

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

October 23, 2017

3:50 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 Charisse Millett (alternate)  
Representative Louise Stutes (alternate)

**MEMBERS ABSENT**

Representative Lora Reinbold

**OTHER MEMBERS**

Representative Andy Josephson  
Representative Geran Tarr  
Representative Justin Parrish  
Representative George Rauscher  
Representative Dan Ortiz  
Representative Dan Saddler

**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."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 54

SHORT TITLE: CRIME AND SENTENCING

SPONSOR(S): SENATOR(S) COGHILL

02/10/17 (S) READ THE FIRST TIME - REFERRALS  
 02/10/17 (S) JUD, FIN  
 02/17/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 02/17/17 (S) Heard & Held  
 02/17/17 (S) MINUTE(JUD)  
 02/24/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 02/24/17 (S) -- MEETING CANCELED --  
 03/01/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/01/17 (S) Heard & Held  
 03/01/17 (S) MINUTE(JUD)  
 03/03/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/03/17 (S) Heard & Held  
 03/03/17 (S) MINUTE(JUD)  
 03/06/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/06/17 (S) -- MEETING CANCELED --  
 03/08/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/08/17 (S) Heard & Held  
 03/08/17 (S) MINUTE(JUD)  
 03/10/17 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
 03/10/17 (S) Moved CSSB 54(JUD) Out of Committee  
 03/10/17 (S) MINUTE(JUD)  
 03/13/17 (S) JUD RPT CS 3DP 1NR NEW TITLE  
 03/13/17 (S) DP: COGHILL, COSTELLO, KELLY  
 03/13/17 (S) NR: MEYER  
 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) Heard & Held  
 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 1DP 4NR 2AM NEW TITLE  
 04/03/17 (S) NR: MACKINNON, BISHOP, DUNLEAVY,  
 MICCICHE  
 04/03/17 (S) AM: HOFFMAN, OLSON  
 04/03/17 (S) DP: VON IMHOF  
 04/03/17 (S) FIN AT 9:00 AM SENATE FINANCE 532  
 04/03/17 (S) Moved CSSB 54(FIN) Out of Committee  
 04/03/17 (S) MINUTE(FIN)  
 04/07/17 (S) TRANSMITTED TO (H)  
 04/07/17 (S) VERSION: CSSB 54(FIN)  
 04/08/17 (H) READ THE FIRST TIME - REFERRALS  
 04/08/17 (H) STA, JUD, FIN

05/04/17 (H) STA AT 3:00 PM GRUENBERG 120  
05/04/17 (H) <Bill Hearing Canceled>  
10/23/17 (H) STA AT 12:30 AM GRUENBERG 120  
10/23/17 (H) JUD AT 1:00 PM GRUENBERG 120

**WITNESS REGISTER**

BYRON CHARLES

Ketchikan, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, testified.

JEFFERY TEMPLE, Director

Corporate Affairs

Fred Meyer

Portland, Oregon

**POSITION STATEMENT:** During the hearing of SB 54, offered support for the legislation.

BUTCH MOORE

Big Lake, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, testified.

ADAM LEGG

Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, testified.

BONNIE LILLEY

Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, offered support for the legislation.

CHRISTINA LOVE

Juneau, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, testified.

JORDAN SHILLING, Staff

Senator John Coghill

Alaska State Legislature

Juneau, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, presented a PowerPoint titled, "Senate Bill 54, An Overview" of the legislation, and answered questions.

GREGORY RAZO, Chair

Alaska Criminal Justice Commission

Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, presented a PowerPoint titled, "Alaska Criminal Justice Commission, and answered questions.

SUSANNE DIPIETRO, Executive Director  
Alaska Judicial Council  
Alaska Court System  
Anchorage, Alaska

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

NICOLE BORROMEO, Executive Vice President/General Council  
Alaska Federation of Natives  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, offered AFN's support for the legislation.

BEN MALLOTT, Vice President  
Alaska Federation of Natives  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, offered AFN's support for the legislation.

MIKE COONS  
Palmer, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, testified.

JAHNA LINDEMUTH  
Attorney General  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, testified and answered questions.

KACI SCHROEDER, Assistant Attorney General  
Criminal Division  
Legal Services Section  
Department of Law  
Juneau, Alaska

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

TARA RICH, Legal and Policy Director  
American Civil Liberties Union of Alaska  
Anchorage, Alaska

**POSITION STATEMENT:** During the hearing of SB 54, testified in support of the legislation.

## **ACTION NARRATIVE**

[3:50:23 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 3:50 p.m. Representatives Claman, Kopp, LeDoux, Fansler, and Millett (alternate) for Representative Reinbold were present at the call to order. Representatives Eastman, Stutes (alternate) and Kreiss-Tomkins arrived as the meeting was in progress.

### **SB 54-CRIME AND SENTENCING**

[3:51:06 PM](#)

CHAIR CLAMAN announced that the only order of business would be 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."

CHAIR CLAMAN opened public testimony on SB 54.

[3:51:59 PM](#)

BYRON CHARLES advised that he has been part of the state system for quite a few years and that he recently submitted a document to Representative Scott Kawasaki depicting primary examples of the types of programs that could be implemented in the state, especially as to management of all property, waters, and more. He explained that this particular training program would be provided by the federal government for incarcerated young people who were ready to return to society. He said, "I know for a fact that the State of Alaska is using one person to make a decision on all those that are incarcerated when it comes to programs, and that's the state Mental Health Commission." He related that he had witnessed two qualified psychologists who were forced to leave their jobs and they were willing to work with incarcerated individuals who desired to do something with their lives. Currently, the federal government wants to be part of this and he sincerely hopes they get (indisc.) because strict sanctions can be imposed on those falling under the federal policy that was applied to the state when it was a territory.

He said he would like to see more qualified psychologists working with those incarcerated individuals who are willing to do something with their lives and are willing to accept responsibility for their actions.

3:55:13 PM

JEFFERY TEMPLE, Director, Corporate Affairs, Fred Meyer, advised that Fred Meyer is a Northwest retailer with many stores located in Alaska, it employs over 3,300 associates in the state, and it supports SB 54. On behalf of Fred Meyer, he advised that during the period, January 1, 2016 through September 24, 2016, theft dollars recovered were approximately \$1.2 million, and during the same time period in 2017, it increased to \$1.7 million; theft dollars lost are calculated at \$942,000 in the prior period, and it increased to \$1.1 million during the same period for 2017. He explained that when this data is tallied and aggregated, it creates a change of approximately \$700,000 during that time frame, and he asserted "this would be addressed favorably" for Fred Meyer, and other businesses throughout the State of Alaska, by passing SB 54.

CHAIR CLAMAN asked that Mr. Temple forward Fred Myer's data and information to his office and will share it with the committee.

3:57:45 PM

BUTCH MOORE advised that he had previously forwarded suggestions for SB 54, and referred to violations of conditions of release prior to Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature], wherein a person could be sentenced to up to one year, and that SB 54 changes it from zero to five days. For example, in the event a violent offender violated the condition of release of bail by being caught with a firearm, the state should be able to give them more time. Also, he said, first-time Class B felony convictions, prior to Senate Bill 91, were one to three years minimum mandatory, and under Senate Bill 91, it is zero to two years with a potential suspended imposition of the sentence (SIS), and no jailtime. He stated that Attorney General Jahna Lindemuth wrote a letter regarding SB 54, and advised that 90 to 95 percent of all convictions were reached by a plea deal. Therefore, he pointed out, in the event someone is charged with a Class A felony and they plead to a Class B felony, conceivably, they could receive no jailtime, and if they were charged with a Class B felony and prosecuted, they could potentially receive no jailtime. Significant changes need to be made to SB 54 because the prosecution lost its ability to

bargain and an offender believes they will receive no jailtime, he said.

4:00:26 PM

ADAM LEGG referred specifically to the sex trafficking language in Secs. 3 and 4, and advised that in January, the Alaska Criminal Justice Commission included a recommendation to the legislature regarding potential loopholes created for sex traffickers by the passage of SB 91. At that time, he said that the commission said as follows:

The provisions of SB 91 that altered the sex trafficking statutes were not based on any recommendation from the commission. A legislative history suggesting these provisions were intended to ensure that sex workers simply working together, not exploiting one another, could not be prosecuted for trafficking each other, or trafficking themselves. However, as passed, the provision could be read so that a person who might otherwise be found guilty of sex trafficking, i.e., someone receiving money for sex work performed by others, could avoid prosecution if that person engaged in sex work personally.

MR. LEGG stated that he agrees with the Alaska Criminal Justice Commission, and other organizations working first-hand with survivors of this heinous crime, and he urged the passage of SB 54 with its current sex trafficking language intact.

4:02:17 PM

BONNIE LILLEY advised she is a 58-year old single woman, and since the passage of Senate Bill 91, her life has changed due to the active drug dealers on her street, with many shootings and thefts. She said she encourages the passage of SB 54; however, she asked that it be strengthened and described that SB 54 is like putting a band-aid on a cut to the jugular because it is not enough to stop the rampant crime taking place in Alaska. Rampant crime has been blamed on drugs and the economy, which is true; however, due to these lenient laws with no repercussions for theft and criminal activity, many people have started businesses dealing in stolen goods. She asked that the committee look at a possible means to finance a taskforce to look into the professional criminal rings actively working in Alaska because it is starting to take a toll on its citizens. She stressed that she personally hates guns, but she now conceal

carries and she will not go to the local Fred Meyer without a gun in her pocket due to the crime that has taken over Alaska. She asked that the committee take this issue seriously, and aggressively and rapidly work to solve the problem.

4:05:15 PM

CHRISTINA LOVE related that she is a single mother, a resident of Juneau, and a survivor of domestic violence and sexual assault. Ms. Love advised that when she was 12 years old, her father was put in jail for crimes against her 12 siblings and herself. She explained that she is a formerly incarcerated person in long-term recovery for IV use of opioids and other mind-altering substances, and described herself as a survivor and overcomer. She said, "That's important because when we first started this journey of Senate Bill 91, we really just wanted an even playing field" because when she was released from jail she did not have the same services or access to services that her father received when released from jail as a convicted pedophilia, such as access to food stamps, housing, and such. She was not eligible for those services and, as such, her child also did not have access to those services. She stated that the bill is so important, especially when looking at her journey, where she is now as a productive member of society in working with people struggling with substance use, mental illness, formerly incarcerated individuals, and those with hidden disabilities. Previously, she advised, she was Juneau's Disability Abuse Response Team Coordinator and her primary purpose was working with people with disabilities to be sure they had their services and; therefore, she has a good knowledge of the state's systems of care and how to get people into accessing those systems. She said that in speaking from her experience, this bill has the opportunity to address those core causes of what brings people into jail. Currently, the numbers and evidence show that 90 percent of incarcerated people suffer from disabilities, whether substance abuse, mental illness, or fetal alcohol syndrome, of which Alaska has an enormously high rate. She stressed that she knows the reason she is not in jail is because she was embraced by her community, and had access to those services offering a continuum of care that continues to support her in being successful, and supports her child and community.

4:08:01 PM

REPRESENTATIVE LEDOUX asked why her father, a convicted pedophilia, had access to services and she did not have access to services.

MS. LOVE answered that her crimes were drug related and, at that time, anyone with a drug offense did not have access to food stamps.

[4:09:04 PM](#)

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, turned to PowerPoint titled, "Senate Bill 54, An Overview" slide 2, table of contents, and said the slides include the following: violation of conditions of release (VCOR); sex trafficking in the third and fourth degrees; first-time C-felony presumptive sentencing; sex offender probation; Class A misdemeanor sentencing; Class B misdemeanor sentencing, specifically theft in the fourth degree; no valid operator's license (NVOL); pretrial risk assessments; and the Alcohol Safety Action Program (ASAP).

[4:10:03 PM](#)

MR. SHILLING turned to slide 3, "Violation of Conditions of Release (VCOR)," Sections 1, 2, 9, and advised that violation of conditions of release is a pretrial offense where a defendant has violated the conditions applied by the court. In 2015, the Alaska Criminal Justice Commission recommended downgrading violations of conditions of release (VCOR) to an arrestable, jailable violation, enacted through Senate Bill 91, but it was not implemented exactly as intended. Therefore, he explained, early on, some people arrested on VCOR were not being held in jail pending a bail review, and judges and magistrates did not feel they had the legal authority to detain someone on a violation. He remarked that while some jurisdictions found a solution to this issue, the commission did recommend that this be returned to a misdemeanor punishable by up to five days of active imprisonment to ensure defenders are held in jail awaiting a bail review hearing in front of a judicial officer in their underlying case.

[4:11:22 PM](#)

MR. SHILLING turned to slide 4, "Sex Trafficking," Sections 3, 4, 5, 13, 14, 20, 22, and advised that as to sex trafficking in the third and fourth degree, basically the changes put into Senate Bill 91 were not recommended by the Alaska Criminal

Justice Commission. However, he said, those provisions were vetted by the Department of Law (DOL) prior to being included in Senate Bill 91 and the language did not pose any problems at the time. He explained the intent of the provision was to ensure that sex workers who are working together, and not exploiting each other, would not be prosecuted for trafficking each other or trafficking themselves. Later, he advised, the Department of La (DOL) claimed the language was problem in that it inadvertently created a loophole allowing a sex trafficker to avoid prosecution for the lower degrees of sex trafficking. Therefore, SB 54 repeals those provisions and attempts to address some of the original issues with the state's sex trafficking statutes, he explained.

[4:12:18 PM](#)

MR. SHILLING turned to slide 5, "C-Felony," Class C felony sentencing, Section 6, and advised that under current law, an individual, with no prior felonies, convicted of a Class C felony receives a presumptive sentence of up to 18-months of suspended imprisonment, and up to five-years of supervised probation. Of course, he offered, the way presumptive ranges work is if an aggravator were proven up, this individual could spend up to five-years in prison, and the presumptive range is up to 18-months of suspended imprisonment. He advised that the commission heard numerous concerns about this provision in particular, prosecutors felt that some of these felonies warranted jailtime, and members of the community felt that it did not express community condemnation, which is an important principle in the Constitution of the State of Alaska when considering sentencing. This legislation establishes a presumptive sentence of up to one-year of active imprisonment for first-time FC felonies, he said.

[4:13:25 PM](#)

MR. SHILLING turned to slide 6, "Sex Offender Probation" Section 7, and explained that as Senate Bill 91 moved through the five committees, at one point the bill evolved in such a manner that the maximum probation term lengths actually conflicted with the minimum probation term lengths for felony sex offenders. In that regard, he explained, a decision was made in one of the committees to eliminate the conflicting minimums, and as the bill continued to evolve, the maximums and minimums no longer conflicted, but the minimums for sex offender probation were not reinstated at that point. It is not that a judge cannot impose probation, he explained, it is that there are not any minimums

to ensure it, and even though it is incredibly unlikely a felony sex offender would not receive probation, the commission felt strongly there ought to be minimums in place. The sponsor worked with the Department of Law (DOL) to determine the appropriate minimums, and DOL suggested returning to the previous minimums, which is exactly what happened. He offered that the legislation is 15-years for an unclassified felony, 10-years for a Class A or Class B felony, and 5-years for a Class C felony.

[4:14:33 PM](#)

MR. SHILLING turned to slide 7, "Class A Misdemeanors," Sections 8, 11, 12, and offered that Senate Bill 91 enacted a presumptive sentencing range of zero to 30-days for many First and Second Class A misdemeanors. However, he pointed out, even first-time offenders could receive a sentence of up to one-year for certain offenses, and cases where the defendant has more than two criminal convictions for similar conduct. Prosecutors voiced concern about the increase in penalty occurring after the second conviction, rather than starting the gradual increase after the first conviction. Therefore, he said, these sections of the bill provide an additional aggravating factor whereby an individual with one prior conviction for that conduct could be sentenced up to 60-days. Also, he pointed out, there is another section of the bill that establishes a five-year "look back period" for the purposes of counting priors when sentencing an individual for a Class A misdemeanor.

[4:14:36 PM](#)

MR. SHILLING turned to slide 8, "Theft 4," Section 10, and advised this is the act of stealing something under \$250, and it is not robbery or burglary which are felonies. Research has shown that most of the thefts in this category average approximately \$50. Senate Bill 91 reduced first and second time fourth degree theft to be non-jailable with probation only, although, possibly restitution and fines, but no jailtime; and zero to five-days suspended imprisonment for third or subsequent offenses. He advised that the commission received a lot of feedback from businesses, law enforcement officers, and prosecutors, who felt that it had emboldened some offenders, and argued that possible jailtime acts as a deterrent and reflects community condemnation. As a result, he said, the commission recommended that third-time theft in the fourth degree should be punishable up to ten-days in jail. That being said, he offered, this bill goes much further than what the commission actually

recommended this year because not only does it provide for that 10-days in jail for third and subsequent offenses, it actually moves jailtime up to the second offense, and jailtime can be utilized for the first offense if that offender violates their conditions of probation.

[4:16:59 PM](#)

MR. SHILLING turned to slide 9, "No Valid Operator's License (NVOL)," Section 15, and advised that this was an oversight being corrected in that Senate Bill 91 made driving with a suspended license into an infraction if the reason for the license suspension was something other than a DUI. For example, non-payment of child support or something similar, he suggested. However, by not similarly reducing this offense to an infraction caused a disparity in the law wherein someone committing a less serious offense of simply not having a license, would potentially be punished more severely than someone who had their license taken away for non-payment of child support, or a number of moving violations. He reiterated that this provision resolves an inequity in the statute.

[4:17:50 PM](#)

MR. SHILLING turned to slide 10, "Pretrial Risk Assessments" Section 17, and advised that the provisions of Senate Bill 91 go into effect in a few weeks and the law will require the court to consider a risk score prior to making a release decision, which is risk to public safety and risk of not appearing in court. However, he said, the law requires the Department of Corrections (DOC) to conduct this assessment on every defendant, but not all defendants will actually be in custody pre-arraignment due to being released under the bail schedule, or a law enforcement officer may have used their discretion to issue a citation. He described that it is impractical to conduct an assessment on folks not in custody and it does not make a lot of sense when a release decision had already been made without a risk score, he said. The commission recommended limiting pretrial risk assessments to only those defendants in custody, or any defendant out of custody if the prosecution so requests, he offered.

[4:18:55 PM](#)

MR. SHILLING turned to slide 11, "Alcohol Safety Action Program" Section 21, and advised that Senate Bill 91 limited referrals to the Alcohol Safety Action Program (ASAP) to DUI and refusal

offenders only. The other body made a change to this, it was not recommended by the commission, but it expands the use of ASAP for drug possession offenders, he explained.

4:19:30 PM

REPRESENTATIVE MILLETT referred to inflation-proofing on theft and asked why that was not changed in SB 54, because in reviewing some of the notes from the Department of Law (DOL), it believed it may not be constitutional to have inflation-proofing on the theft threshold.

MR. SHILLING advised that it is not in the bill because the commission did not recommend it, and noted that he had not read that legal advice and did not know whether that provision had been challenged and found unconstitutional.

4:20:14 PM

REPRESENTATIVE KREISS-TOMKINS referred to violations of conditions of release wherein Mr. Shilling stated that some jurisdictions found a solution even under the current law, and asked him to explain those solutions.

MR. SHILLING answered that the court system may be better situated to respond, but he heard that the jurisdictions added a special page to a form, or a box to check on a form, that ameliorated the situation. He related that the First Judicial District arrived at this solution quickly, and the commission's recommendation stated that the problem is not universal. He related that the commission recommended it in January 2017, and it may be interesting to follow up to determine whether that problem still exists.

CHAIR CLAMAN advised the Alaska Criminal Justice Commission has already released its report to the legislature, due November 1, 2017, which is contained within the committee packet.

REPRESENTATIVE KREISS-TOMKINS commented that a take away from various committee deliberations last year was that when non-violent offenders are incarcerated for certain periods of time there is a criminogenic effect. Also, non-violent offenders after being incarcerated can become violent offenders in the future. He asked whether there is a threshold period of time wherein the data indicates that that effect takes place after a certain period of incarceration.

MR. SHILLING referred to the 2015 Alaska Criminal Justice Commission report, and noted that with respect to specific durations of time, research shows that low-risk pretrial defendants held longer than 24-hours could have a criminogenic effect, and it is specific to low-risk individuals. There is also research showing that low-level drug offenders have a higher risk of recidivating when incarcerated for long periods of time, he advised.

[4:23:18 PM](#)

REPRESENTATIVE LEDOUX noted her understanding that when Senate Bill 91 was originally passed, there was the idea that rather than incarcerating people, to invest the money that was saved from not building a new prison, into alcohol and drug rehabilitation programs. She asked the status of the reinvestment currently, noting there are still a limited number of beds for opioid addiction, and such, statewide.

MR. SHILLING responded that Senate Bill 91 created a framework for a six-year reinvestment plan, the first two fiscal years of that plan have been completed, and the full plan entails reinvesting \$99 million over those six-years. To date, he advised, \$22 million has been reinvested, and by following the plan for just one more year, \$40 million will have been reinvested. The money is there, he said, and it has hit the streets in a number of areas, such as pretrial supervision wherein 60 new law enforcement officers will begin on January 1. These officers can make warrantless arrests, carry firearms, and ensure that defendants are following the conditions of their release. This reinvestment money includes, as follows: substance abuse treatment; reentry services; and new money going into the Council on Domestic Violence and Sexual Assault that had dried up over the years, and now Senate Bill 91 reinstated that money. He remarked that "reinvestment's a real thing and we're just two years in now."

[4:25:38 PM](#)

REPRESENTATIVE LEDOUX offered that clearly not all of the crime being experienced in Anchorage is the result of Senate Bill 91 as there are a myriad of reasons, but it does appear that Senate Bill 91 may have exacerbated certain things. She asked why the commission's research did not indicate that the crime being experienced would happen.

MR. SHILLING acknowledged there are a number of complex reasons crime moves up and down, and he referred to the many discussions about the opioid crises, budget cuts, economic recession, and the truth is that crime began increasing long before Senate Bill 91 was enacted. Violent crimes have slowly increased over the last 30-years with big spikes in 2015, property crime began increasing in 2011 with big spikes in 2015, and these are all prior to the introduction of Senate Bill 91. He stressed that the commission considered a lot of research and data and made a set of 21 evidence based recommendations with the goal of reducing crime and holding offenders accountable by investing in programs that actually reduce the crime rate.

REPRESENTATIVE LEDOUX asked whether Mr. Shilling was saying that none of the crime being experienced in Anchorage is a result of Senate Bill 91.

MR. SHILLING replied that he does not know the answer to that question, but Brad Myrstol, Ph.D., University of Alaska made many presentations to the legislature on crime rates and what is happening in Alaska. Mr. Shilling said he could not definitively say that passing a bill, such as Senate Bill 91 or SB 54, makes crimes go up and down, and it certainly cannot be proven out with data.

[4:27:49 PM](#)

REPRESENTATIVE MILLETT offered that when reviewing the State of Texas and timing, Texas passed its criminal justice reform and "we use that kind of a standup model," although it did not have a fiscal crisis, opioid crisis, or a recession. She asked whether the Alaska Criminal Justice Commission took into consideration any of the outward pressures Alaska was facing, and whether the timing was wrong because it exacerbated the uptick in crime. She commented that phase one was probably the wrong time to perform that portion of Senate Bill 91, although phases two and three "are pretty great." Moving forward, she asked, whether the commission will take into consideration those outward pressures happening in Alaska before it recommends going forward, because timing is an issue.

MR. SHILLING answered, "I don't think I fully understand and I need to be real careful about not getting outside of the scope of my expertise." He stated that he knows what is in Senate Bill 54, but as to these complex questions about the causes of crime and timing, he is not the correct person to answer.

4:29:25 PM

CHAIR CLAMAN pointed out that, statutorily, the legislature directed certain instructions to the commission about its responsibility, and it did not include assessing the health of the overall economy.

REPRESENTATIVE MILLETT said that possibly, those statewide outward pressures should be part of the discussion when passing a justice reform crime bill.

4:30:08 PM

REPRESENTATIVE FANSLER referred to slide 5, Section 6 of the Class C felonies, wherein Mr. Shilling had mentioned that this was pretty much for a straight up first-time felony offender without any aggravators or such. He asked that Mr. Shilling define an aggravator, and breakdown how typically an aggravator is attached to a crime, for the public's information.

MR. SHILLING noted that the Department of Law (DOL) may best speak to how common aggravating and mitigating factors are in practice. He explained that there are at least 20 aggravating factors, and aggravating and mitigating factors allow the court to sentence someone above or below the presumptive range. He suggested that the members think about these ranges as default ranges, except that they can be departed from, and each class of felony has a hard maximum that cannot be exceeded even with an aggravator. For example, in the case of a Class C felony, the maximum is five-years, and if the individual has one prior felony, the sentencing range is one- to three-years under this statute, and if they have two or more, it is three- to five-years.

4:31:35 PM

REPRESENTATIVE EASTMAN referred to the upcoming 60 new officers on the streets in January, and requested an explanation of the parameters on those warrantless arrest situations.

MR. SHILLING answered that the legal standard for making an arrest for a pretrial service officer is probable cause, as with any law enforcement officer. These officers, he explained, will make warrantless arrests if needed on defendants violating the conditions of their release and breaking the court established rules.

CHAIR CLAMAN pointed out that officers cannot arrest anyone on the street without a warrant, they can only arrest someone on pretrial release subject to their supervision as a pretrial service officer.

MR. SHILLING answered in the affirmative.

[4:32:43 PM](#)

REPRESENTATIVE LEDOUX asked whether social media was as alive as it is currently when the commission considered the amount of jailtime for first and second time theft offenses, and when it considered issues in other states. Five years ago, she said, a person would not have expected the kind of folks robbing or shoplifting from a convenience store to actually realize there was a "get out of jail free card," and now everyone knows, probably through social media, that with first and second time offenses "you'd get nothing, absolutely nothing." She pointed out that even with the corrections SB 54 provides, there is one get out of jail free card, and asked whether anyone has researched or analyzed the effect of social media.

MR. SHILLING described the question as complex and that he does not have the answer to social media's effect on the heightened awareness of the state's criminal justice statutes. In the event SB 54 passes, the first-time theft offender is non-jailable; however, he pointed out that there is suspended time imposed that can be applied to the individual if they violate the conditions of their probation. Also, beyond the life-time criminal record, there is a period of probation, restitution, and fines, that could be imposed which is how he would describe a first-time offender being treated under SB 54, he said.

CHAIR CLAMAN opined that he has seen research that prior to the justice reform efforts, typically a first-time Class B misdemeanor theft offender would rarely receive jailtime.

MR. SHILLING responded that, pre-Senate Bill 91, petty theft offenders spent on average of 23-days in prison post-conviction.

[4:36:04 PM](#)

REPRESENTATIVE EASTMAN noted that under SB 54, it is zero to five-days, and zero to ten-days, and asked whether that was actual time spent in jail, or whether it included good time, and how much time those people would actually serve in a jail cell.

MR. SHILLING responded that he does not recall whether it applies to sentences this short, although, he knows that to be eligible for parole, a person must be sentenced in excess of 181 days. He said his hunch is that good time does not apply in this case, but DOL was available to answer.

REPRESENTATIVE EASTMAN asked that Mr. Shilling take a look at that issue because when the military sentences people to one-month, good time would apply.

CHAIR CLAMAN advised that DOL will be presenting later and he encouraged Representative Eastman to pose the same question to that department.

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REPRESENTATIVE KOPP said he wanted to be sure he understood correctly that the Alcohol Safety Action Program (ASAP) was expanding screening to any alcohol or drug related offense, and not solely to DUIs. He opined that this would restore the court's ability to monitor treatment of all drug and alcohol offenders, and not solely DUI offenders.

MR. SHILLING agreed, and he explained that this expands the types of offenders that can be referred to, and accepted by, the ASAP. He related that he does not have the strongest grasp on everything ASAP does, but he does know that it conducts screenings, refers people to treatment, and monitors those people going through treatment.

[4:38:10 PM](#)

REPRESENTATIVE KOPP commented that this change is significant in light of Alaska's current opioid crisis. Representative Kopp then referred to the misdemeanor Class C felony assault changes and noted that it appears to reconcile the problem where a prosecutor may be forced to plead down a Class C felony, if a person strangled a household member to a misdemeanor, wherein they could receive up to one year in jail for just hitting a household member, and now, for more severe behavior a person can get more severe penalty.

MR. SHILLING answered in the affirmative.

[4:39:55 PM](#)

GREGORY RAZO, Chair, Alaska Criminal Justice Commission, turned to slide 2, "Commission Process," and explained that the recommendations are fundamentally and foundationally based upon research. In the case of criminal justice reform, the foundational research was meant to look at recidivism and the return to jail within three years of being released.

MR. RAZO stated that prior to criminal justice reform, two out of every three people returned to prison within three years of being released, an approximate 66 percent recidivism rate. He noted that part of the commission's process includes stakeholder outreach, and that every meeting is a public meeting subject to notice and subject to the meeting process. In addition, as the commission developed its criminal justice reform efforts, it performed specific stakeholder outreach, it spoke with victims of crimes, and traveled to rural Alaska to understand the problems confronting the people living in that area. The commission performed a fact based system assessment to understand how the system was currently operating by reviewing data from the University of Alaska, Department of Public Safety (DPS), Department of Corrections (DOC), and Department of Health and Social Services (DHSS). These facts and figures obtained supported exactly where Alaska stood at the time, and it had a good sense of where the state was before recommending where the state might be with some changes to the system. Mr. Razo explained that because the commission was looking at such a large criminal justice system with many aspects to it, the commission broke its research into work groups, such as [victims of crimes], pretrial, sentencing, and post-conviction.

[4:44:00 PM](#)

MR. RAZO turned to slide 3, "Goals of Criminal Justice Reform" and advised that the directive was to look into what sort of programs to use that could be proven to result in reduced recidivism, and what programs would enhance public safety if the state performed the reinvestment piece. The commission also looked into implementing evidence based pretrial practices; focusing prison beds on serious and violent offenders; strengthening probation and parole supervision; improve reentry programming; and ensuring oversight and accountability.

[4:46:59 PM](#)

MR. RAZO turned to slide 4, "Reinvest in Programs Proven to Reduce Recidivism & Protect Public Safety - Reinvestment in FY17

& FY18" and noted that approximately \$25.5 million was set aside for reinvestment, and of that amount, \$2.5 million was for substance abuse treatment; \$3 million for reentry support coalitions around the state; enhancing violence prevention programs for victims; and giving the legislation a tool to use to have some notion of what a return on investment for any of these programs was. He said, that over this two-year period, there has been \$8.5 million of reinvestment money.

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MR. RAZO turned to slide 5, "Reinvest in Programs Proven to Reduce Recidivism & Protect Public Safety - Future Reinvestment 2019-2022" noting the \$4 million for treatment in community resource centers (CRC) "half-way house." He explained that previously, no treatment took place in a half-way house, a person entered a half-way house on their path to return to society, and in many cases, it was an avenue to return a person to their prior criminal conduct. He continued explaining reinvestments, as follows: treatment can occur in half-way houses and it is part of the continuum of care and treatment that begins when initially put in jail; \$4 million for treatment in prison; \$8 million for treatment in the community and reentry services. He advised that some money comes from Medicaid reform and appropriations, with the focus on supervised probation by probation officers wherein the person is held immediately accountable; and \$8 million for violence prevention program in the community aimed at supporting victims and victims' rights.

[4:50:06 PM](#)

MR. RAZO turned to slide 6, "Invest in Evidence-Based Pretrial Practices" and advised that \$13.5 million was spent by the Department of Corrections (DOC) to establish a pretrial unit and train a new group of probation officers. Released individuals will be monitored to be certain they appear in court or they do not drink, and if the person does violate the conditions, they are back in jail. He explained that the methodology to impose risk based pretrial enforcement is an extensive and deliberative mechanism that is also tracked by the commission.

[4:51:34 PM](#)

MR. RAZO turned to slide 7, "Evidence-Based Pretrial Practices" and explained that the slide depicts pretrial before and after the enactment of Senate Bill 91.

[4:52:02 PM](#)

MR. RAZO turned to slide 8, "Focus Prison Beds on Serious & Violent Offenders - Prison Population Composition - Snapshot" and advised that the legislature asked the commission to focus on prison beds and on serious and violent offenders. He noted that from FY15 through FY17, the number of non-violent misdemeanor offenders taking up prison beds has gone down, which was the expected result, violent misdemeanors have stayed the same, non-violent felonies have gone down, and violent felonies have risen. He related that a factor to be determined from this small non-statistically relevant slice of evidence is that when looking at this graph, the violent felony offenders are in jail and, he advised that there are more violent felony offenders in jail than prior to starting the whole process.

[4:52:56 PM](#)

MR. RAZO turned to slide 9, "Strengthen Probation & Parole Supervision" and explained that the idea behind probation supervision is that there be swift consequences if probation is violated, and not that the person waits for six-months to get into court and in the meantime, stacks up probation violations until there is a hearing that takes days of court time. The idea is that the probation officer should be able to determine whether or not the person violated their conditions, and if so, there would be a swift consequence. The violations being filed for violation of probations have increased substantially which means that even more people are being violated today than previously, which was the expected outcome.

[4:54:05 PM](#)

MR. RAZO turned to slide 10, "Strengthen Probation & Parole Supervision" and noted that the percentage of people actually in prison for violations of probation have gone down because the people are not sitting in jail waiting for their probation hearing. These people are going into jail for three, five, or ten days for violation of probation time, and when they are released they still have a job, a place to live, and are still subject to the strong conditions the court placed upon them in the first place, but their lives have not been disrupted to send them back into criminality.

[4:54:53 PM](#)

MR. RAZO turned to slide 11, "Reduce Prison Expenses While Preserving Public Safety" and explained that the average daily prison population has gone down since criminal justice reform, which was asked of the commission by the legislature, and it is predicted to continue.

[4:55:13 PM](#)

MR. RAZO turned to slide 12, "Prison Population Decreased 437 Beds Since Implementation" and pointed out that \$3.8 million has been avoided since criminal justice reform was implemented, such that the operational costs were reduced with the closure of the Palmer Correctional Center, and \$5.6 million was saved at approximately \$42 per day to house a prisoner.

[4:55:56 PM](#)

MR. RAZO turned to slide 13, "Alaska Criminal Justice Commission Recommended Changes to Sentences - for first-time Class C felonies" that resulted in SB 54, and advised that the commission's recommendation for Class C felonies was a jail term of zero to 90 days, which was not unanimous, and it would still retain the suspended time of up to 18-months. Currently, he said, SB 54 has the potential of up to one-year of jailtime for Class C felonies. He offered that as the commission was considering changes to Senate Bill 91, the recommendations that came out of the commission in January 2017 were fundamentally different than the recommendations the commission first made. He explained that "they were recommendations" based upon two days of public hearing testimonies that included constituents, law enforcement, the average citizen, and the victims of crimes, who "were screaming that this is not working for us." At the end of the day, he commented, that anecdotal testimony is not statistical data and it is not the same sort of data the commission originally relied upon, but it was data that could not be ignored. Consequently, he advised, the commission decided to change its methodology going forward with respect to criminal justice reform and take into consideration the sorts of things Representative LeDoux had questioned.

[4:58:10 PM](#)

MR. RAZO turned to slide 14, "Alaska Criminal Justice Commission Recommended Changes to Sentences" referred to violations of conditions of release and the increase in penalties for theft, and advised that he realizes theft in the fourth degree is

plaguing Alaska's communities and that he understands the outrage.

[4:58:49 PM](#)

MR. RAZO turned to slide 15, "New Project for the Commission" and offered that there still remains a number of things on commission's plate such as, how to handle people charged with crimes who are chronically intoxicated, which is different from the folks detoxing. Prior to the changes to Title 47, these people were "stored in prisons" until they became sober, and they are creating a problem in hospitals and law enforcement because police officers have no idea what to do with these folks. Unfortunately, these folks are so intoxicated they are unable to take care of themselves, but they have not broken the law and being drunk in public is not a violation of the law. It is only violations of the law, in general, that will allow law enforcement to deprive someone of their liberty, and to do that without a judge and a due process proceeding is problematic and unconstitutional in many people's regard. He noted that the commission is struggling with this problem and is considering a possible voluntary agreement to sleep it off until they are no longer a danger to self or others.

MR. RAZO referred to the 10/22/17 Alaska Criminal Justice Commission Annual Report and explained that it goes through a number of issues the commission has worked on over the last few years.

[5:02:32 PM](#)

REPRESENTATIVE MILLETT referred to Title 47, and someone being drunk, and commented that currently Class C felonies are considered a misdemeanor and are not jailable offenses, except that the person has the fundamental problem of drugs and/or alcohol. Currently, she said, the state is not able to address the underlying issues because it is a misdemeanor.

MR. RAZO opined that the state has gotten comfortable about using criminal justice to deal with mental health, which he described as a slippery slope. Mr. Razo remarked that in his opinion, it is important there are facilities available so folks "can sleep it off," and have a safe and secure spot where they would not be victimized, and someone could intervene medically, if necessary, and those sorts of things cost money. He said, "For us to complain about crime when we've reduced the amount of spending, fundamentally, by a third we spend on our entire

criminal system and expect that crime isn't going to act accordingly, I think is magical thinking."

[5:04:22 PM](#)

REPRESENTATIVE MILLETT noted that the legislature created the commission to focus on recidivism and reduction of costs, but it did not focus equally as to public safety, which is where the legislature failed the commission. Currently, she noted, the state is witnessing a response from the public in not feeling safe. She asked whether Mr. Razo would be open to an amendment directing the Alaska Criminal Justice Commission to move forward with public safety at the top, then recidivism, then costs, and redefining the commission's mission, or whether it could be performed internally "without the legislature dictating to you what to look at?"

MR. RAZO responded that each commissioner believes that reducing recidivism increases public safety, it is not a mission statement issue because reducing recidivism enhances public safety and it is the "flip side of the same coin. He noted that with regard to the low-level offenses that were either changed to violations, or Class C felonies that resulted in supervised probation, the thinking and resources behind those changes was that those sorts of changes could result in increased public safety through reduced recidivism.

CHAIR CLAMAN, speaking as a member of the Alaska Criminal Justice Commission, commented that if there is one overwhelming sentiment he has received by sitting in on the commission's meetings, it is that public safety is its highest priority.

[5:07:32 PM](#)

REPRESENTATIVE MILLETT referred to the risk assessment, which she opined was solely a function of DOC, and asked whether the commission had contracted for a risk assessment and whether a draft risk assessment was available. She asked whether the Alaska Court System, Department of Public Safety (DPS), and Department of Law (DOL) should be an intricate part of that risk assessment rather than just laying it on the hands of DOC because she would like more input from outside of DOC as it is just one touch to a criminal. Whereby, she further asked whether there was a contract and whether the state would be better served with more folks taking the initiative and having input.

MR. RAZO answered that in looking at the development of the pretrial risk assessment division and the tools it will use, it included every one of those stakeholders Representative Millett named. The function of the pretrial risk assessment is within the DOC, except in order to comprehensively develop an entire new unit within the Department of Corrections, the Department of Public Safety (DPS), the Department of Law (DOL), [and the Alaska Court System] have been intimately involved. This system, he offered, involves such things as the law enforcement's initial encounter, the booking process, and the person's involvement in the court system, and he described it as all intimately related. The stakeholder list of people invited to every meeting the DOC holds on updates regarding the risk assessment and procedures includes one hundred people, and he described a strong participation from DOL, DPS, and all of the folks in DOC that are trying to learn this new methodology and tool.

[5:10:10 PM](#)

MR. RAZO advised that in terms of contracting it out, DOC hired a person to be in charge of the pretrial program and it also relied upon the same sorts of empirical evidence the commission relies on in determining what might work in Alaska. As it turns out, he explained, the factors determining whether a person is at risk for failure to appear are different than the factors determining whether that person is at risk for committing a new criminal act. It is a sophisticated tool, he described, and tools are never perfect and are subject to change with oversight and regular review by the commission. Other states implementing these sorts of tools found unintended consequences in that the tool was discriminatory for certain classes of people, and DOC is trying to avoid those sorts of mistakes. He advised, "No, they did not go out to contract" with some outside risk assessment provider to develop the tool, "they took the best and worked with that to determine" that there are two factors in Alaska to consider. Possibly, he opined, because Alaska is such a large state, failure to appear in Alaska would not be considered the same factor in another state.

[5:12:22 PM](#)

REPRESENTATIVE MILLETT asked whether the whole approval process is on DOC, and that the criminal justice commission does not get to approve it or disapprove it, neither does DPS, the court system, or the Department of Law. She commented that

stakeholder engagement is great, and asked whether there should be a better approval process.

5:13:01 PM

SUSANNE DIPIETRO, Executive Director, Alaska Judicial Council, Alaska Court System, clarified that the tool is one bit of information the pretrial enforcement officers use. The officers consider a number of objective factors, come up with a risk score, and make a recommendation to the judge and the parties. The actual decision is made in court on bail, she clarified, and it is not made within DOC.

REPRESENTATIVE MILLETT said she was talking about the risk assessment tool.

MS. DIPIETRO noted that Representative Millett was talking about the actual tool itself and explained that it is actually just an actuarial tool, similar to something an insurance company may use to predict whether the person would get into an accident. She explained that the tool was developed by a researcher at CJI Research Corporation (CJI).

CHAIR CLAMAN pointed out that the tool itself has been the subject of tremendous discussion on the Alaska Criminal Justice Commission and the commission made recommendations about how to proceed and directions were given to DOC. In the event someone is released under certain conditions based on the assessment tool, he opined that the prosecution has a right to ask for a quick hearing to reconsider if the prosecution believes the judge's decision on pretrial release was flawed.

MR. RAZO remarked that in the event the scores for failure to appear and the likelihood of committing a new crime are very low, there is a presumption of release. The entire process happens quickly because a person has a right to a speedy arraignment and must be brought before a judge within 48-hours. Consequently, he said, an interview does not take place to determine whether a person is risky, it is basically an analysis of their background.

5:16:22 PM

REPRESENTATIVE EASTMAN referred to violations of probation, and noted that Mr. Razo had stated that in some instances, violations had increase but that was a good thing because it is what he expected to see ...

MR. RIZO (indisc.) probation violations, not new criminal offenses.

REPRESENTATIVE EASTMAN clarified that it is probations being violated, and Mr. Razo had expected to see that because these people have been taken out of prison ....

[5:16:52 PM](#)

MR. RAZO advised that, generally speaking, when a person has completed their sentence they are almost always released on a supervised felony probation with a probation officer. Under certain circumstances, he advised, a person can be released on parole after the Parole Board decided that this person met the criteria and should be released from jail. Subsequent to their release, he explained, they have a probation or parole officer monitoring them to make sure they follow the judge's conditions as to what they can and cannot do while on probation or parole. Previously, he explained, when a person violated their probation by drinking, for instance, the person would have a probation violation filed against them, and they could be incarcerated immediately with a right to a hearing and representation. At that time, he offered, the district attorneys, public defenders, and court would gear up, and there would be a hearing which was usually a lengthy period of time later. These folks were accused of violating a condition of probation, they were not judged on it, but they were doing a lengthy period of time in jail on what is essentially a technical violation of probation. He pointed out that this person had not committed another crime, they had had a drink. Currently, he explained, if the probation officer has probable cause to believe that person has had a drink because he walked in with alcohol on his breath, he goes to jail for three days for the first time. The intent, he offered, is to let that person realize there is a consequence to violating orders from the judge, and if they violate again it will be five days. It empowers that person, he described, and at the same time the criminal justice reform allows the probation officer to give incentives to people who do not violate their probation by decreasing the amount of time that person is on probation.

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MS. DIPIETRO explained that when DOC measures technical violations of parole and probation, it does not have a way to count the number of times people have violated because DOC only

has a way to count the number of times the probation officers have filed on a violation. She referred to the graph of the increases, and explained that it is the number of times the officers had filed on violations, and it does not necessarily mean that because there are more people out on supervised probation, it is driving the increase. It is believed, she pointed out, that officers are more likely to file quickly the first time rather than giving the person a pass because, previously, the procedure involving a technical violation was onerous, it took a long time, and a few would stack up before it could get around to being adjudicated. The current thinking, as to the increase in violations of probation, is that officers have this new swift and certain process and they are more likely to address that first violation with a filing, as opposed to "sort of just a wait and see" whether the person does it again. The point of swift, certain, and proportionate, is filing the first time, and the fact that "in that second slide" there are fewer supervision violators taking up beds, it shows more violations being filed but they are coming in for shorter amounts of times, she said.

[5:21:40 PM](#)

REPRESENTATIVE EASTMAN referred to Mr. Razo's statement as to the offenders in prison due to violent offenses being the focus, and Mr. Razo also mentioned that the emphasis was, not having anyone in prison that was not in that category of violent offenses, and asked the amount of weight that was given [to that focus]. He related that if he was next on the list to be a victim of a violent offense, he would prefer the person was already in prison before they committed violence against him. To what extent is weight given to the victims or future victims of situations, he quiered.

MR. RAZO replied that the idea behind criminal justice reform is that the protection of victims is given great weight, and that a person who has committed a violent offense be in prison for a long time and serve a long sentence. He offered that possibly the person had a mental health disorder that was unsuccessfully treated or was not treated, and while they were in prison they actually received the sorts of services that would make it less likely they would commit a violent felony. Interventions are taking place that reduce crime, which is the mechanism and a pillar supporting criminal justice reform in that there are alternatives to prison that can work to reduce crime, and there is proof of that, he said.

[5:23:52 PM](#)

CHAIR CLAMAN advised that the commission was shown a statistic wherein many violations occur within the first three to six months. He related that the swift and certain short-term fix has a positive impact because offenders figure out how to behave in society better without spending a long time on short technical violations.

MR. RAZO agreed, and he stated that it is less disruptive goal is to not be disruptive and the person has to start all over again.

[5:24:58 PM](#)

REPRESENTATIVE LEDOUX related that she was a proponent of Senate Bill 91 in 2016, but in view of all of the crime in Anchorage, she has started to re-evaluate. The Anchorage 2014 through 9/2017 crime statistics for vehicle theft appear to have experienced a huge rise subsequent to the enactment of Senate Bill 91. She said that while she realizes all sorts of crimes have been on the rise for a number of years, in Anchorage there has been a large spike in vehicle theft which she suspects is a result of Senate Bill 91 as a possible unintended consequence. It gives her pause, she noted, that after the testimonies and all of the research, that the spike in crime was not anticipated by the research, and asked why she should believe in the research when it comes to other matters.

MR. RAZO responded that he completely understands Representative LeDoux's thinking, and the same question could be asked that if the previous mayor of Anchorage had decided not to send new police officers to the police academy and diminishing the police force by a couple hundred people, would that have resulted in more or less crime. He related that there is no way to prove that, it is not the sort of evidence one could say that there was a statistical correlation between this to that, they just happened at the same time. He said that he agrees that when looking at vehicle theft, this "hockey stick rise" in vehicle theft is definitely something that has to be contended with, and he argued that contending with it means hiring more prosecutors, more police officers, and task forces devoted to vehicle theft. Although, he said, he would find it difficult to believe that 14 months of criminal justice reform implementation, which had little to do with vehicle theft, resulted in the vehicle theft increase. The future will show whether statistics actually support the increase because it is a mathematical statistical

correlation that is being discussed. Those, he pointed out, were what the commission wanted the legislature to decide as to whether or not this might be a good idea for Alaska. For example, he said, the way one legislator might go about dealing with the crime in Alaska could be different from another legislator, and these things happened about the same time and they relate to each other, except that other things happened just about the same time.

[5:29:26 PM](#)

REPRESENTATIVE FANSLER referred to the reinvestment programs on slides 4, 5, and 6, and asked Mr. Razo to describe how the money is being used, whether it is for people or facilities.

MR. RAZO responded that the money DOC spent on its portion is easy to track, understand, and is accountable. The Department of Health and Social Services (DHSS) spent a great deal on developing community reentry and supporting existing programs that support reentry, which leverages both state and federal money to build up these community coalitions. He said he did not know the number of people that were put to work as a result. He related that there is still a long way to go as to what happens in half-way houses and whether half-way houses are the best way to deal with folks coming out of prison. He offered that a nice thing that happened at the same time as criminal justice reform is the "Results First Initiative." He explained that the University of Alaska collaborated with all of the agencies to express in real numbers the sorts of programs, their cost, and the return on investment on those programs. Many of the results are what a person would expect, and he pointed out that first of all, it costs more money to provide programs in rural Alaska, although, they have good effects. It costs more to spend money on therapeutic courts because it employs a judicial officer, court system staff, and there are the folks that go to the hearings, so a hearing is expensive, except that they get pretty good results, he expressed. The cost/benefit breakdown is from the Results First Initiative process, for example, the batterer's programs have been a popular tool to use to educate folks involved in domestic violence sorts of crimes. Although, he noted, the return on investment for those programs have been less than he would have expected. Those are the mechanisms being used to help the legislature judge whether it is spending its money in the correct places. He advised that even with all of that, the money the state is spending on prevention and treatment of substance abuse and alcohol abuse is completely insufficient, particularly with regard to detox in

this pervasive age of heroin and opioid addiction. He stressed that the state has a long way to go until it can spend money on places for these folks, such as determining who can help them, and the rules and regulations.

[5:33:58 PM](#)

MS. DIPIETRO added that the commission researched how the money had been spent and it is included in the 10/22/17 commission report. She explained that the Council on Domestic Violence and Sexual Assault has been investing its funds, such as \$1 million in 2017, and \$2 million in 2018, and in community based violence prevention and bystander programs, including Green Dot; the COMPASS project, and a lot of programs that encourage healthy relationships for youth, girls, and boys; and adult mentorship programs in the communities. She opined that this is some of the money the committee may find most impactful.

[5:34:53 PM](#)

REPRESENTATIVE FANSLER asked for a yes or no answer, in that when Mr. Razo looks at the system assessment, whether it is under the purview of this commission to look at things like the lack of ability to retain or hire folks in these systems. Currently in Bethel, he pointed out, there are two probation officers and that will not get the job done when switching to a major pretrial system that puts a much larger onerous on probation and parole.

MR. RAZO responded that under Senate Bill 64, [passed in the Twenty-Eighth Alaska State Legislature] the commission has a broad mandate with the additional requirements that were placed on the commission, and said he did not have an opinion as to whether it was something in its statutory purview.

[5:35:50 PM](#)

REPRESENTATIVE FANSLER referred to the "hockey stick spike" and asked the proper window, sample size, or ideal world for the legislature to look back and determine whether the state made progress with Senate Bill 91 reforms.

MS. DIPIETRO answered that the statute requires the commission to report the recidivism rate within three years, and in terms of any connection between crime rates and criminal justice reform, it is important to understand that crime rates fluctuate radically over time. She related that the commission will

continue to track crime rates and continue to break it down by property crimes versus violent crimes of which is difficult to correlate. She said she does not know of any research suggesting there is much of a correlation between these things, but the commission will track it and present the information to the legislature.

[5:37:46 PM](#)

REPRESENTATIVE FANSLER surmised that he is hearing that more time is needed, and asked Mr. Razo, in speaking on behalf of the commission, whether SB 54 is a proper vehicle for the legislature to address these issues. For example, he said, if vehicle theft is spiking, would it be smarter to reclassify that as a different type of crime so there is more surgical scoping when it comes to this, rather than changing entire classifications for one or two crimes that may be spiking.

MR. RAZO replied that as the chair of the commission he does not have a good answer, but in his personal opinion, the best way to deal with vehicle theft is to have more police officers on the street.

CHAIR CLAMAN commented that a current proposal before the commission is whether to take vehicular homicide and create a separate group of offenses relating to vehicular homicide because there are a number of ways in which it is different, as a legal matter, than all of the other homicides. He predicted that within the next six months the legislature would receive a recommendation as to vehicular homicide.

[5:39:45 PM](#)

REPRESENTATIVE KOPP noted appreciation for Mr. Razo's work on the commission, and also for his comment that the visible presence of law enforcement has a deterring effect on crime, of which he wholeheartedly agrees. He referred to slide 12, and noted that the statistical data point read the cost of incarceration was \$42 per day, except in other presentations he has heard an amount more than three times that amount. He asked whether this was a community residential center cost per day.

MS. DIPIETRO responded that the \$42 per day is called a "marginal cost," which is the amount it costs DOC to add one more person, and the \$159 a day figure is larger because it includes "fixed costs." She explained that whether DOC has five prisoners or 5,000 prisoners, a commissioner of DOC is

necessary, buildings are needed, and there still are some fixed costs, but if there are five prisoners and it moves to six prisoners in the same building with the same commissioner and the same number of correctional officers, the cost is \$42 per day.

[5:41:41 PM](#)

REPRESENTATIVE KOPP referred to criminal justice reforms encompassing the probation accountability with enforcement, and asked whether the more targeted supervision based on the risk assessment of higher risk offenders is resulting in the higher petition to revoke probation violations because people are not being supervised equally and are more focused on those more likely to offend.

MR. RAZO advised that he does not know the answer to the question, but he "guessed that is what is happening" as that was the desired result.

MS. DIPIETRO added that the figures on probation revocations do not include Probation Accountability and Certain Enforcement (PACE) because they were trying to give the legislature an idea of the situation with the new probation supervision reforms. The commission has the figure with PACE and they are similar trends, but the PACE program has been in place for a long time and it did not seem appropriate to add that into the figures related to Senate Bill 91.

[5:43:18 PM](#)

REPRESENTATIVE KOPP referred to an earlier question as to the commission's seemingly slow responsiveness to spikes in crime or justice trends, and asked whether about one year ago these recommendations were put forward in this bill so the legislature could take action.

MR. RAZO related that the commission prefers that as many people as possible attend its public hearings and testify and when the commission first heard from a room full of police officers who had come to listen to the commission, he said he wanted to hear from them even if they did not necessarily want to testify. He related that he reached out into the audience and asked for input from these folks who had taken the time to attend the meeting because police officers have valuable input. These men and women work on the ground every day in a most dangerous job,

and he said he believed it would be a waste of a valuable opportunity to not hear from law enforcement.

[5:44:34 PM](#)

REPRESENTATIVE MILLETT asked how Senate Bill 91 helps a heroin user charged with a first-time misdemeanor.

MR. RAZO replied that if a person is convicted of possession of heroin, formerly a Class C felony, under criminal justice reform they face up to 18-months of supervised felony probation. (Indisc.) reduction of misdemeanor, that situation.

REPRESENTATIVE MILLETT referred to a mere drug possession heroin user's first-time misdemeanor, and asked how Senate Bill 91 helps that person.

MS. DIPIETRO responded that prior to the system assessment, many of these convicted first-time Class C felony drug possessors were going to prison for periods of time, and for low-level possessors, not dealer, prison can be criminogenic, as has been discussed. In response to the question, she suggested it may help that first-time heroin user to not go to prison for a length of time. However, she pointed out, that is still a criminal justice intervention, it is still a misdemeanor crime, and the idea is that the arrest, charging, pleading, or going to trial, is an intervention in a person's life that could lead them to consider whether their life was moving in the right direction or whether they might consider the possibility of treatment. The idea behind the escalation of the penalties, she explained, is that the possessor who is not addicted does not come back, but the people who do have a problem will be arrested again and again, and as they prove through their behavior that they do have a big problem, the grasp of the criminal justice system on them increases. She advised, that is the way the structure is designed to intervene with low-level drug possessors.

[5:47:24 PM](#)

REPRESENTATIVE MILLETT noted that the amount of mere possession was changed to a new structure of possession of narcotics, and when reviewing what the statute was changed to, it could be a dealer.

MS. DIPIETRO answered that Representative Millett was correct in that there is that murky category of what is called user/dealer,

people who deal a little bit in order to serve their own addiction.

[5:48:16 PM](#)

REPRESENTATIVE MILLETT asked whether the committee should take the time to review the commission's new recommendations and try to get it right. She said she does not want these recommendations falling on deaf ears because some are valuable.

MR. RAZO advised that that is entirely up to the legislature, the recommendations made by the Alaska Criminal Justice Commission were all of the recommendations shown in the report. Although, he pointed out, some of the recommendations were made over one-year ago and have not yet had action, but all of the recommendations in the report are solid and sound recommendations. He related that the commission would not have made recommendations for changes in criminal law, policy, or procedure, without going through the process that each commissioner demands.

REPRESENTATIVE MILLETT thanked Mr. Razo for the timeliness of the report, and asked whether he had read the "op-ed piece from the Nome police commissioner in yesterday's paper?"

MR. RAZO answered, "No."

[5:50:55 PM](#)

REPRESENTATIVE EASTMAN referred to Mr. Razo's previous response to vehicle thefts and that criminals are not behaving in the manner expected and "we're not sure why." He asked whether the commission had considered that with the reduction of 437 inmate beds, that perhaps it is due to these individuals not being in prison and it is easier to steal a car out of prison.

MS. DIPIETRO pointed out that the directive for the commission was to consider recidivism reduction, and recidivism means people who have already been touched by the system. Therefore, she explained, some crime has been committed by people who have already been through the system, and some crime is committed by people who have not been through the system and she did not exactly know the proportion. The commission's recommendations are designed to reduce recidivism which is why she is reluctant to try to link crime rates to changes in laws because the crime rate is different from reducing recidivism. The system can only reduce recidivism for people it affects, those that have come to

its attention. Personally, she said, she wonders whether these are people who have already been through the system and who have this high recidivism rate and can the state try to reduce that; or whether it is new people who have never been in the system before and are just now starting their criminal justice journey. These are questions the commission is interested in, but it is difficult for her to draw conclusions at this stage, knowing so little, she commented.

MR. RAZO responded that his answer was not different because, essentially, there is no way to link the two concepts together at this point based upon what is known.

[5:53:38 PM](#)

REPRESENTATIVE EASTMAN referred to the process of someone being brought in as a heroin user who now has a misdemeanor and the person is then arrested and released, and arrested and released again, and at some point, the person actually receives jailtime. He described that Mr. Razo was expecting law enforcement to be patient individuals and more akin to caseworkers because "an awful lot of time" is spent with a single person. He asked whether that was a realistic expectation of law enforcement when considering all of the paperwork involved, and the police officer not really receiving any reward in the short term because the bad guys are still out doing bad things.

MR. RAZO replied that what has been done, at this point, is only a fraction of what needs to be done to confront the problems facing the state. He pointed out that the City of Seattle has diversion programs in place wherein a law enforcement officer has the opportunity to tell a person with a "needle sticking out of their arm" that they have a choice right now, either go to treatment with the police officer now who will get them enrolled and will meet the case worker, or, they can go to jail. That, he explained, is a type of discretionary and diversionary program that can exist in a full-bodied system of justice and it is the type of intervention a police officer can use to give someone a clear choice on what they want to do with their lives. He remarked that Alaska is not anywhere close to that point, and criminal justice reform looks forward to the possibility of creating diversion programs and alternatives offering clear paths for addicts caught for the first-time in their lives and not having their lives ruined with a felony conviction. Those types of programs have worked in other jurisdictions, and not just for caseworkers but for law enforcement also because law

enforcement enjoys having the discretion to do something besides hauling someone off to jail, he said.

[5:57:41 PM](#)

REPRESENTATIVE LEDOUX referred to the first-time heroin user arrested for their first misdemeanor and the idea of intervening in their lives to attempt to get them off the track they are on, and asked whether there is currently anyplace for them to go for substance abuse treatment in Anchorage.

MR. RAZO responded that there are not enough places.

REPRESENTATIVE LEDOUX asked how many beds are available in Anchorage for opioid treatment.

MR. RAZO answered there are 15 beds for detox.

REPRESENTATIVE LEDOUX clarified, for heroin and alcohol detox, or "for everything detox."

MR. RAZO advised that he does not know the answer but there are not enough beds, and said detox is described as the most needed portion of treatment.

[5:58:54 PM](#)

REPRESENTATIVE LEDOUX asked whether the cart was put before the horse because possibly the detox/treatment places should be up and running before letting that first-time misdemeanant heroin user back out on the street where, in order to support their habit, will steal someone's car. She suggested that it makes more sense to have detox/treatment places available, and opined that some of the jurisdictions pursuing criminal justice reform do have those facilities up and running before changing the sentencing rules.

MR. RAZO opined that the various states offering criminal justice reform are all unique and individual. Except, he pointed out, the fundamental idea is that it is better for an individual with an addiction problem facing their first-time arrest to be afforded the opportunity to deal with their problem, and not their crime.

[6:00:43 PM](#)

REPRESENTATIVE LEDOUX asked whether it was realistic that the person deal with their problem without treatment facilities by putting them back out on the street while still experiencing their addiction problem and breaking into cars.

CHAIR CLAMAN added that there is a shortage of treatment beds but when putting someone in jail for heroin possession for three months, three years, or thirty years, the likelihood is that they will be released from jail with a heroin problem that has not been treated.

MR. RAZO pointed out that the policy question is what the best use of the people's money and if it is better to spend the people's money on providing treatment beds, prevention programs, and all of the sorts of things known to be fundamentally needed by Alaskans, or to spend it on prisons.

[6:01:55 PM](#)

REPRESENTATIVE MILLETT noted that Senate Bill 91 included three phases that were in the wrong order. Wherein, she said, phase one should have been put to the bottom, and after phases two and three were completed, to then discuss the reclassification of the criminal code and sentencing.

MR. RAZO, in his purely personal opinion, answered there were roughly 55 public hearings for those choosing to spend their time with the commission in trying to understand the concepts being discussed today. Ideally, he remarked, he would have enjoyed having at least a year to try to explain the same concepts to law enforcement, the courts, the prosecutors, the defense bar, and everyone involved in the system. He stressed that these concepts are important to comprehend in appreciating why the commission would change the criminal justice system so dramatically, and it would have been well worth the time and effort to first educate people as to what the changes in the law would mean. Then, ideally, within that period of time, spend the money with upfront spending in order to have the programs in place. That process, he stressed, would have brought about a better result, although it would not have dealt with any of the other potential factors that may be impacting crime today.

[6:03:56 PM](#)

REPRESENTATIVE MILLETT commented that she appreciated his response because there was zero frontend loading, which was needed. Phase one changes all of the sentencing requirements

and allows people with problems to go free to recommit crimes, which is why the public is upset, although the public is not upset about phases two or three, she offered. Implementing phases two and three first would have made phase one successful and people want to repeal Senate Bill 91, she advised.

MR. RIZO said he would take Representative Millett's comment as a rhetorical statement.

[Chair Claman moved the committee back to public testimony.]

[6:06:10 PM](#)

NICOLE BORROMEO, Executive Vice President/General Council, Alaska Federation of Natives, was available to testify.

[6:06:26 PM](#)

BEN MALLOTT, Vice President, Alaska Federation of Natives, was available to testify.

MS. BORROMEO advised that the Alaska Federation of Natives (AFN) was "intensely supportive" of Senate Bill 91 in 2016, and is "fiercely opposed" to SB 54 because the criminal justice reforms in Senate Bill 91 are the right thing to do for Alaska, and the contemplated adjustments are premature. However, she said, the annual convention wrapped last week and through the course of those three days, the delegates and members of AFN redirected its position. The AFN now favors the swift passage of SB 54, and would like the committee to work with members across the aisle and the other body to see this passed during this fourth special session. The Federation of Native is committed to seeing this bill passed this session and is happy to work with other stakeholders, she said.

MR. MALLOTT reiterated that the Federation of Natives (AFN) passed a resolution in support of SB 54, and it looks forward to working with the committee.

MS. BORROMEO stressed that the AFN does not want to see a complete repeal of Senate Bill 91.

[6:08:06 PM](#)

REPRESENTATIVE FANSLER asked whether it is AFN's position that it wishes to see SB 54 passed in its exact form at this time, or

whether it advocates for any changes. He said he was aware the time period of incarceration for Class C felonies was an issue.

MS. BORROMEO clarified that AFN advocates for the "speediest passage possible," and there are aspects of the bill that no one is particularly happy about, but in the interest of moving Alaska forward, it would like to see SB 54 passed this special session. Therefore, she said, whatever that looks like is what the AFN would like to see passed, she said.

6:09:02 PM

REPRESENTATIVE MILLETT referred to the three phases of Senate Bill 91, and the public's backlash and frustration with phase one, and asked that if phase one was repealed and everything else went through, would AFN be comfortable with that legislation.

MS. BORROMEO responded that she was uncomfortable offering AFN's position. To the question of whether the phases are out-of-order, she said that the AFN does not necessarily believe the phases were out-of-order because a lot of data suggested this was the correct order. She opined that all could agree there was not a proper educational campaign and many folks across Alaska do not understand the bail schedule and where it ties in [with the legislation]. She suggested better informational and educational sessions on the bail schedule and how it impacts Senate Bill 91.

6:11:16 PM

MIKE COONS related that the "process is a farce, pure and simple." Senate Bill 91 went through deliberations and public input, it passed regular session, and the Senate had more hearings than the House of Representatives (audio difficulties) taking time to hear from Alaskans (audio difficulties) Senate Bill 91. Senate Bill 91, flawed as it is, (audio difficulties) knee jerk action of indecision. Prosecute shoplifting, car theft was (audio difficulties) level that all (audio difficulties) deliberative review of the law affecting all Alaskans. Yet, (audio difficulties) crimes with the (audio difficulties) attorney general all were in (audio difficulties) noticed in the earlier testimony (audio difficulties) Attorney General Sessions now (audio difficulties) federal attorney general (audio difficulties). [The audio difficulties made Mr. Coons's testimony extremely difficult to decipher.

[6:14:26 PM](#)

The committee took an at-ease from 6:14 p.m. to 6:31 p.m.

[6:31:52 PM](#)

JAHNA LINDEMUTH, Attorney General, Department of Law, advised she that has been in the role of attorney general for approximately 15 months, and other than the state's fiscal crisis, opined that the largest issues facing the State of Alaska are of public safety. She stressed that the budget crisis and the opioid crisis hit Alaska at exactly the worst time in that DOL lost over 20 percent of its general fund budget, the criminal division was cut at approximately 12 percent, and the state's crime statistics for 2015 and 2016 went through the roof in all areas. At the time of the budget cuts, it was not known that 2015 and 2016 crime statistics "were what we were" when those cuts were made. Last year she reviewed DOL's budget and recommended that the department stay flat and not make further cuts, which is where DOL ended up last year other than the small tweak of adding a prosecutor. She related that all of the cuts to DOL took place prior to her becoming attorney general.

ATTORNEY GENERAL LINDEMUTH advised that Senate Bill 91 has been blamed for a lot of things that could be further blamed on the state's fiscal crisis and the budget cuts to the public safety system. She explained that as the attorney general she sits on the Alaska Criminal Justice Commission, and although she does not have a criminal law background, said that she has completely steeped herself in criminal law during the last 15 months. She explained there are regular Alaska Criminal Justice Commission meetings, and subcommittee meetings associated with issues, and quite a few meetings on criminal justice policy issues. Public safety is the department's top priority, aside from the state's fiscal crisis, she pointed out.

[6:35:20 PM](#)

ATTORNEY GENERAL LINDEMUTH, in explaining the origin of SB 54, advised that the commission heard public testimony, testimony from prosecutors and law enforcement, and she spoke with the Department of Public Safety (DPS), and her employees regarding the implementation and unintended consequences in Senate Bill 91, and where to make changes. Subsequent to those discussions, Commissioner Walt Monegan and Attorney General Lindemuth drafted most of the recommendations that became SB 54, and the key

issues seen in the legislation that passed the Senate are recommendations from Department of Law (DOL) and Department of Public Safety (DPS). As a matter of process, she explained, they took those recommendations to the commission and had them vetted and voted on before bringing them to the legislature, and commented that that was a good policy means of getting to good substance on criminal justice legislation. The issues seen in SB 54 are the adjustments to criminal justice reform that the department believes should be changed now, she explained.

ATTORNEY GENERAL LINDEMUTH advised that in the future, additional ideas the department would like to see addressed may come forward. For instance, the Title 47 issues, intoxication and incapacitation issues that existed prior to Senate Bill 91. The commission is currently grappling with what long-term fixes could be made to improve the system, but it is not yet ready to bring forward a policy recommendation, she said.

[6:37:26 PM](#)

ATTORNEY GENERAL LINDEMUTH related that the department would be satisfied if SB 54 was passed at this time, and then starting the dialogue of what more can be accomplished. Her personal recommendation, she offered, is that beyond SB 54, as currently passed by the Senate, the next best thing to be done is to better fund public safety. Attorney General Lindemuth advised that during the next session, her recommendation will be to add more money for prosecutors with targeted adds to the public safety system, which could include adds to DPS, and most importantly the social services pieces and treatment pieces. As Representative LeDoux noted, there are not enough treatment options, especially with the opioid epidemic taking off the way it has with the demand for those services even greater than two years ago, more resources must be added at that level, she stressed.

CHAIR CLAMAN noted that many of the recommendations in the Alaska Criminal Justice Commission's report are located in SB 54, and asked that tomorrow she explain the recommendations not listed in SB 54, why she was not asking the committee to amend SB 54, and what her timeline would be for the committee to look at any additional recommendations.

[6:39:40 PM](#)

REPRESENTATIVE LEDOUX noted there was a [letter] "with a bunch of recommendations" the Department of Law (DOL) had made when initially discussing Senate Bill 91.

ATTORNEY GENERAL LINDEMUTH opined that Representative LeDoux was referring to the memorandum directed to the Alaska Criminal Justice Commission from the Departments of Law and Public Safety that resulted in SB 54.

[6:40:20 PM](#)

REPRESENTATIVE MILLETT clarified that Representative LeDoux was referring to the 6/17/2017, [letter] directed to Governor Bill Walker from John Skidmore, Department of Law referencing "SB 91, Omnibus Criminal Law and Procedure; Corrections."

CHAIR CLAMAN reminded the committee that this [letter] was previously emailed to each member.

REPRESENTATIVE MILLETT advised that contained within the [letter] are recommendations and questions posed by Mr. Skidmore that the legislators should have read that "came out so close to while we were debating it on the floor." She requested an updated memorandum on Senate Bill 91 now that phase one had been implemented, and asked whether DOL had the same concerns, such as, the inflation proofing and separation of powers issue.

[6:42:00 PM](#)

ATTORNEY GENERAL LINDEMUTH responded that Representative Millett was discussing the "bill review [letter]" for Senate Bill 91, and explained that a bill review is prepared for the governor on every bill that passes the legislature, and it describes the provisions of a bill. She clarified that it is not meant to be a recommendation one way or the other, it is meant to "tell the governor what the legislature is proposing that he sign."

[6:42:27 PM](#)

ATTORNEY GENERAL LINDEMUTH advised that tomorrow she will submit three documents DOL prepared for SB 54, as follows: FAQ on SB 54; list of all Class C felonies in Title 11 as one of the main fixes being addressed in SB 54 is giving courts the discretion for jailtime for Class C felonies because many things fall within Class C felonies, some are non-violent but many are violent offenses that deserve giving judges the discretion for jailtime; and the 5/19/17, memorandum from John Skidmore and

addressed to Senator Coghill that discusses where Alaska falls as a state on Class C felonies vis-a-vie other states that have undertaken criminal justice reform. She pointed out that the evidence behind Senate Bill 91 was that longer jail sentences were not any better than shorter jail sentences, and what the department is doing in proposing zero to one-year Class C felonies still fits within that evidence submitted to the commission from the PEW Foundation, and it is still consistent with criminal justice reform. She said that contained within the evidence submitted to the commission that lead to Senate Bill 91, it did not see evidence that zero jailtime would be appropriate for Class C felonies. It was one of those things, she described, where those in the trenches putting together the package, "we think just kind of dialed it back a little too far." The department's recommendation is dialing it up and giving a little more discretion to judges for Class C felonies. Previously, she explained, it was zero to two-years, and DOL is recommending zero to one-year because it believes that accomplishes the issues DOL and law enforcement were seeing with these Class C felonies, but it is still consistent with the principles behind criminal justice reform.

CHAIR CLAMAN asked whether there was a memorandum from DOL in roughly January 2017 that made the more narrowed recommendations related to SB 54.

ATTORNEY GENERAL LINDEMUTH replied that the January memorandum is the memorandum to the commission itself [with the recommendations from DOL and DPS], the commission then considered those recommendations and the recommendations that came out of the commission are not exactly the same as what was recommended by the departments, but DOL is fine with where SB 54 is now, as passed by the Senate.

[6:45:43 PM](#)

REPRESENTATIVE MILLETT referred to Senate Bill 91, and offered concern that the legislature lessened the penalty for a police officer injured in the line of duty.

ATTORNEY GENERAL LINDEMUTH deferred to Kaci Schroeder, DOL.

[6:47:09 PM](#)

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, opined that Representative Millett was referring to the overall sentencing

and explained that sentences were reduced overall, except the most serious offenses, such as homicide. However, she said, Representative Millett was referring to crimes committed against law enforcement and there is an aggravator present wherein the sentence could be enhanced if a crime was directed at a law enforcement officer.

REPRESENTATIVE MILLETT commented that the legislature lowered it in Senate Bill 91.

MS. SCHROEDER reiterated that the sentences were lowered across the board.

[6:47:59 PM](#)

REPRESENTATIVE EASTMAN offered his understanding that in some instances, aggravators are not allowed to be used as far increasing this penalty.

MS. SCHROEDER asked that he repeat the question.

REPRESENTATIVE EASTMAN referred to a previous discussion as to how aggravators can sometimes be used, and sometimes cannot be used. He opined that with Senate Bill 91, there are additional instances where the judge cannot consider aggravators.

MS. SCHROEDER answered that she is unaware of any language in Senate Bill 91 preventing the use of an aggravator. She explained that in the event there is an element of the offense, DOL cannot use that element to aggravate the sentence. For example, she offered, if the element of the offense requires a dangerous instrument or a deadly weapon, DOL cannot then use that instance to aggravate the offense. Senate Bill 91 did not affect that, it has been law for a long time, and the same aggravators are present as prior to Senate Bill 91, she said.

[6:49:01 PM](#)

REPRESENTATIVE EASTMAN said he understands that to be the case, except now that the penalty has been reduced, that cap is lowered and there could or could not be an aggravator. He commented that it would not raise that cap one inch.

MS. SCHROEDER responded that the maximum sentences for each offense, such as a Class C felony and a Class B felony, are the same as prior to Senate Bill 91. She explained that the presumptive ranges within those offenses have been adjusted and

once an aggravator is proved, it is within the judge's discretion to sentence up to the maximum.

[6:49:40 PM](#)

REPRESENTATIVE MILLETT commented that she thinks criminal justice reform is a good idea, although its implementation has caused some issues. She noted the question had been raised about inflation proofing and separation of powers, and asked whether Attorney General Lindemuth still believes the "inflation proofing has the issue of separation of powers within changing the inflation proofing."

CHAIR CLAMAN clarified that Senate Bill 91 includes an inflation proofing mechanism on theft offenses that would be adjusted every five-years, and Representative Millett is raising the question about whether that decision by the legislature ...

REPRESENTATIVE MILLETT interjected that the question was raised by DOL.

CHAIR CLAMAN agreed, and he said that Representative Millett was raising the question of whether DOL thinks that "we shouldn't have done that."

ATTORNEY GENERAL LINDEMUTH explained that the purpose of the bill review is to identify issues that may exist in the future, and DOL identified some legal uncertainty as to what a judge would do with that particular issue in the future. She pointed out that it is not something DOL was saying the legislature needs to fix.

[6:51:04 PM](#)

REPRESENTATIVE MILLETT paraphrased a portion of the memorandum as follows: "No other state in the country has a similar provision of the law that adjusts the value of threshold or property crimes for inflation. So, having the jud -- judicial branch adjust the property crime thresholds may also raise two separation of powers issue," and it goes into the first and second issue. She related that the issue was raised in the memorandum, and asked whether it should be clarified now so inflation proofing is not part of the question or part of a problem going out into the future.

ATTORNEY GENERAL LINDEMUTH opined that the idea of inflation proofing is a good policy idea, and DOL identified that there

were some potential legal challenges. She related that "since we're already here and we're already doing that" to wait and see whether there is a court challenge on that particular issue. She explained that when the Department of Law (DOL) prepares a bill review, it tries to identify legal issues for the governor. She pointed out that within a bill's legislative process, DOL is involved along the way, and in the event DOL sees any constitutional issues it works with the legislators to try to resolve the issue during that process, and this issue did not rise to the legislative level of something that needed to be fixed, she advised.

[6:53:07 PM](#)

REPRESENTATIVE EASTMAN offered that at five-years out, in the event there is a legal challenge and the court finds it was a problem, approximately how many cases might be impacted.

ATTORNEY GENERAL LINDEMUTH replied that she does not have that number as that would be on a case-by-case basis. In the event there was situation such as that, any change to the law would have to come back to the legislature, other than being inflation proofed at the front-end, she explained.

[6:53:54 PM](#)

REPRESENTATIVE LEDOUX asked exactly who would challenge the law, because the person being prosecuted would not challenge the inflation proofing as that person would benefit by the inflation proofing, presumably.

REPRESENTATIVE MILLETT commented, the guy who is charged the day before with the lower, lower ...

REPRESENTATIVE LEDOUX advised Representative Millett that she was asking Attorney General Lindemuth.

CHAIR CLAMAN pointed out that the legislature raised the misdemeanor theft level to \$1,000, and say inflation bumped it up to \$1,100, and someone was charged with a Class A misdemeanor for \$900 in property theft, and one-year later the level is \$1,100, that person is charged with a misdemeanor for stealing \$1,050.

REPRESENTATIVE LEDOUX asked whether that person would have standing to ...

ATTORNEY GENERAL LINDEMUTH responded that it is difficult to speculate about a potential legal challenge, and she could not think of a party that may challenge this, but that does not mean it would not be challenged in the future, possibly Fred Meyer who believes ...

CHAIR CLAMAN interjected that because victims of crimes have rights here, the challenge would come from a victim of crime.

[6:56:38 PM](#)

REPRESENTATIVE MILLETT opined that under administrative parole, a person could have their sentence reduced by 75 percent based on the use of administrative parole in the sentencing and not going before the Parole Board.

ATTORNEY GENERAL LINDEMUTH deferred to Kaci Schroeder.

MS. SCHROEDER answered that for certain types of offenders with certain classes of offenses who meet the criteria must have served one-fourth of their sentence, or the mandatory minimum required under law, or the term of imprisonment imposed by the judge subject to discretionary limitations. She advised that it is generally for property-type of offenses because there are many exclusions, such as crimes against a person, Class C felonies, sex offenses, and more. She offered that she does not know how this is working on the ground as that would be a question for the Department of Corrections (DOC) as to how many people it has seen who are eligible and released under this provision.

[6:58:11 PM](#)

REPRESENTATIVE MILLETT described that it is a policy question as to whether the legislature wants a prisoner to have one-fourth of their sentence to serve or ... it is a big reduction in sentencing based on some of the circumstances being discussed. She asked the logical reason the legislature should reduce someone's sentence by 75 percent.

ATTORNEY GENERAL LINDEMUTH opined that the commission may have more insight as to that recommendation, and added that it is a carrot/stick issue because many provisions in Senate Bill 91 are trying to incentivize good behavior, together with the idea of putting the most egregious and violent people in prison. She commented that using flexible consequence-type issues for those

non-violent lesser offenses fits within the parameter of criminal justice reform.

7:00:06 PM

CHAIR CLAMAN offered a scenario of an assault in the third degree against a firefighter absent an aggravator, and under this amendment, if it is a first offense that person would face a sentence of zero to one-year. He asked what happens to the sentencing range if the prosecution proves up the aggravator that it is a uniformed firefighter.

MS. SCHROEDER answered that if the prosecution is able to prove the aggravator, the judge could sentence up to the five-year maximum for a Class C felony.

7:00:54 PM

REPRESENTATIVE KOPP pointed out that for decades there have been provisions, such as AS 12.55.078, suspending entry of judgment, which read as follows:

(a) Except as provided in (f) of this section, if a person is found guilty or pleads guilty to a crime, the court may, with the consent of the defendant and the prosecution and without imposing or entering a judgment of guilt, defer further proceedings and place the person on probation. The period of probation may not exceed the applicable terms set out in AS 12.55.090(c).

REPRESENTATIVE KOPP offered that certain offenses are disqualified from that, but Alaska law has recognized for 50-years that there are certain cases where the interest of justice is served. Representative Millett brought up good questions as to structuring sentences where people have an opportunity to be out on probation or parole earlier, and Mr. Razo would be the person to ask. He pointed out that "we've had things like this in the statute book" that had nothing to do with any recent reform wherein legislatures long-ago set up these types of opportunities in several different [statutes].

CHAIR CLAMAN offered that the suspended imposition of sentence has been on the books for a long time, and there have been awkward issues involving the suspended imposition of sentence because technically a person is found guilty with a suspended imposition of sentence and they do not technically impose a

sentence. The criminal justice reform, he offered, adds a new process called the suspended entry of judgment which essentially happens before a finding of guilt, with the consent of all parties, in addressing the issue of someone with good rehabilitation potential. The thought was that for that person to have an opportunity to successfully complete their rehabilitation and be able to say they have a clear record, which is "murky" on the suspended imposition of sentence. The principle of trying to make it possible to clear a person's record has been part of Alaska's criminal justice for decades.

[7:03:24 PM](#)

REPRESENTATIVE MILLETT referred to the three phases of Senate Bill 91, and asked whether the state would have been better served to implement phase one after phases two and three. She asked Attorney General Lindemuth's thoughts about repealing the revisions of the classification of the criminal code, and stopping provisions such as, the reclassifications and sentencing reductions, administrative parole, the redefinition of a mere drug possession, and the recidivist amendment wherein the misdemeanors continue on and on, and never get to a felony.

ATTORNEY GENERAL LINDEMUTH responded that the classification and sentencing is a critical component because it is how criminal justice reform programs are paid. The pretrial services office and the adding of 16 new police officers has not yet come into effect, but it is an expensive piece being paid by reducing sentences and having certain people not in jail so much of the time. There is a whole cost component with sentencing and classification. Secondly, she pointed out, as far as the timing, it is a little too late. She offered that in a perfect world, it would have been better to have the pretrial services piece in place before moving forward and interacting with the folks not spending as much time incarcerated pretrial. Also, she stressed, the bail schedule was not part of Senate Bill 91, and its timing exacerbated the issues. As of January 2018, those pretrial officers will be on the ground and things should start getting better on that front, she said.

[7:05:46 PM](#)

ATTORNEY GENERAL LINDEMUTH referred to vehicle theft, especially in Anchorage, and offered that it is a Class C felony and the fixes in SB 54 will largely address that particular issue. She advised that her former Anchorage district attorney advised her, as far as resources go, that the Anchorage office must

prioritize the violent felonies. She said that given the limited resources in Anchorage and the record number of homicides over the last two-years, let alone all of the other violent crimes, [vehicle theft] type cases are not receiving as much attention as they should if DOL was better funded, she said.

[7:06:58 PM](#)

REPRESENTATIVE MILLETT referred to Attorney General Lindemuth's statement regarding reinvestment and cost to the state, and asked about the costs to society in letting these people out of jail by lowering sentencing. She related that constituents are upset about people frequently breaking in and stealing cars, and that societal costs must be balanced with the cost of government.

ATTORNEY GENERAL LINDEMUTH reiterated that pretrial services will begin in January, and the pieces believed to be misses in Senate Bill 91 are addressed in SB 54, such as Class C felonies, recidivist theft, and violations of conditions of release. The big thing that had been seen from law enforcement on the ground was its lack of the ability to put someone in jail pending the next bail hearing with the judge. Those issues are addressed in SB 54, she reiterated. She stressed that the recommendations in Senate Bill 91 are based on science, including evidence from a number of other jurisdictions undertaking these types of reforms, that it works. There are small tweaks to be taken in SB 54, she acknowledged, but the big picture is the evidence supporting it in the longer run. Once the state gets up and running, this actually should improve public safety, and she related that "right now, we have to go with what the best evidence is, and that's where we're at."

[7:09:51 PM](#)

REPRESENTATIVE LEDOUX noted Attorney General Lindemuth's scenario of a perfect world wherein phases two and three would have come before phase one. She asked, why not implement phase one after phases two and three are fully implemented.

ATTORNEY GENERAL LINDEMUTH reiterated that this October 2017, and everything begins as of January 1, 2018. She referred to the cost of the system and educating all of the prosecutors and law enforcement, and said that putting a pause on it at this particular juncture, the timing is that "we're there and we'll

see what -- what this does when we have those pretrial officers on the ground in January."

7:10:44 PM

REPRESENTATIVE LEDOUX commented that alcohol and drug abuse treatment services are still not available.

ATTORNEY GENERAL LINDEMUTH clarified that within the last 18-months, additional resources have been put into the system and more needs to be done. In the event there was a fiscal plan, her recommendation would be to put a significant amount of more money into those treatment options, more than what has been planned under the \$99 million over a six-year type of investments. Put more money in there now, she expressed, especially given the opioid epidemic and the demands being experienced on those issues, and accelerate that piece of the reinvestment. That does not mean the state should pause everything else, she pointed out.

7:11:41 PM

REPRESENTATIVE LEDOUX noted that the bottom line is that there is not a fiscal plan currently, it is what it is. She asked whether the [legislature] should want those services in place before letting people out of jail knowing they cannot receive the anticipated treatment.

ATTORNEY GENERAL LINDEMUTH responded that it is all a matter of degree, and "we just have to keep working toward this." At the same time, she pointed out, that does not mean the whole package is flawed or that the state cannot move forward with criminal justice reform. The Departments of Law and Public Safety have looked at this and believe the tweaks that needed to be made are in SB 54, she reiterated. The commission will continue discussing these issues and additional evidence will come forward, especially with the additional reinvestment that is needed for substance abuse treatment and getting those resources online. At this juncture, she advised, until there are further issues vetted at the commission level, no further legislative recommendations are being made to the legislature.

7:13:07 PM

REPRESENTATIVE LEDOUX asked whether SB 54 incorporates all of DOL's recommendations to the commission, and if not, what is left.

ATTORNEY GENERAL LINDEMUTH explained that in looking at the January 2017, memorandum directed to the Alaska Criminal Commission from the Departments of Law and Public Safety, everything listed in the memorandum is addressed somewhere in SB 54, but it may not be in the exact form as the recommendation.

[7:13:59 PM](#)

The committee took an at-ease from 7:13 p.m. to 7:17 p.m.

[7:17:24 PM](#)

ATTORNEY GENERAL LINDEMUTH referred to the above-mentioned memorandum and reiterated that everything in the memorandum was addressed in some manner in SB 54, but possibly not in the same form as offered in the memorandum. Except, Number 7 at the bottom of page 4, "Align Discretion of Bail and Pretrial Services Officers to make Recommendations with Judge Discretion to Impose Bail." She then turned to page 5, and pointed to the two-colored charts, one is pretrial service officers and the other is the courts. She advised that the discussion at the commission level was that this part of the statute had not yet gone into effect, and to wait and see how it works in practice as to whether a fix is necessary. The thought of some of the commissioners was that judges are smart enough to figure this out, so a fix may not be necessary. Number 7 was the only thing hanging out there and it is really for future consideration after it goes into effect, she said.

[7:19:02 PM](#)

REPRESENTATIVE FANSLER referred to first-time Class C felonies and aggravators, and asked the attorney general to walk the committee through typical aggravators, and whether aggravators are typically attached to crimes, or whether aggravators are rare.

MS. SCHROEDER responded that aggravators are not run of the mill; however, there are many aggravators in statute. She said she could not say that there is always an aggravator that will apply, but when they do apply they can be pursued, and the person can be sentenced above the presumptive range. For example, a crime directed at a law enforcement officer has an aggravator, and many aggravators are located at AS 12.55.155, as follows: a crime committed in a domestic violence situation; a

person commits another felony while on bail release for a felony; and those types of crimes.

[7:20:39 PM](#)

REPRESENTATIVE FANSLER noted that the pretrial services office begins January 2018, but in some districts, the post-trial probation is nowhere close to sufficient. He asked how DOL is looking to address this issue, and why are there only two probation officers in Bethel for "seven spots?"

ATTORNEY GENERAL LINDEMUTH commented that the Department of Corrections (DOC) could better address that question because probation runs through DOC. In looking at the big picture, there is more that should, and can, be done with probation and she is working with other departments to put together a Public Safety Action Plan for Governor Walker to take concrete steps and increase resources for probation. She advised that putting them in the community and having more community involvement makes better sense than having the state provide those (coughing).

[7:22:14 PM](#)

REPRESENTATIVE FANSLER noted the focus has been on many specific crimes, and asked why not reclassify certain crimes and move them out of a Class C felony up to a Class B felony, or move them to a more appropriate location to get the sentence. He also asked whether that would be a more tactical and surgical manner to accomplish what "we're trying to accomplish" rather than changing the whole Class of felonies.

ATTORNEY GENERAL LINDEMUTH answered that that is not a recommendation the Department of Law (DOL) is currently making, but it is certainly a legislative prerogative. The legislature can always look at offenses and decide the appropriate sentence, putting aside the whole Senate Bill 91 issue, she said.

[7:23:34 PM](#)

REPRESENTATIVE FANSLER related that there is a chicken and the egg situation here where these services need to be paid and the choice was made to take money from the state's prison system and turn it into rehabilitation. He surmised that if the state wants these programs to be successful, it needs money to do it and it needs to figure out a way. Under Senate Bill 91, the legislature chose to take the money out of the Department of

Corrections (DOC), which is why this certain order was chosen, and at this point the [state] is committed, he stated.

ATTORNEY GENERAL LINDEMUTH agreed with Representative Fansler, and she said that was a critical piece, and also stopping the projection of where the state was headed and adding new prisons in the future. She offered that a lot of the cost savings was just avoiding those additional costs that the projection was moving toward. Also, she added, being smart about how the state uses its corrections in putting certain people in jail, and that sometimes if folks can stay out of prison, keep their job and their life in order, they may have a better success in the long run. Reinvesting the saving and is not enough, she stressed, the state really does need to front-load the treatment options and put more money in upfront to have the successes anticipated.

[7:26:38 PM](#)

REPRESENTATIVE KOPP reiterated the issues raised by constituents over vehicle theft, the presumptive range for first offenders being just probation, low-level thefts, and the seeming lack of law enforcement ability to issue any repercussion, and asked whether SB 54 fixes those problems.

ATTORNEY GENERAL LINDEMUTH answered that as far as the sentencing and legal structures that need to be tweaked by the legislature, all are addressed by SB 54. The other piece is resources and making sure there are enough prosecutors on the ground to actually prosecute the crimes being referred to DOL, and those two issues go hand-on-hand. As far as Anchorage, the police department added 40 new positions over the last two years generally, and it expects to add more people throughout the next year. As more Anchorage law enforcement is added on the ground, she pointed out that more crimes are referred to DOL, and in Anchorage, DOL handles the felonies and the Municipality of Anchorage attorney handles the misdemeanors. Although, she advised, as far as the felonies go, DOL will have to prioritize those because it does not have enough prosecutors on the ground. After the passage of SB 54, funding and resources issues are the second piece that needs to be addressed, she advised.

[7:28:29 PM](#)

REPRESENTATIVE MILLETT referred to misconduct involving a controlled substance and mere drug possession, and asked whether the legislature got it right and how it helps the first-time misdemeanant heroin user.

ATTORNEY GENERAL LINDEMUTH responded that she does not know if the legislature got it right, time will tell whether this experiment works. The fundamental question is whether the state wants to criminalize and institutionalize the people in corrections who have substance abuse treatment issues, or try to get those people into treatment. Statewide, she said, DOL deals with misdemeanors, other than the Juneau and Anchorage municipalities, and the state needs to have resources to put toward misdemeanors, noting that the department will have to prioritize felonies, especially violent felonies. The department does not have enough people on the ground to do the type of misdemeanor prosecution that is needed to effectuate that piece of the puzzle, she expressed, and simply changing the consequence by making the sentence longer will not fix the issue. Resources are needed in order to have those cases run through the system regardless of whatever the sentence is that is being imposed, she said.

[7:31:46 PM](#)

CHAIR CLAMAN noted that Representative Millett had asked what this legislation is doing for the heroin user, and a heroin user having the choice between being convicted of a misdemeanor versus convicted of a felony would probably choose a misdemeanor because their odds of a decent life, after treatment, is better without a felony on their record. Representative Millett's question was whether it was a societal matter, he asked whether the state will get more people into treatment if they are convicted of felonies with the state spending a bunch more money to put them in prison.

[7:32:43 PM](#)

REPRESENTATIVE MILLETT commented that her point was that the state is releasing people with mere drug possession and hoping they get into treatment, while the legislature knows that treatment is not available. Again, she remarked, it is a representation of putting the cart before the horse, and the state is lessening sentences, lessening opportunity, and sending people out into the world with a false hope that somehow this bill will save them when it actually impacts society in an adverse manner.

CHAIR CLAMAN noted that Representative Millett did not ask a question.

7:33:15 PM

REPRESENTATIVE KREISS-TOMKINS noted that an Anchorage Police Officer shared that 440 officers have been cut to 340 officers over the last five-years and the Anchorage Police Department (APD) is currently looking to increase that amount, but those officers are not yet on the street. He asked whether he approximately understood the level of the Anchorage Police Department's resources, and to what degree law enforcement refers crimes for prosecution to DOL, and whether she was seeing a prosecutorial resource shortfall, particularly if these new officers come onto the street and more crimes are referred to DOL.

ATTORNEY GENERAL LINDEMUTH commented that as far as the APD officer level, she did not know where it was previously and opined that Representative Kreiss-Tomkins was approximately correct wherein they had a high in the 400s and now are in the 300s.

CHAIR CLAMAN offered that in 2009 the count was 414, in 2014 it was approximately 328, and currently approximately 408 currently.

7:35:34 PM

ATTORNEY GENERAL LINDEMUTH noted that there had been a significant amount of people on the street in the last 1.5 to 2 years, and that those officers on the ground are making referrals to the DOL. She reminded Representative Kreiss-Tomkins that she began her testimony today advising that DOL does not have sufficient prosecutorial resources, and she reiterated that if anything, the department has been cut too deeply which impacts its ability to provide core services, including prosecuting crime. She remarked that while the number of crimes the department is pushing through have not changed much, the type of level the department is prosecuting has gone up, homicides are up, violent assaults are up considerably which requires DOL to prioritize. The most serious crimes receive attention, which means the lesser offenses of misdemeanors and non-violent vehicle thefts do not receive the attention they need. She expressed that if DOL had more resources she was sure more crimes would be prosecuted.

7:36:48 PM

REPRESENTATIVE KREISS-TOMKINS offered that when the state had surpluses, the department had more resources and asked whether vehicle thefts were being prosecuted.

ATTORNEY GENERAL LINDEMUTH responded that certainly more vehicle thefts were prosecuted than the current amount.

[7:37:06 PM](#)

REPRESENTATIVE LEDOUX reiterated the public's outrage and society's condemnation, noting that Attorney General Lindemuth said SB 54 fixes the problem with respect to low-level misdemeanors so that people can no longer think they are going to simply get away with this without any punishment. She asked whether it actually fixes it for first-time misdemeanor shoplifting, for example, or if those folks still have a get out of jail free card.

ATTORNEY GENERAL LINDEMUTH answered that Representative LeDoux was correct, those repeat offenders were the problem complained about from Fred Meyer, and other folks who testified at the commission and legislative levels. She asked whether the legislature was going to put a first-time shoplifting teen-age offender in jail, and opined that this was not happening prior to the enactment of Senate Bill 91, even with the ability for jailtime. She said she does not look at it as a get out of jail free card, it is prosecutors and courts using discretion to deal with someone who may have made one small mistake, and does not have a life of crime behind them. The issue, she remarked, is the recidivist issue and those with repeat offenses.

[7:39:03 PM](#)

REPRESENTATIVE LEDOUX noted that in reality, prior to Senate Bill 91, the first-time shoplifter probably would not have received jailtime, but with jail hanging over their heads, the state had more ability to "scare the hell out" of the teen-ager when they thought about committing a shoplifting offense. Currently, that does not exist, she comments.

CHAIR CLAMAN asked, under present statute or under SB 54.

REPRESENTATIVE LEDOUX answered under both.

ATTORNEY GENERAL LINDEMUTH responded that the state no longer has the tool of scaring someone with jailtime for a low-level theft.

REPRESENTATIVE LEDOUX commented that if the tool was not being used to incarcerate the teen-age who had made a mistake, the parents or judge could use it to scare that person, so why not keep the tool.

ATTORNEY GENERAL LINDEMUTH answered that it is important to return to the evidence presented to the commission resulting in the passage of Senate Bill 91. There is good evidence to show that jailtime in those kinds of situations can actually create a problem versus solve a problem, and it is important to review the evidence in those types of issues, especially a low-level theft of less than \$250, she said.

[7:41:19 PM](#)

REPRESENTATIVE LEDOUX argued that Attorney General Lindemuth had said that, in reality, the first-time offender for the low-level petty crime did not actually end up in jail. She asked why the legislature had to fix a problem that did not exist and remove the tool that could scare someone.

CHAIR CLAMAN related that during recent conversations with police officers, he asked what happened with low-level theft offenses prior to criminal justice reform, and the answer was that they looked at the offender and the circumstance. In the event they had some 18-year old student in college and if it was their first shoplifting offense, they would write a citation, send them home, and never take them down to the station. By the same token, he said, if it was a 26-year old with a long string of other crimes but never arrested for a theft offense, they would take them to the station. Generally, he commented, when they had people with no prior record, the people were not threatened with jail at any point in time.

REPRESENTATIVE LEDOUX said that Chair Claman proved her point.

[7:42:52 PM](#)

REPRESENTATIVE LEDOUX commented that, generally there are decent, fair-minded people on both sides of issues, and she had noticed, "in this hearing, at least" all of the folks supporting SB 54 do not want to see it strengthened, and certainly do not want a repeal of Senate Bill 91. Representative LeDoux said that in speaking as the attorney general of this state "you probably know lots of attorneys, lots of folks" and asked the

name of a bright and articulate person who would disagree with her analysis.

ATTORNEY GENERAL LINDEMUTH answered that she does not know anyone who has really looked at this issue and come out strong in repealing Senate Bill 91, or criminal justice reform. Those folks who have looked at this issue, including all of the commissioners on the commission representing criminal justice agencies, judges at every level, mental health authorities, and everyone involved, believe the state should continue on and make these changes that the commission recommends, but not go further and not do a complete reverse and end up with something completely different.

[7:44:52 PM](#)

REPRESENTATIVE LEDOUX questioned, "So, you know nobody in the entire legal community that you have any respect for. I mean, what about Mr. Campion [former Anchorage District Attorney, Clint Campion] who might have a different opinion."

ATTORNEY GENERAL LINDEMUTH advised that she spoke with Mr. Campion about this very issue, and his view is aligned with the Department of Law's view. She stated that he believes SB 54 should pass and that there may be future tweaks needed in the future, but he is ... "I mean I see you shaking your head, but I've had that discussion with him, and you are welcome to call him and ask him to testify." She related that she does not believe Mr. Campion was arguing for something that goes much further than what has been put forth, and Mr. Campion's biggest concern is to give DOL the resources it needs to prosecute crimes.

[7:45:46 PM](#)

REPRESENTATIVE LEDOUX said she thought one of the reasons he resigned was that he said how difficult it was in light of both the lack of resources and Senate Bill 91.

CHAIR CLAMAN said that rather than arguing about hearsay statements reported in the newspaper, he would endeavor to see whether Mr. Campion was available.

ATTORNEY GENERAL LINDEMUTH commented that that is not her understanding of why Mr. Campion left, and opined that he had another opportunity he wished to pursue.

[7:46:53 PM](#)

REPRESENTATIVE EASTMAN referred to how the state calculates recidivism, and offered a scenario of someone committing two crimes, wherein they shoplifted to the point they received some jailtime, and they are then released and do it again. He opined that would count against the state's recidivism goals. He said that post Senate Bill 91, if that same individual commits those same crimes but not put in jail, whether they count against the state's recidivism, or has recidivism been reduced "and we can declare victory."

ATTORNEY GENERAL LINDEMUTH surmised that a recidivist is a person who has a conviction and receives another conviction within a certain period of time. It does not depend upon whether there was actual jailtime served, it depends upon whether there was another conviction, she explained.

[7:48:10 PM](#)

REPRESENTATIVE EASTMAN noted that legislators have been encouraged to let the process work with regard to Senate Bill 91, and absent public support for these reforms, he asked whether it can work.

ATTORNEY GENERAL LINDEMUTH commented that obviously the public needs to generally buy into the system and feel that the system works, and part of that system is an education piece to understand how the system works. She pointed out that a lot of blame has been put upon Senate Bill 91 that had nothing to do with Senate Bill 91. She suggested educating the public as to what is being fixed in SB 54 versus resource issues, and that DOL is not prosecuting certain types of offenses because it does not have enough prosecutors. The State of Alaska had an unworkable system, it was not functional and would have cost a lot of money going forward as a state, and the state needed better outcomes, she said.

[7:50:00 PM](#)

REPRESENTATIVE EASTMAN surmised that a degree of buy-in from the public is necessary in order for it to work, and "those of us on the ground" are sensing that the buy-in may not be present, and asked whether the department has a plan as to how that could be secured.

ATTORNEY GENERAL LINDEMUTH reiterated that a lot of it is education and outreach, having these types of hearings available to the public is helpful, and she said she has been on radio show programs, as have others, discussing these issues, such as what are criminal reform issues, what is a resource issue, how those things fit together, and how is the opioid crisis generally impacting society. Governor Walker tasked her with putting together a Public Safety Action Plan where the state could take concrete steps to improve public safety, and she pointed out that SB 54 is just the first fix, the public is owed a plan as to how the state is going to tackle public safety moving forward. Rolling back Senate Bill 91 altogether is not what she is recommending. There are many other things to do as a state and she hopes to roll that plan out shortly, so the public may buy-in and know that something is happening. She referred to her press conference with the United States Attorney's Office last week, and advised that the Department of Law (DOL) is partnering with its federal law enforcement agency partners to take on violent crime, do more with better corroboration and cooperation, and super-charge those efforts focused on the most violent criminals in Alaska. She advised that things are taking place to improve public safety, but it is a matter of educating all of Alaska about where the state is going, what is being done, and not being reactive to a public's opinion that may be uninformed.

[7:52:14 PM](#)

REPRESENTATIVE KOPP noted that for 23-years he took people to jail almost every day and have arrested "many thousands," and he has seen multi-generations of family members repeating the same particular offense patterns. He said he would like DOL to review the issue of, how to keep a tail over people who have had a drug possession offense, how to keep them honest, clean, and in treatment doing what they should do, and not make a felon out of them because that question, literally, has not been discussed. He asked whether the state has to "make someone a felon before we can help them." Thanks to CourtView, that arrest, even if it is dismissed and goes away can keep people unemployable for the rest of their lives for even a first-time offense, he said. It is true, he commented, police officers are frustrated when they do not see a good result come out of their work effort and risk, there is a saying, "You can beat the rap, but you can't beat the ride." Although, he acknowledged that may make a police officer feel good for the moment, ultimately everyone wants to see a long-term change in someone's behavior, and to especially not pass it on to the next generation. He

suggested finding a way to allow DOL prosecution to have a hold on someone without that hold turning into a showing that they were arrested for a first-time felony, even if it was pled down to a misdemeanor. The focus is not allowing youthful first-time offenders to become felons for life, even when they were never convicted because it will be on CourtView for the rest of their lives. That is a real challenge, he expressed. There have been discussions about the huge cost to all Alaskans around unemployability and public assistance, and for every person out there who becomes a felon, "we carry that as a society for the rest of their lives." In the event a person deserves a felony, they should receive a felony, he pointed out, but "for our first-time, in particular, our youthful offenders, to be able to prevent that, we are literally saving the next generation" by keeping them in the work pool, keeping them alive, and keeping them successful.

7:56:04 PM

REPRESENTATIVE MILLETT countered that accountability is an established belief with prison time as a deterrent, and more people will commit crimes when lessening the penalties. She asked whether Attorney General Lindemuth had read an article from a group of police chiefs who believe the cart was put before the horse, and asked whether the legislature should not listen to the experts and people on the ground who are trying to protect the public yet taking away their tools.

ATTORNEY GENERAL LINDEMUTH responded that she had read the article and pointed out that the first recommendation in the article was to pass SB 54, which would be her starting point. The testimonies of law enforcement and prosecutors lead to the recommendations, and then the vote by the commission, and those recommendations lead to SB 54. She acknowledged frustration at the law enforcement level that may go further than SB 54, and she invited law enforcement to testify before the commission, so it can continue vetting these issues. She explained that whatever is passed now is not written in stone, and it does not mean the various entities cannot continue considering where to move forward. For example, she advised, law enforcement is struggling with the Title 47 holds and intoxicated folks, noting there is a line between intoxication and incapacitation and how that plays out will be further vetted by the commission. She said she disagrees if what is being recommended is to walk away from what has taken place because the commission is committed to the process and hearing from law enforcement.

8:00:08 PM

REPRESENTATIVE KOPP stressed that he wanted to let Representative Millett know that she misunderstood what he had stated. He explained to her that he had asked DOL to look at just first-time drug possession offenses for youthful offenders, and he did not speak to any other felonies. He said, "I am not about to advocate lightening felony sentencing for all those other categories. I want to look at what are we doing with kids on the first-time drug offense, how do we keep them accountable, and get that first felony rap."

CHAIR CLAMAN advised that his point was well taken.

[Chair Claman returned the committee to public testimony.]

8:01:31 PM

TARA RICH, Legal and Policy Director, American Civil Liberties Union of Alaska, advised that the American Civil Liberties Union of Alaska (ACLU) is calling on the legislature to take quick action on SB 54, and opined that the committee has absolutely identified that there has been a confluence of circumstances. Originally, she explained, ACLU's perspective was that it is too early to start picking apart Senate Bill 91 and making changes, except with the state's economic crisis, an opioid epidemic exploding in the state, and vehicle theft exploding, the ACLU understands that this may be a needed a change. She responded to a couple of suggestions made during this hearing as to the danger in basing further substantive changes to Senate Bill 91 on fear or anecdotal testimony and not research and data, while pointing out that DOL had mentioned last week that a full repeal of Senate Bill 91 would be dangerous. She referred to the suggestion of pausing phase one, and remarked that it is important to think about what that means, such that, when advising to either repeal or put a pause on phase one of Senate Bill 91, the discussion is about sending more people back to jail or incarcerating further people. She pointed out that it comes back to the question, "How should we spend the money," and Alaska does not have infinite resources and the legislature has to choose. She said it reminds her of the adage, "Don't tell me what your values are, show me your budgets and I'll tell you what your values are." She asked whether the legislature wants to take action and go through the continuum of care that Mr. Razo had discussed, such as preparing for release before someone is released, assisting in reentry, reinvestment, and diverting

people away from the criminal justice system versus continuing to use jails as warehouses for the mentally ill as a catch-all.

[8:04:09 PM](#)

CHAIR CLAMAN advised public testimony would continue during the October 24, 2017 meeting, at 6:00 p.m.

[8:06:21 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 8:06 p.m.