theft. The discussion is about increasing discretion for judges to impose jail time, if appropriate, under those specific circumstances. He noted public concern as to whether or not tools are available to disrupt that criminal cycle when people engage in repeated thefts and shoplifts. The bill returns that discretion to prosecutors and judges to order someone into jail if convicted of theft and it is their second or third offense.

[11:24:28 AM](#)

MR. HENDERSON continued with slide 8, and advised it depicts that under former law there were graduated sanctions for the offenses, and under the first two theft offenses, a person could receive up to 90-days in jail, and the third theft offense, referred to as recidivist theft, was up to one year in jail. Under current law, he advised, the first two theft offenses were changed to just fines or probation and no jail time was authorized, and at the third offense, the judge was authorized to impose up to five days suspended. In the event this person violated their conditions of probation, the judge was authorized to impose a term of jail for that violation, and the judges would return the person to incarceration or impose jail time for the violation of probation, not for the underlying offense. This bill takes that first offense and allows for up to five days suspended on the first offense, meaning that on the first low-level theft the person will receive a sentence of five-days suspended and probation on the condition they perform well on probation, and that jail term would not be imposed. Except, he noted, in the event the person did not perform well on probation, a jail term would be imposed. On the second or third offense, the judge has authority to impose active jail time. He explained that the bill attempts to provide tools so when there are repeat offenders with the continual cycle of thefts, the cycle can be disrupted.

[11:26:30 AM](#)

MR. HENDERSON turned to slide 9, and explained that the final main aspect of SB 54 is violating conditions of release. Captain Case noted confusion and struggle that law enforcement does not have the tools necessary to address people violating their bail conditions, and the bill allows up to five days in jail, if appropriate. This is important because under current law, a person violating conditions of release is committing a violation, not a criminal act. He explained that it is an arrestable violation that may be sanctioned with a fine, except

that description is confusing because, generally speaking, violations are not arrestable. However, he said, what the law allows is that it changes that dynamic a bit and "we said that officers need the ability to arrest on VCORs, but we're going to keep it as a violation," which is contrary to the way the law has historically been written and that necessarily created certain confusion, he said. The practical effect of that was that judges were apprehensive about holding someone in jail on a violation, even though it was an arrestable violation, until the bail hearing in which the original judge could then re-assess what bail should be in the underlying sentence, he advised. This bill addresses that issue by making violations of conditions of release a criminal offense again, a class B misdemeanor, and it allows for the imposition of up to five-days in jail, if appropriate. He offered that this will clarify for law enforcement that it can take someone into custody who is violating their bail conditions, and it will also clarify for judges that they can hold that person in jail pending the subsequent bail review for that underlying offense.

[11:29:06 AM](#)

REPRESENTATIVE LEDOUX surmised that under SB 54, for the first offense, the penalty is a "get out of jail free card."

MR. HENDERSON referred to theft in the fourth degree, the petty theft statute, and explained that under the current iteration of SB 54, a person convicted of a first-time theft in the fourth-degree offense would receive a suspended jail sentence.

REPRESENTATIVE LEDOUX referred to the ongoing frequency of current shoplifting crimes, and asked the rationale for taking away the judge's discretion under the former law.

MR. HENDERSON replied that this legislation returns that discretion, acknowledging it is not as much discretion as existed in the former law, which was 90 days. This, he offered, is that balance and compromise because it is known that long periods of incarceration may have that criminogenic effect, and it is a person's first low-level theft conviction.

[11:30:45 AM](#)

REPRESENTATIVE LEDOUX referred to long periods of incarceration possibly contributing to recidivism, and argued that one or two days did not appear to be a long period of time.

MR. HENDERSON referred to the results of the research, and explained that it shows that long periods of incarceration had a criminogenic effect on low risk offenders. He clarified that that does not necessarily mean offenders with low level offenses, but low risk offenders. He described that there was a good assumption that those individuals convicted of their first petty theft, with no prior criminal theft history, would fall into the category of lower risk.

REPRESENTATIVE LEDOUX pointed out that the person could have no prior theft history, but they could have histories for misdemeanor assaults, and various other deeds, and still only receive five days suspended, which is the "get out of jail card for the first theft."

MR. HENDERSON responded that SB 54 limits that prior history to theft history, and it is possible that someone could have a prior criminal history that is non-theft related. He remarked that whether it is a "get out of jail free card" is a policy question, but there is a sanction of misdemeanor probation with up to five days in jail.

[11:32:48 AM](#)

CHAIR CLAMAN noted, from a practical standpoint and long before the justice reform process started, with regard to a first-time theft in the fourth degree (audio difficulties) class B misdemeanor theft conviction, he asked whether folks were receiving jail time or a suspended sentence most of the time.

MR. HENDERSON answered that, as a general rule with first time low-level theft offenders, it was unlikely prosecutors would ask for jail time on those offenses.

[11:33:36 AM](#)

REPRESENTATIVE REINBOLD asked whether Mr. Henderson was in favor of Senate Bill 91.

MR. HENDERSON replied that he is in favor of criminal justice reform.

[11:33:54 AM](#)

REPRESENTATIVE REINBOLD described SB 54 as a baby step in the right direction, and asked that in his experience, how many

times a person actually stole property prior to being caught and convicted.

MR. HENDERSON opined that Representative Reinbold's question was how often, in his experience, someone he was convicting or asking a jury to convict someone of theft in the fourth degree, did he know, based on other information, that they had prior involvement in the criminal justice system, including theft.

REPRESENTATIVE REINBOLD said that before someone is actually caught stealing oftentimes they have already done it multiple times ...

REPRESENTATIVE REINBOLD, in response to Chair Claman's question, answered that she was focusing solely on theft.

REPRESENTATIVE CLAMAN asked whether her question was that someone was stopped for shoplifting in Fred Meyer, and before that time, when they were in front of prosecutors five prior times ...

REPRESENTATIVE REINBOLD clarified that research has shown there are dozens of times someone steals before being caught and convicted, and described that it is a high bar to be caught and also convicted. She offered concern as to the zero to five days (audio difficulties) discretionary. She said it is important that committee members are able to express the concerns of the people and districts they represent and not be shut out.

[11:36:56 AM](#)

CHAIR CLAMAN noted that people are not being shut out, and Representative Reinbold disagreed.

[11:37:11 AM](#)

MR. HENDERSON responded that he had not experienced, during his time as a prosecutor, where someone had several prior incidents of shoplifting when he was convicting for the first conviction, but if he had had that information, it would have been important to know as the prosecutor. He then referred to the principle that sentencing has to be an individualized process, and said that if he knew, through testimony or information from loss prevention at some of these stores, that a certain individual continued to come into the store over and over again and this is the first time they were caught, that is something the judge needs to know. Equally, he pointed out, if this is the first

time the person had been involved in the criminal justice system and first theft conviction, the judge needs to know that information.

[11:38:25 AM](#)

REPRESENTATIVE REINBOLD surmised that Mr. Henderson believes people are caught the first time, and asked that with his legal background, how many times a person had previously stolen by the time they were caught and convicted.

CHAIR CLAMAN noted that Mr. Henderson had answered that question, but he would give Representative Reinbold another shot at clarification.

MR. HENDERSON answered that he could not answer that question of data and social science, and as a prosecutor he had to operate with the information before him.

[11:39:01 AM](#)

REPRESENTATIVE KOPP said that speaking from his experience as a police officer from 1986 - 2009, it was common when bringing someone into arraignment, if law enforcement had knowledge there were other problems associated with the person, such as other arrests still working their way through the system for high risk behaviors under investigation, law enforcement could ask for a high bail regardless of what the penalty was at sentencing.

MR. HENDERSON responded that that can still done, but judges can be hesitant to hold someone in jail on bail when there is no potential sanction of incarceration. In the event there was that potential for incarceration, a judge is more likely to determine that the person needs a high bail for all of the high-risk behaviors Representative Kopp described.

[11:40:30 AM](#)

REPRESENTATIVE LEDOUX referred to the time period prior to Senate Bill 91, and said Mr. Henderson stated that it was unlikely if a person was a first-time theft offender whether they would actually get jail time. She asked whether they would have gotten jail time if this had been their first-time theft conviction, but they had a myriad of other "things."

MR. HENDERSON answered that if someone had a significant criminal history outside of a theft and it was their first-time

theft offense, it was likely the prosecutor would ask for jail time.

REPRESENTATIVE LEDOUX clarified her question that under Senate Bill 91, and SB 54, there is no jail time even if there is a myriad of other offenses.

MR. HENDERSON responded that active jail time is not authorized, only suspended jail time.

[11:41:44 AM](#)

REPRESENTATIVE MILLETT referred to Senate Bill 91 testimonies, and the 5/19/17 memorandum from John Skidmore, through Robert Henderson to Senator John Coghill, its Executive Summary, written subsequent to the passage of Senate Bill 91, and she read as follows: "This means Alaska has the lowest authorized sentences in the nation for this wide range of conduct." She asked whether Mr. Henderson had performed the same sentencing survey as to changing the sentencing for the class C felonies proposed in SB 54, and whether Alaska still has the lowest authorized sentences in the nation "for that" with the changes in SB 54.

MR. HENDERSON advised that he did not believe Alaska is the lowest in the nation any longer. He then highlighted that the reason Alaska is the lowest under current law, is due to the way Alaska categorizes or classifies criminal offenses. He referred to the Department of Law's (DOL) summary of all class C felony offenses that fall within Title 11 [contained within the committee packets] and commented that it is a long list. He clarified that the summary contains only class C felonies that fall within Title 11, it does not include Titles 4, 8, 16, 28, or any other title in the Criminal Code. He pointed out that it is important because a lot of other states distinguish between various low-level felony offenses, even within their same classifications. For example, he said, many states distinguish between violent low-level felony offenses and non-violent low-level felony offenses, and Alaska does not. Instead, he explained, Alaska handles that situation by authorizing the judge to impose this particular presumptive range, and that range has been intended to encompass all of that myriad of conduct. He remarked that it comes back to why it is so important there is the sentencing range in SB 54.

[11:44:23 AM](#)

REPRESENTATIVE MILLETT surmised that other states have larger classifications and "you kind of chart out what states do and what their classifications," and folks that want to repeal Senate Bill 91 and start over, and want to take Mr. Henderson's memorandum to Senator Coghill and implement some of the wide ranges. She indicated it would be a better way for the legislature to serve the public, and keep the public safe, "by having some of these other states that have implemented this broad range and more categories of the better way of deciding criminal justice, and how we sentence and how we convict people." The proponents of repealing Senate Bill 91 have looked at this memo, and suggest repealing and implementing Mr. Henderson's recommendations. She asked whether Mr. Henderson would like to see a different form, possibly take the other references in the memo, and change how Alaska does that to more reflect successful states.

MR. HENDERSON answered that a full repeal of Senate Bill 91 is dangerous because it has numerous phases and it would be a step backwards from where the legislature started. He agreed that Alaska looking to other states is a good place to start. For example, "how do we" make sure the judges have discretion to treat violent offenders differently than non-violent offenders. Other states have addressed that issue and have given Alaska some guidance, and the Criminal Justice Commission is another body looking at that issue. He referred to the question of whether the legislature should start all over, and pointed out that Senate Bill 91 has multiple phases and some of those phases have not yet been implemented. He explained that phase one, reclassification of criminal offenses (audio difficulties) went into effect July 2016; phase two, changes to probation and parole, went into effect January [2017], and the question of how Alaska handles, sanctions, and incentivizes people on probation and parole is in play now, and judges are still learning and figuring out what works; and phase three, the pretrial services unit is important to Alaska and is the first time the state will be able to supervise offenders in pretrial status, which comes into effect January 1, 2018.

[11:47:26 AM](#)

REPRESENTATIVE MILLETT described that the cart was put before the horse, and criminal justice reform should have started with phases two and three, and then if those phases were successful, to move to phase one because the public is most upset about phase one. She referred to the 6/17/16, Department of Law's bill review to Governor Bill Walker, and said it warns about

some of these things in phase one, is a detailed look at phase one, and it possibly points out some of the flaws seen without having phase three implemented, especially. In reviewing some of its recommendations, she said she assumes Mr. Henderson supports SB 54 in its current form, and asked whether there are other things DOL would be supportive of if instituted in SB 54. She asked whether DOL is open to looking at other amendments that would strengthen SB 54, and if so, would he be willing to provide a list of additional changes to SB 54 based off of the 6/17/16 memo wherein some issues were pointed out with Senate Bill 91. A list of amendments was taken from the bill review letter that she believes conceptually make sense in strengthening Senate Bill 91, and she surmised that Mr. Henderson would be supportive.

MR. HENDERSON responded that this is a process, and as Governor Walker said when proposing SB 54, this is a good and important first step, and it is too early to tell whether there will be additional steps. Contained within SB 54 are the issues they heard from their law enforcement partners that needed to be addressed quickly, he said.

[11:50:01 AM](#)

REPRESENTATIVE LEDOUX pointed out that if there is a memo wherein DOL had "a whole bunch of suggestions to Senate Bill 91," why DOL could not say on the record that it would like these suggestions implemented.

MR. HENDERSON replied that after this hearing he will review that memo because if there are suggestions, he wants to be sure he is clear on the memo.

[11:50:54 AM](#)

REPRESENTATIVE REINBOLD asked Mr. Henderson to explain the three phases.

MR. HENDERSON responded that, generally speaking, phase one went into effect in July 2016, and was the revision of the classification and sentencing structure of the Criminal Code. Class C felony sentences moved from zero to two years, to zero to 18 months suspended probation; where the presumptive range was changed; and where it elevated the (audio difficulties) threshold from \$750 to \$1,000 felony level theft. That is the reclassification (audio difficulties), he said. Phase two went into effect in January 2017, the probation and parole phase, in

which probation and parole instituted a new way to monitor and surprise offenders on probation and parole. He explained there are administrative sanctions and incentives to encourage people to perform well on probation and parole, and the earned compliance credit is incentive to be on probation for a shorter period of time. Research shows that if people will reoffend, they will reoffend (audio difficulties - issues with construction noises), he said.

[11:52:37 AM](#)

[CHAIR CLAMAN had a discussion with unknown speaker asking Chair Claman to repeat his request for people to mute their lines.]

[11:53:11 AM](#)

MR. HENDERSON noted that earned compliance credit was implemented because the research shows that people who will violate their probation or reoffend once released will do that within the first six to twelve months after their release. In the event a person can be incentivized to stay the course, engage in their ordered treatment, and do all of the things the state wants them to do, they are much more likely to succeed. Phase three is bail and pretrial release, which goes into effect on January 1, 2018, and at that point, the Department of Corrections will have 60 new pretrial service officers to supervise and assess offenders on bail release. The officers will use an evidence based risk assessment tool in assessing bail offering judges more information when assessing bail as to low, medium, and high-risk individuals. The risk assessment tool will assess two separate factors: the risk of a person committing a new criminal act, and the risk of failure to appear because at this point the person is presumed innocent. The tool, he reiterated, will allow DOC to provide judges with more information as to what the bail should be, and under what conditions.

[11:55:24 AM](#)

REPRESENTATIVE CLAMAN advised that the construction company had been advised the meeting would conclude at 11:30, which is roughly 30 minutes past time. He advised Representative Reinbold that he would give her one brief question, and if it was not brief, she would not be allowed to ask it.

[Discussion between Chair Claman and Representative Reinbold regarding asking a question.]

11:56:24 AM

REPRESENTATIVE REINBOLD asked whether Mr. Henderson believes public safety is the government's top mandate, noting her belief that it is dangerous not to repeal Senate Bill 91.

MR. HENDERSON answered that as a prosecutor, public safety is one of his number one priorities.

11:57:07 AM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 11:57 a.m.