ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
October 24, 2017
9:00 a.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kris-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 Les Gara
Representative Andy Josephson
Representative Dan Saddler
Representative Geran Tarr

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	(S)	FOURTH SPECIAL SESSION BILL - SCR 401
10/23/17	(H)	FOURTH SPECIAL SESSION BILL - SCR 401
10/23/17	(H)	STA REFERRAL WAIVED Y25 N12 E2 A1
10/23/17	(H)	STA AT 12:30 AM GRUENBERG 120
10/23/17	(H)	-- MEETING CANCELED --
10/23/17	(H)	JUD AT 1:00 PM GRUENBERG 120
10/23/17	(H)	Heard & Held
10/23/17	(H)	MINUTE(JUD)
10/24/17	(H)	JUD AT 9:00 AM GRUENBERG 120

WITNESS REGISTER

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, discussed the Alaska Court System's bail schedule, and answered questions.

JOHN SKIDMORE, Director
Legal Services Section
Criminal Division
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

GRACE ABBOTT, Staff
Representative Charisse Millett
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of SB 54, testified and answered questions.

CLINT CAMPION, Attorney
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, testified and answered questions.

JORDAN SHILLING, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

ACTION NARRATIVE

9:00:54 AM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 9:00 a.m. Representatives Claman, Fansler, Kreiss-Tomkins, Kopp, and Millett (alternate for Representative Reinbold) were present at the call to order. Representatives LeDoux and Eastman arrived as the meeting was in progress.

[Due to their length, some amendments discussed or adopted during the meeting are found at the end of the minutes of SB 54. Shorter amendments are included in the main text.]

SB 54-CRIME AND SENTENCING

9:01:28 AM

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 advised that Nancy Meade, Alaska Court System, would explain the Alaska Court System's bail schedule, and advised that the bail schedule is not part of the legislature's action on criminal justice reform.

9:02:33 AM

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, advised that there may have been a misunderstanding about the bail schedule and explained that the bail schedule is the courts "sort of" set of presumptive bails that take place when someone is arrested, and there have "always, always" been court bail schedules. She further explained that at the time an arresting officer brings someone into a correctional facility, they look at the bail schedule, and follow it. For example, she advised, releasing someone on their own recognizance (OR) or charging the bail amount listed on the bail schedule. Under court rule, the bail schedule does not apply to felonies such that when someone is charged with a Class C felony vehicle theft and brought to jail,

the person cannot be released. The bail schedule does not apply to any crimes of domestic violence, or violating conditions of release set in a crime of domestic violence. Statutorily, she advised, those people must be held until they see a judge the next day at arraignment. The bail schedule does have a list of things that are presumptively "OR releases" which means the person should be released on their own recognizance. She explained that, in several places, the bail schedule includes provisions that in the event an arresting officer or correctional officer believes the dollar amount or the "OR release" set in the bail schedule are inappropriate in a particular situation, that officer can call an on-call judge. The Alaska Court System has on-call judges on duty 24/7 for that purpose, she said.

9:05:30 AM

MS. MEADE referred to the current bail schedule and explained that about the time Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature] was being debated in the Spring of 2016, more information had come forward. Social science and research from the Alaska Criminal Justice Commission showed that Alaska's pretrial population had grown 81 percent over the last 10 years, and in response to that information, under Senate Bill 91, the legislature enacted all of the reforms to pretrial decision-making which will go into effect January 1, 2018. These reforms, she explained, include the new pretrial services division under the Department of Corrections (DOC), and a completely revised bail statute the judges use to determine whether someone should be released, under what conditions and bonds, and what kind of bail should be set. The clear intent of the legislature on the record is that these changes were made because it was deemed that too many people were in jail pretrial. She said she has heard different numbers as to the percent of pretrial individuals waiting in Alaska's prisons, and explained that these individuals have not yet been found guilty or pled guilty, and are awaiting a determination of their case.

9:07:23 AM

MS. MEADE remarked that this information was considered by the Alaska Criminal Justice Commission, and this legislature, that this was not the best use of prison beds and not the best way to handle pretrial defendants. The presiding judges reexamined the bail schedules and prior to March 2016, each individual presiding judge had their own bail schedule for their own district reflecting community norms and other differences around

the state. The presiding judges determined that it may be wiser to have a statewide uniform bail schedule, so they put together a bail schedule that would recognize this latest research, and also would more closely adhere to the existing bail statute. The existing statute will not change until January, she explained, and it has a clear presumption for releasing someone OR unless something more is needed to prevent the person from not appearing in court, or to protect the victim, the community, and others, from that person. Unless a judge finds that something more is needed to prevent a failure to appear or because the person is a threat, the presumption in the existing statute is to release the person OR. In recognition of the research, and of the clear statutes, she said, the judges revised the bail schedule and issued a statewide bail schedule. The presiding judges provided that more misdemeanors would qualify for an OR release, which had been taking place all along for different types of misdemeanors, and the judges set dollar amounts of established bail for certain [alleged crimes]. For example, she said, under the statewide bail schedule, first time driving under the influence (DUI) is an OR release because the legislature determined that for the first DUI, a person cannot spend any of the three-day mandatory prison time in jail, and that person's time would be spent on electronic monitoring, or house arrest. Therefore, she advised, according to legislative intent, that person should not spend any time in a jail bed, so a judge is hard-pressed to hold that person for 24-hours in a jail bed until they see a judicial officer, she said.

9:10:37 AM

MS. MEADE advised that, subsequent to March, the presiding judges revised the bail schedule because most of its problems were with regard to the violating conditions of release provision. She pointed out that Senate Bill 91 changed that misdemeanor into an arrestable violation, so there was confusion about what happens when someone is arrested for violating conditions of release, taken to a correctional facility, and the law says they cannot spend any time in jail because violations do not include jailtime. She said that the presiding judges tried to revise that provision a few times, and one revision was made in response to feedback from law enforcement personnel dissatisfied with the fact that a misdemeanor assault was an OR release under the initial drafts of the bail schedule. In response, the judges revised the bail schedule, and currently a misdemeanor assault is not an OR release and a dollar amount is attached.

MS. MEADE commented that she has heard dissatisfaction among some people about the fact that law enforcement would like the ability to retain custody of drunk individuals or those who possibly have a drug problem. For example, she explained, when law enforcement arrests someone for a low-level misdemeanor, such as trespassing, if the person is intoxicated, the bail schedule does not read that the person should be held. In response to that issue, she reiterated that in any particular case, if law enforcement is not happy with the release called for under the bail schedule, they can call a judge at 2:00 a.m. and explain the problems, and the judge would in all likelihood hold the person or impose a bail amount. Also, she said, the presiding judges "really did not agree" there was a basis for holding someone in jail until they were sober. She pointed out that there were "great discussions" about that issue and the judges could not find a legal basis for holding an intoxicated individual because it is not against the law to be drunk.

9:14:06 AM

REPRESENTATIVE MILLETT referred to the "sober law, and advised that she performed research last night and pointed to a woman in Fairbanks being released on her own OR release while intoxicated, and "went out and died." Also, she said, a man in Eagle River was charged with two DWIs in the same day. She noted that [previously] this was "standard operating procedure" and asked what stopped public safety from holding someone until they were sober. She stressed that she would like that tool to be in law enforcement's toolbox, especially when it comes to rural Alaska.

MS. MEADE responded that the procedure to hold someone until they were at a certain level of sobriety was not the case statewide. For example, the First Judicial District had never had a provision saying to hold someone until a certain drug/alcohol level, but it had been in Anchorage, and the APD and the state troopers were used to that provision. The four presiding judges did not agree whether that was appropriate or not, and at the same time, the legislature was saying to be careful about who the state was keeping in hard beds. There was disagreement between the four presiding judges about having a provision that basically made the DOC the detox center because there was not a different place to put these intoxicated people, and that did not seem justified by the law. She pointed out that the legislature could write a law that read, "If the court has a bail schedule, it must provide that people shall be held until their BAC is at a certain level." She reiterated that the

presiding judges did not, as a group, reach agreement that that was valid under the existing law.

9:16:55 AM

REPRESENTATIVE MILLETT stressed her concern about public safety, and asked whether it is safe to release someone, over the legal limit of alcohol, to go out and possibly harm another individual. She related that she struggles because she believes it is a good policy, and asked whether Ms. Meade would oppose an amendment that added that provision back into statute.

MS. MEADE clarified that that provision was never in statute, and if Representative Millett wanted to add that amendment to SB 54, the court system would be neutral. She reiterated that with respect to public safety, if there is any perceived safety threat in any particular situation, law enforcement can call the judge and the judge would impose a bail to retain the person.

She remarked that, statistically, the people with first time DUIs do appear in court and are not a threat to the community. She offered that an amendment reading that anyone with an alcohol amount above a certain level should not be released, is the committee's policy call but there are two ways to look that the issue.

9:18:04 AM

REPRESENTATIVE MILLETT noted that this is solely about someone being released on their OR release without a third-party person picking them up, and that [the provision] for a third-party to pick someone up after their release is always available.

MS. MEADE said she was uncertain she understood Representative Millett, but it would depend upon how the statute was worded. She said that if it read that a person must be detained in custody until their blood alcohol concentration (BAC) is at .08 or below, then they would stay in jail whether a third-party could pick them up after the DUI, or not. Although, she related, it could read, "or is released to a responsible sober adult" which would cover the situation where a person's BAC was too high, but someone responsible could pick them up.

9:19:02 AM

CHAIR CLAMAN explained that part of the confusion with the question is that there are third-party court-approved custodians

that provide supervision, which is distinct from a third-party who happens to be sober and takes the person home. The sober third-party distinction would not be subject to review by the court as to whether that person met the criteria for a court approved third-party.

9:19:39 AM

REPRESENTATIVE KREISS-TOMKINS asked that Ms. Meade comment further as to the degree to which the on-call judges are engaged with law enforcement, and to the degree to which law enforcement is aware of this option.

MS. MEADE advised that she does not have the data on the number of times [judges] are called, and she has heard different things from judges. She opined that in the First Judicial District, law enforcement calls the judges "all of the time," and if the officer believes a person is a threat or there is an issue, by and large the judges agree with the officer and establish a bail amount. In Anchorage, she explained, the magistrates are present in the courthouse 24/7, and the law enforcement officer can bring a person in front of the magistrate and if the magistrate believes the person should not be released, bail can be set routinely. In other judicial districts she was not certain, but she thought that in Fairbanks it was fairly routine, and in Bethel people are on call and they receive calls.

9:21:39 AM

CHAIR CLAMAN referred to yesterday's discussion regarding Title 47 holds versus Titles 11 and 12 holds, and explained that Title 47 is Welfare, Social Services, and Institutions; Title 11 is Criminal Law; and Title 12 is the Code of Criminal Procedure. He asked Ms. Meade to comment about those particular issues and how they relate to the question of holding someone who may be intoxicated [until their BAC reaches the .08 level].

MS. MEADE answered that a Title 47 hold has a much higher standard for retaining someone or having someone sent to a mental health facility because the individual must be severely intoxicated and a danger to themselves. The judge can hold a specialized hearing to determine whether that person should be committed against their will and hospitalized for three days to be examined. Those are not extremely common, and she explained that the person must be in a "very bad state" to have a Title 47 hold because it is like a mental commitment with severe

restrictions on the person's rights, and doctors must be involved. Short of that, she said, people can be arrested and be quite intoxicated, but they have not quite reached the level where psychologists and substance abuse providers are involved to determine whether this person should be hospitalized to save themselves from themselves, or are a threat to society. Under the bail schedule, short of the Title 47 commitments, and a certain level of intoxication, is the statement that if a person is considered to be a present danger to the public through a level of intoxication, the arresting officer shall contact a judicial officer for a different bail. Those are quite different proceedings, and a Title 47 hold is quite a high hurdle to reach in order to detain someone, and a crime need not be attached, she explained.

9:24:46 AM

REPRESENTATIVE FANSLER asked whether she would say there has been proper training and proper discussion as to how to handle these cases. It appears there is some disparity throughout the different judicial districts as to how to handle a situation, and he asked whether there is a way to have better training for public safety and court system to have better results.

MS. MEADE answered, "Yes," probably there is a way to have better training. When the presiding judges revised the bail schedule, it was distributed to every clerk of court advising that court to send it to all of the law enforcement agencies in their area, but she does not know how those agencies handle the bail schedule. She advised that when sending out the latest bail schedule the court system included a one-page chart with an easy reference that the officers could tape next to their telephone. The court system tried to make it simple, and she offered that she is always available to answer questions, and that she receives questions from law enforcement officers from various areas. More training is always better, and she pointed out that a state trooper and an officer from the Anchorage Police Department (APD) sit on the Alaska Criminal Justice Commission and they know to call her with questions, but she did not know if everyone was aware that she is always available for questions. She related that she is happy to travel to communities to help explain the bail schedule.

9:27:31 AM

The committee took an at-ease from 9:27 p.m. to 9:37 p.m.

9:37:42 AM

CHAIR CLAMAN advised that the committee had received 22 amendments at this point and he would recess the committee to a call of the chair.

9:38:53 AM

[Chair Claman and Representative Millett discussed the rules Chair Claman set around the committee's debate process.]

9:40:20 AM

CHAIR CLAMAN recessed the committee to a call of the chair at 9:40 a.m.

10:53:52 AM

CHAIR CLAMAN called the House Judiciary Standing Committee meeting back to order at 10:53 a.m. Representatives Claman, Fansler, Eastman, Kreiss-Tomkins, Kopp, and Millett (alternate for Representative Reinbold) were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

CHAIR CLAMAN advised that he had asked the Department of Law (DOL) to explain the recommendations contained within Appendix F of the 10/22/17, Alaska Criminal Justice Report [pages F1 through F10].

10:54:59 AM

JOHN SKIDMORE, Director, Legal Services Section, Criminal Division, Department of Law (DOL), advised he would walk through each recommendation contained within Appendix F in terms of SB 54. Mr. Skidmore explained as follows:

Recommendation 1-2017, titled "Return VCOR to Misdemeanor Status" returns violations of conditions of release to a misdemeanor status with up to five-days in jail, and it is found in SB 54 currently;

Recommendation 2-2017, titled "Increase penalties for repeat Theft 4 offenders" discusses a maximum of five-days suspended for a third or subsequent offense. He then paraphrased the language found on page F3, as follows:

> The Commission therefore recommends that for a third-time Theft 4 offender, that the offense should be punishable by up to 10 days in jail.

MR. SKIDMORE opined that it is five-days for second time offenders, and that the general concept of increasing penalties for repeat theft offenders is currently found in SB 54.

10:56:31 AM

MR. SKIDMORE continued explaining the recommendations contained in Appendix F, as follows:

Recommendation 3-2017, titled "Allow municipalities to set different non-incarceration punishments for non-criminal offenses that have state equivalents" was contained in Senate Bill 55 [passed during the Thirtieth Alaska State Legislature] and signed into law, but he could not recall whether the recommendation is in SB 54 currently.

CHAIR CLAMAN commented that while the recommendation may be contained in SB 54 as a duplicate of SB 55, it was in SB 55 and passed into law.

MR. SKIDMORE agreed, and he continued explaining the recommendations contained in Appendix F, as follows:

Recommendation 4-2017, titled "Revise the sex trafficking statute" lays out the manner in which that would be accomplished, and is found within SB 54 currently;

Recommendation 5-2017, titled "Enact a 0-90-day presumptive sentencing range for first-time Class C Felonies" discusses changing the presumptive range for Class C felonies and the commission recommended 0-90 days after a split vote with a one-vote difference, currently found in SB 54 is 0-365-days;

Recommendation 6-2017, "Enact an aggravator for Class A Misdemeanors for defendants who have a prior conviction for similar conduct" this recommendation is found in SB 54 currently, and that this recommendation was offered before a court of appeals opinion that "changed the landscape a little bit on it;"

Recommendation 7-2017, titled "Clarify that ASAP is available for Minor Consuming Alcohol," clarified that the Alcohol Safety Action Program (ASAP) was available for minor consuming alcohol

cases, and a change to the ASAP requirements is found in SB 54 currently.

Recommendation 8-2017, titled "Enact a provision requiring mandatory probation for sex offenders" is found in SB 54 currently;

Recommendation 9-2017, "Clarify the length of probation allowed for Theft 4" is addressed in SB 54 currently;

Recommendation 10-2017, titled "Require victim notification only if practical" was contained in SB 55 and passed into law;

Recommendation 11-2017, titled "Felony DUI sentencing provisions should be in one statute" is found in SB 54 currently;

Recommendation 12-2017, titled "Clarify who will be assessed by Pretrial Services" is found in SB 54 currently;

Recommendation 13-2017, titled "Fix a drafting error regarding victim notification" was contained in SB 55 and passed into law;

Recommendation 14-2017, titled "Enact the following technical corrections to SB 91" dealt with inflation adjustments for Class B felonies, "not all inflation adjustments, just those four Class B felonies," and it was contained in SB 55 and passed into law.

11:00:57 AM

MR. SKIDMORE referred to the several technical corrections to SB 91, listed under Recommendation 14 [pages F8-F10] and said he would explain in the order of bullets, as follows:

Bullet 1, inflation adjustment for Class B felonies is located in SB 55 and passed into law;

Bullet 2, recommends that the crime of driving without a valid license be reduced to an infraction and is located in SB 54;

Bullet 3, recommends deleting the reference to subparagraph (B) in Title 11.71.060(a)(2)(B), it was a technical correction found in SB 55 and passed into law;

Bullet 4, cleans up some of the language found there to make it clear that it was a person charge with, rather than convicted of, because a suspended entry of judgement (SEJ) does not end in

a conviction if they are successfully completed, and is located in SB 55 and passed into law;

Bullet 5, aligns the penalties for posting and sending explicit images to a minor, and it is located in SB 54 currently;

Bullet 6, deals with probation terms and is found in Senate Bill 55 and is passed into law;

Bullet 7, recommends adding language to Senate Bill 91, Sec. 164, page 105, line 7, so that the data on earned compliance credits would extend that requirement to parolees and not just probationers, is located in Senate Bill 55 and passed into law;

Bullet 8, the commission amends Senate Bill 91, Secs. 148 and 151 for clarity as to their applicability, those adjustments are located in Senate Bill 55 and passed into law.

11:04:06 AM

REPRESENTATIVE MILLETT referred to Recommendation 13-2017, page F8, administrative parole, and surmised that a victim has a right to object to administrative parole, and asked how the victim is notified when the person is eligible under Senate Bill 91.

REPRESENTATIVE MILLETT responded to Mr. Skidmore that her question was specifically about victim notification as it relates to administrative parole, and she referred to Bullet 2, under Recommendation 12-2017, which read as follows:

> Section 132: **33.16.120(h)** "A victim who has a right to notice under (a) of this section may request a hearing before a prisoner is released on administrative parole under 33.16.089."

REPRESENTATIVE MILLETT, noting her understanding of administrative parole, said that there is no requirement to notify the victim. Therefore, a victim would have to be diligent, and she pointed out that victims are notified about other parole hearings and they can speak to the Parole Board.

11:05:59 AM

CHAIR CLAMAN surmised that the question was that for other forms of parole there is a requirement of victim notification, which was part of Senate Bill 91. He asked whether that same notice

requirement applies to administrative parole as with the other forms of parole.

REPRESENTATIVE MILLETT clarified her question and asked whether there is victim notification under administrative parole, and if there is not, "what does this do?"

MR. SKIDMORE responded that there is supposed to be a victim notification for administrative parole, the victim should have the opportunity to be notified when someone will be paroled. He explained that the concept in Senate Bill 91 is that an administrative parole would move forward unless the victim objected and asked for a hearing, they do need to be notified. Although, he said, he is unaware of the mechanics of the notification that the Department of Corrections (DOC) would use to accomplish the notification.

11:06:57 AM

REPRESENTATIVE MILLETT asked whether municipalities can have their own misdemeanors in response to local problems.

MR. SKIDMORE replied that the quick answer is, yes; however, when [Senate Bill 91] passed, it limited what a municipality could do because it required that any punishment for any misdemeanor could not exceed the maximum punishment that state law would authorize. For example, a maximum penalty authorized is up to one year for a DUI, but for a first time DUI, under criminal justice reform, it was zero to thirty days. The municipality could enact a municipal ordinance making it illegal to drive under the influence of alcohol, but the punishment could not exceed what is authorized under state law. The reason for the recommendation, he explained, was that some courts had interpreted the provision under criminal justice reform to apply to infractions and not just crimes, such as a speeding ticket. The intent had been that the limitation was on criminal offenses and not on infractions, which was clarified in a recommendation from the commission in SB 55.

11:08:46 AM

REPRESENTATIVE MILLETT referred to Mr. Skidmore's 6/17/16 [letter], page 2, where he discussed administrative parole, and she paraphrased as follows: "It allows certain individuals to automatically be released." She reiterated concerns about victim notification pertaining to administrative parole because

if the person is automatically released, she could not see an avenue for victims to be notified.

MR. SKIDMORE explained that page 2 would have been the [Overview] describing "things generically," and he turned the committee's attention to administrative parole, pages 19-20, B-1, titled "Administrative parole (secs. 120 and 122). *January 1, 2017."* and pointed to the first paragraph on page 20, which read as follows:

> A victim in a case may request a hearing in a case where an inmate would otherwise be eligible for administrative parole. The request would result in a hearing by the parole board to determine if the inmate should be released.

MR. SKIDMORE reiterated that there is a requirement in the law that the victims can object, which would require that there be victim notification.

11:11:33 AM

REPRESENTATIVE LEDOUX asked whether he had read an opinion piece in the 10/22/17, Anchorage Daily News, titled SB 91 Isn't Working, Serious Amendments Needed, written by John Papasodora, the Nome Chief of Police, and also the President of the Alaska Association of Chiefs of Police.

MR. SKIDMORE advised that he had read the opinion piece.

REPRESENTATIVE LEDOUX asked whether SB 54 adopts the recommendations made by that police chief and the other concurring police chiefs.

MR. SKIDMORE pointed out that the first recommendation is to adopt SB 54, and other recommendations are described, but the first and foremost recommendation is to adopt SB 54.

REPRESENTATIVE LEDOUX agreed that it is the first, but was unsure whether it was the foremost recommendation. She asked Mr. Skidmore's reaction to the other recommendations.

MR. SKIDMORE answered that a number of things were discussed, some require statutory changes, and some do not, and that he had not come to a final policy analysis of the remaining recommendations.

REPRESENTATIVE LEDOUX inquired as to when Mr. Skidmore could make a policy analysis on the remaining recommendations.

MR. SKIDMORE responded that coming to a policy analysis on any sort of amendment is not a process the DOL takes lightly. Fortunately, he said, he works in a department with many smart and talented individuals, and the process is to consult with other lawyers with many people analyzing and reviewing the issues before the department decides to make any sort of policy decision. He estimated that it could take several weeks.

11:14:32 AM

REPRESENTATIVE LEDOUX questioned whether any of the suggestions were bandied about, or thought about, by the DOL previous to the publication of this opinion piece.

MR. SKIDMORE advised that he knows Mr. Papasodora quite well, but he did not speak with Mr. Papasodora about this opinion piece prior to its publication, and he has not consulted with Mr. Papasodora about the ideas listed in the opinion piece. He advised that some of the suggestions are not new or novel, but he would have to review each suggestion carefully.

REPRESENTATIVE LEDOUX asked for a break to allow Mr. Skidmore the option of reviewing the recommendations contained within the opinion piece.

11:15:29 AM

CHAIR CLAMAN advised that the committee would not take a break at this time, but Mr. Skidmore's testimony could be taken up after the lunch break.

11:15:56 AM

REPRESENTATIVE FANSLER surmised that the committee had just reviewed 14 recommendations with some subparts by the Alaska Criminal Justice Commission, and that various experts from around the state have considered this for a good long time.

MR. SKIDMORE responded that these recommendations came from that commission.

11:17:01 AM

REPRESENTATIVE FANSLER asked that, of the 14 recommendations, whether every one of them had been touched upon in some manner via either the enacted SB 55, or the currently pending SB 54.

MR. SKIDMORE answered in the affirmative.

REPRESENTATIVE FANSLER stated that, in fact, SB 54 goes further than the recommendations, especially with regard to Recommendation 5-2017, in which the commission spent more than one-year reviewing, and the commission recommended that a zero to 90-day presumptive sentencing range would be correct. He pointed out that SB 54 reads one-year.

MR. SKIDMORE pointed out that Recommendation 5-2017 discusses Class C felonies, which was significantly debated at the commission level and recalled there was a one-vote difference between adopting "90 days to one-year." He said that Representative Fansler is correct in that the ultimate recommendation from the commission was 90 days, and SB 54 currently read "zero to one year." There was significant support on the commission for that one-year as well, although not the majority, he said.

11:18:04 AM

REPRESENTATIVE MILLETT referred to the 10/22/17 Alaska Criminal Justice Commission Annual Report, Executive Summary, page v, and said that prior to the passage of Senate Bill 91, Alaska's prison population was decreasing at "a pretty robust rate," and asked whether Alaska's prison population was on a downward trend prior to the enactment of Senate Bill 91.

MR. SKIDMORE said that assuming Representative Millett was referring to Figure 1: Average Daily Prison Population, answered that in 2015, the prison population started on a downward trajectory below what was the projected average daily prison population (ADP). It appears the prison population began to decrease, according to the chart, prior to Senate Bill 91.

11:19:42 AM

REPRESENTATIVE MILLETT questioned what started the downward trend prior to Senate Bill 91, and whether non-statutory internal actions took place in the DOL, the DOC, and the court system that caused that downward trend to begin.

MR. SKIDMORE responded that he did not have a definitive answer, but the DOC had begun efforts, prior to Senate Bill 91 being implemented, that focused on the same sort of concepts as the provisions in Senate Bill 91. He referred to the above-mentioned annual report, page 10, and noted that the prison population changed, and the report acknowledges that "some of these things" were trying to be implemented prior to the implementation of Senate Bill 91. He opined that that is what the conclusion of the report is about, and why it happened. From the DOL's perspective, the only thing that changed around that timeframe is that he told people in the department to start to utilize pretrial diversion to a greater degree. He could not recall any statistics suggesting the department's use of that was as robust as he would have liked, nor that he would conclude that was what caused this decrease, he said.

11:22:29 AM

REPRESENTATIVE MILLETT said there is a theory that the legislature passed Senate Bill 91 because the state's prison population was going up, when it was actually in a decline one and one-half years before the bill as passed. Therefore, she stated, the theory of the legislature's need to pass Senate Bill 91 or the state would need to build more prisons is not true.

11:22:47 AM

REPRESENTATIVE LEDOUX asked whether the prison population may have declined due to the fact prosecutors were cut from the DOL's budget and less people were being prosecuted.

MR. SKIDMORE responded the department's budget reductions began in 2014, with further reductions in 2015, but he could not offer the impact those cuts may, or may not, have had on the downward decline.

11:23:38 AM

REPRESENTATIVE KOPP noted that state troopers, statewide police agencies, the APD cut their budgets to fewer officers, the Palmer Correctional Center closed, and some inmates were either eligible for parole or close to flat-timing out, which would also account for the decline at that time.

CHAIR CLAMAN asked whether there were any statutory changes from the criminal justice reform process, beginning with Senate Bill 64 [passed in the Twenty-Eighth Alaska State Legislature], and

continuing to Senate Bill 91, and continuing to Senate Bill 55, that had caused prosecution problems and made legal changes wherein the DOL could not prosecute cases.

MR. SKIDMORE responded "No," and stated that he does not think there were changes in the law that caused the department to decline cases it had previously accepted, the law did not make that change. He advised that for the cases the department had previously accepted, it was about resources, and not about changes in the law.

11:25:21 AM

REPRESENTATIVE MILLETT noted that under Senate Bill 91, if a person shoots a uniformed officer "you have one sentence," but "we carved out" that if a person shoots an officer and puts them in a wheelchair, the sentence is reduced for that crime. Murder stayed the same, but when shooting and wounding an armed officer, the sentence was reduced as the legislature did with everything else. She asked whether she was correct.

MR. SKIDMORE explained that Senate Bill 91, with the exception of sex offenses and murder, took the presumptive sentencing ranges and adjusted them in all categories downward, which would include any type of assault. However, he said, the difference when it comes to a law enforcement officer is that the presumptive range is the range prosecution must stay within if there is not an aggravating factor available. In the case of a uniformed officer being shot, there is an aggravating factor available which means it would be up to the court's discretion how to sentence the person. The presumptive ranges are still reduced, but that aggravator would allow a court to go above the presumptive range before and after any criminal justice reform occurred, and the maximum penalties did not change.

11:27:01 AM

REPRESENTATIVE MILLETT asked, from the DOL's perspective, whether carving out that uniformed officer and putting it back to seven to eleven years was reasonable. The legislature has carved out for uniformed officers in other places, and she asked why not carve out this provision.

MR. SKIDMORE advised that the numbers Representative Millett just listed are not presumptive ranges. There are standard presumptive ranges and there are aggravators, but in addition to aggravators there are "special circumstances" in sentencing. He

explained that the special circumstances can adjust the presumptive range up slightly, but that is different than the aggravating factor. He said he could not recall that special circumstances dealt with uniformed officers, but rather it was being in possession of a firearm, the dangerous instrument. He explained that the way those two things interact is that there cannot be a special circumstance that enhances a sentence when the element of that special circumstance, the use or possession of that dangerous instrument, is also an element in the underlying crime. He further explained that prosecution cannot stack these together to create something that is more, and the same concept exists with aggravators. He related that he was not sure the special circumstances apply to Representative Millett's scenario, and that he would need to sit down with the statutes and walk through this issue again.

REPRESENTATIVE MILLETT advised that she would send Mr. Skidmore that question as she would like to see it carved out and the statute go back to where it was previously.

11:29:17 AM

CHAIR CLAMAN referred to the question regarding police officers, fire fighters, EMTs, paramedics, essentially anyone who is a first responder, and asked, in Mr. Skidmore's experience, whether there had ever been a time in which an assault was directed at a uniformed first responder and the department declined to pursue the aggravating factor that would give the judge the fullest range of sentencing discretion.

MR. SKIDMORE answered that he is unaware of a circumstance in which there was a first responder that the department would not file and attempt to pursue the aggravator.

11:30:25 AM

REPRESENTATIVE LEDOUX referred to aggravating factors, and asked whether one would have to knowingly endanger an officer in order for the aggravating factor to apply, as opposed to recklessly endangering an officer. She commented that obviously it is harder to prove knowingly than recklessly.

MR. SKIDMORE replied that recklessly versus knowingly is the mental state otherwise known as the mens rea, and agreed that knowingly is a higher standard, and whether it is harder to prove depends upon the facts of the case.

REPRESENTATIVE LEDOUX, at the request of Mr. Skidmore, repeated her question and asked whether a person must knowingly [endanger an officer] for the aggravator to apply.

MR. SKIDMORE, in response, referred to AS 12.55.155(c)(13), which read as follows:

> (13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, firefighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

11:32:32 AM

REPRESENTATIVE LEDOUX returned to her question regarding the higher bar versus easier or harder to prove, and asked whether the fact that something is a higher bar is "pretty darn suggestive" that it is more difficult to prove "because that is what a higher bar is, I think."

MR. SKIDMORE responded that he understands that what Representative LeDoux is describing is to show that something that is knowingly seems like it would be more difficult. It may well be, he said, but he looks at the facts in any given case to determine whether he could show it as knowingly or recklessly.

11:33:18 AM

REPRESENTATIVE LEDOUX offered a scenario wherein Mr. Skidmore was prosecuting someone and all he had to prove was reckless rather than knowing, and he had to choose one. She asked which one he would go for, and the results would be the same, would he go for reckless or knowing.

MR. SKIDMORE reiterated that it would depend on the crime and whether reckless or knowing was more appropriate.

CHAIR CLAMAN stated that Representative LeDoux's point was well taken, and she could ask another question.

11:34:02 AM

REPRESENTATIVE LEDOUX advised that last year she read about an extremely tragic case where a young girl was sitting in her apartment in Mountain View, and someone was having a "wild party" in the apartment below her and someone was playing around with guns, a [bullet] struck the young girl and she was paralyzed. Representative LeDoux asked whether there is any difference in the sentence or crimes in which those people may, or may not, have been charged with under Senate Bill 91, and prior to Senate Bill 91.

MR. SKIDMORE answered "Yes," and the difference is that the presumptive ranges were lowered ...

CHAIR CLAMAN interjected that he believes the question was elements of the crime to prove the crime, not the punishment.

REPRESENTATIVE LEDOUX stated that it was both.

MR. SKIDMORE noted that the elements to that crime have not changed at all, and there was nothing in Senate Bill 91 that touched on the elements of assault. In terms of sentencing, he offered, the presumptive range would be lowered, and to say whether or not that impacts the ultimate sentence imposed would require a detailed factual analysis to determine if any other aggravators or mitigators were available that could affect that presumptive range. The presumptive ranges themselves were all lowered and that would impact the case, he said.

11:36:05 AM

REPRESENTATIVE LEDOUX inquired as to what the presumptive ranges were prior to Senate Bill 91, and what the presumptive ranges are subsequent to the enactment of Senate Bill 91, with respect to that particular crime.

CHAIR CLAMAN noted that unless Representative LeDoux could advise the committee what the actual charges were and what the person was convicted of, the committee should not try to go down this path today.

MR. SKIDMORE advised that he would have to perform an analysis of the crime to sort that out. He said that shooting someone, hitting someone, or causing serious physical injury, would either be an assault in the first degree or second degree and he would have to look at the statutes. In either situation, he offered that the presumptive ranges were adjusted downward. The other factors that would play into that, is that the presumptive

range is also dependent upon the person's previous criminal history, and whether they had prior felonies, he advised.

11:37:27 AM

CHAIR CLAMAN advised the committee that it would now begin the amendment process, and he explained the committee's amendment process.

11:38:03 AM

REPRESENTATIVE MILLETT moved to adopt Amendment 1, Version 30-LS0461\N.32, Martin, 12/23/17, which read as follows:

Page 1, line 3, following "**probation;**":
Insert "**relating to the duties of the commissioner of corrections;**"

Page 11, following line 21:
Insert a new bill section to read:
"*** Sec. 19.** AS 33.30.011(a) is amended to read:
(a) The commissioner shall
(1) establish, maintain, operate, and control correctional facilities suitable for the custody, care, and discipline of persons charged or convicted of offenses against the state or held under authority of state law; each correctional facility operated by the state shall be established, maintained, operated, and controlled in a manner that is consistent with AS 33.30.015;
(2) classify prisoners;
(3) for persons committed to the custody of the commissioner, establish programs, including furlough programs that are reasonably calculated to
(A) protect the public and the victims of crimes committed by prisoners;
(B) maintain health;
(C) create or improve occupational skills;
(D) enhance educational qualifications;
(E) support court-ordered restitution; and
(F) otherwise provide for the rehabilitation and reformation of prisoners, facilitating their reintegration into society;
(4) provide necessary
(A) medical services for prisoners in correctional facilities or who are committed by a

court to the custody of the commissioner, including examinations for communicable and infectious diseases;

(B) psychological or psychiatric treatment if a physician or other health care provider, exercising ordinary skill and care at the time of observation, concludes that

(i) a prisoner exhibits symptoms of a serious disease or injury that is curable or may be substantially alleviated; and

(ii) the potential for harm to the prisoner by reason of delay or denial of care is substantial; and

(C) assessment or screening of the risks and needs of offenders who may be vulnerable to harm, exploitation, or recidivism as a result of fetal alcohol syndrome, fetal alcohol spectrum disorder, or another brain-based disorder;

(5) establish minimum standards for sex offender treatment programs offered to persons who are committed to the custody of the commissioner;

(6) provide for fingerprinting in correctional facilities in accordance with AS 12.80.060;

(7) establish a program to conduct assessments of the risks and needs of offenders sentenced to serve a term of incarceration of 30 days or more and provide to the legislature, by electronic means, by January 15, 2017, and thereafter by January 15, preceding the first regular session of each legislature, a report summarizing the findings and results of the program; the program must include a requirement for an assessment before a prisoner's release on parole, furlough, or electronic monitoring from a correctional facility;

(8) establish a procedure that provides for each prisoner required to serve an active term of imprisonment of 30 days or more a written case plan that

(A) is provided to the prisoner within 90 days after sentencing;

(B) is based on the results of the assessment of the prisoner's risks and needs under (7) of this subsection;

(C) includes a requirement to follow the rules of the institution;

(D) is modified when necessary for changes in classification, housing status, medical or mental health, and resource availability;

(E) includes participation in programming that addresses the needs identified in the assessment;

(9) establish a program to begin reentry planning with each prisoner serving an active term of imprisonment of 90 days or more; reentry planning must begin at least 90 days before release on furlough or probation or parole; the reentry program must include

(A) a written reentry plan for each prisoner completed upon release on furlough or probation or parole that includes information on the prisoner's proposed

(i) residence;

(ii) employment or alternative means of support;

(iii) treatment options;

(iv) counseling services;

(v) education or job training services;

(B) any other requirements for successful transition back to the community, including electronic monitoring or furlough for the period between a scheduled parole hearing and parole eligibility;

(C) coordination with the Department of Labor and Workforce Development to provide access, after release, to job training and employment assistance;

(10) for offenders under electronic monitoring, establish

(A) minimum standards for electronic monitoring, which may include the requirement of active, real-time monitoring using global positioning systems; and

(B) procedures for oversight and approving electronic monitoring programs and systems provided by private contractors; [AND]

(11) assist a prisoner in obtaining a valid state identification card if the prisoner does not have a valid state identification card before the prisoner's release; the department shall pay the application fee for the identification card**; and**

(12) conduct a chemical test of a prisoner's breath at the time of the prisoner's release and may release the prisoner only if the test result indicates that the prisoner's breath has less

than 0.08 grams of alcohol for each 210 liters of breath."

Renumber the following bill sections accordingly.

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 25"

REPRESENTATIVE FANSLER objected.

11:38:32 AM

REPRESENTATIVE MILLETT reminded the committee that it had previously discussed the "sober law," and this amendment directs the commissioner of the Department of Corrections (DOC) to hold someone, who has committed a crime, until they reach the legal blood alcohol content (BAC) limit of not being intoxicated.

11:39:10 AM

GRACE ABBOTT, Staff, Representative Charisse Millett, Alaska State Legislature, said that Amendment 1 requires the DOC to perform a blood alcohol test prior to an intoxicated person's release, and this would apply to misdemeanants as well as people who have committed felonies.

11:40:02 AM

REPRESENTATIVE MILLETT commented that she has articles that discuss the risks to the public, and the risks to prisoners when they are released with high alcohol content. She reiterated her previous testimony as to the death of a woman in Fairbanks who was released while intoxicated and then was hit by a car, and the gentleman in Eagle River who committed two DUIs in one day.

REPRESENTATIVE MILLETT noted that after listening to the testimony of Ms. Meade, there may be the better solution of putting it into the bail schedule. She advised that the Alaska State Troopers (AST), law enforcement agencies, and the Anchorage Police Department (APD) would like to see this tool replaced.

REPRESENTATIVE MILLETT, in response to Chair Claman, said that Amendment 1 is withdrawn.

CHAIR CLAMAN advised that with regard to Amendment 1, he had just received an opinion from Legislative Council. He then offered a scenario of his child being arrested for a DUI, was being held under this provision, and his child could not be released to him as a sober adult. He commented that that is another issue Ms. Meade had mentioned, sober third-parties.

REPRESENTATIVE MILLETT related that they will work on those issues.

11:44:51 AM

REPRESENTATIVE MILLETT moved to adopt Amendment 2, Version 30-LS0461\N.35, Martin, 10/23/17, which read as follows:

Page 11, following line 12:
Insert a new bill section to read:
"*** Sec. 18.** AS 33.07.020, enacted by sec. 117, ch. 36, SLA 2016, is amended to read:

Sec. 33.07.020. Duties of commissioner; pretrial services. The commissioner shall

(1) appoint and make available to the superior court and district court qualified pretrial services officers;

(2) fix pretrial services officers' salaries;

(3) assign pretrial services officers to each judicial district;

(4) provide for the necessary supervision, training, expenses, including clerical services, and travel of pretrial services officers;

(5) **develop** [APPROVE] a risk assessment instrument that is objective, standardized, and developed based on analysis of empirical data and risk factors relevant to pretrial failure, that evaluates the likelihood of failure to appear in court and the likelihood of rearrest during the pretrial period, and that is validated on the state's pretrial population; **the commissioner shall obtain the approval of the Department of Law, the Department of Public Safety, and the Alaska Court System before implementing the risk assessment instrument;** and

(6) adopt regulations in consultation with the Department of Law, the public defender, the Department of Public Safety, the office of victims' rights, and the Alaska Court System, consistent with this chapter and as necessary to implement the

program; the regulations must include a process for pretrial services officers to make a recommendation to the court concerning a pretrial release decision and guidelines for pretrial diversion recommendations."

Renumber the following bill sections accordingly.

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 19"

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 19"

Page 15, line 30:
Delete all material and insert:
"*** Sec. 25.** Sections 17 and 18 of this Act take effect January 1, 2018."

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 25"

REPRESENTATIVE FANSLER objected.

11:44:58 AM

REPRESENTATIVE MILLETT explained that Amendment 2 deals with the risk assessment tool and that there would be input from all departments, and the DOC was ultimately responsible for the data based risk assessment tool. She suggested, with the nuances within Alaska, within the criminal code, and within experiences with the criminal justice system, that the legislature broaden its scope to have the Department of Law (DOL), Department of Public Safety (DPS), and the Alaska Court System look at the risk assessment tool and offer their approval before the commissioner of the DOC implements the assessment tool. Amendment 2, she explained, assures that these entities have the opportunity to optimize the risk assessment tool and offer their approval.

MS. ABBOTT added that the amendment creates parity between the creation of the tool and the adoption of regulations for the implementation of the tool. The above-mentioned entities are involved in the regulation process and it follows that including them in the creation process would make sense. She pointed out

that it also fairly closely follows the recommendation from the 12/2015 original justice reinvestment report created by the Alaska Criminal Justice Commission, Recommendation 2.

11:47:50 AM

REPRESENTATIVE KOPP asked whether adding the Alaska Court System could be a separation of powers issue when seeking the court system's approval for an executive branch risk assessment tool.

MS. ABBOTT advised that, at this point, Representative Millett's office had not been alerted to a problem, and she deferred to the attorneys in the room.

11:48:45 AM

REPRESENTATIVE KOPP asked whether the DOL, the DPS, and the court system are represented on the Alaska Criminal Justice Commission currently.

MS. ABBOTT responded that she believes they are represented both in their representatives and staff.

CHAIR CLAMAN confirmed that the above-mentioned entities are represented on the Alaska Criminal Justice Commission.

MS. ABBOTT related that it falls under the DOC to create and develop the risk assessment tool at this point.

11:49:31 AM

REPRESENTATIVE EASTMAN said he would like to hear the Alaska Court System's perspective about Amendment 2.

CHAIR CLAMAN advised that no one from the court system was available at this time.

REPRESENTATIVE MILLETT requested that the Department of Law (DOL) comment on this amendment.

CHAIR CLAMAN advised that the question is whether having the Alaska Court System formally approve the risk assessment tool creates a separation of powers issue.

MR. SKIDMORE responded that his short answer is that he does not know whether it necessarily is a problem. Although, he commented, he could see how it would be a possibility where one

branch must approve what another branch is doing, but he would have to review the question more thoroughly.

11:51:27 AM

REPRESENTATIVE EASTMAN asked the DOL's thoughts about Amendment 2.

MR. SKIDMORE answered that, from a legal standpoint it is requiring that the DOC develop the tool, and the tool must be approved by the DOL, the DPS, and the court system. From a policy standpoint, when he considers making final decisions as a manager, he said he thinks about whether he wants to have three different people required to make the final decision. From the standpoint of the risk assessment tool itself, he advised that both the DOL and the court system have been involved in consulting with the DOC on the development of the tool. In that regard, he offered, if this change were made, certainly the DOL would approve the tool as it currently exists because it has been involved in the consultations up to this point. From the legal standpoint of whether this is good policy or not, he related that he had not had an opportunity to go through the vetting process of vetting he had described earlier.

11:53:10 AM

REPRESENTATIVE KREISS-TOMKINS asked, under this amendment, what would happen if the court system or the DOL, hypothetically, withheld approval for the tool.

MR. SKIDMORE said that if any one of the three entities listed did not approve the tool, it would not be allowed to be used.

11:54:07 AM

REPRESENTATIVE MILLETT asked why the state would want a risk assessment tool out there without the DOL's approval.

MR. SKIDMORE advised that it ultimately comes down to a policy question of who the committee wants to make the final approval, and whether the sponsor wants prosecutors to be deciding whether an assessment tool is appropriate for the release of a person that is incarcerated.

11:55:34 AM

REPRESENTATIVE EASTMAN asked Ms. Meade the court system's position on the policy.

MS. MEADE responded that the court system is neutral, and it does not have a position. In the event Amendment 2 passes, the court system would then take a different look at the risk assessment tool and decide whether to approve the tool.

REPRESENTATIVE EASTMAN commented that the court system has a great interest in having a good risk assessment tool, and asked whether it has any concerns or possible objections to the current tool, or whether those concerns had already been addressed and resolved.

MS. MEADE answered that the risk assessment tool was recently developed, and it was unveiled to a group of interested participants, including her, as well as two judges who were asked to work on the pretrial services implementation. She related that it was unveiled with a lot of explanation, data, and scientific explanation as to why it was developed in this manner, and that she found it to be quite an impressive piece of work. The tool was tested using State of Alaska data on different populations, such as how it will affect different genders and different races. She commented that whether the court system would approve of the tool as written is a decision for the Supreme Court, and it had not yet seen the tool. Currently, the court system is actively working to educate the judges about the tool, and that they are trained as to what went into the tool, and what the new bail statute will require. She advised that she feels certain that for most of the judges and most of the Supreme Court, this training will be the first time they see the tool, and understand what is to be done with the tool, and how it will impact judges.

CHAIR CLAMAN noted that Supreme Court Chief Justice Joel H. Bolger is a member of the Alaska Criminal Justice Commission and he has seen the tool in his status on the commission.

11:58:23 AM

REPRESENTATIVE KREISS-TOMKINS asked whether Ms. Meade was familiar with any linkages or articulations between the executive and judicial branches in law currently wherein the executive branch "shall" require approval from the judicial branch, and whether there is any precedent for the type of relationship Amendment 2 proposes.

MS. MEADE said she is not familiar with any precedent, and pointed to the language from Senate Bill 91 contained within Amendment 6, page 1, beginning line 19, Sec. 33.07.020(6), and paraphrased as follows:

> The implementation of this tool is to be done ... I mean it says it in so many words, that the DOC shall adopt regs in consultation with Law, PD, DPS, OBR, and the court system in order to implement this.

MS. MEADE pointed out that it is the direction of paragraph (6) that led to what she referred to as "this very large pretrial services implementation group." The Department of Corrections (DOC) has clearly taken the lead and hired its 20 or 30 staffers, and a very capable woman to oversee the division, with top-notch folks to supervise each judicial district. She pointed out that almost her full-time job is going to the meetings to see how all is moving along. People from the judicial branch give input, her included, and the input is "considered and done, they are very accommodating." Again, she said, she is not aware that anything would be sunk if the Supreme Court said "sorry, no approval," and she is not aware of that happening in any other area in the statutes. Currently, it appears to be a group that is operating effectively, under paragraph (6), she advised.

12:00:45 PM

REPRESENTATIVE KREISS-TOMKINS asked for confirmation whether Ms. Meade is aware of any articulation between the executive and judicial branch that requires judicial branch approval in order to do something.

MS. MEADE stated that she is fairly certain that does not exist elsewhere, although there are other suggestions to consult with the other branches.

12:01:19 PM

REPRESENTATIVE KREISS-TOMKINS said he does like the idea of collaboration and coordination between branches, and suggested revising the amendment to instead require consultation.

12:02:09 PM

CHAIR CLAMAN said that in "Sec. 5" under current law, the DOC comes up with an assessment tool using regulations that have not

been adopted, but they include a bunch of agencies. He asked whether separation of powers issues come up if the court system is essentially approving the assessment tool, and formally taking that step of asking a judge to independently decide what to do about an objection from the DOL as to what is in that risk assessment tool. He further asked whether that starts trending into separation of powers issues and impacting the independence of the court.

MS. MEADE noted that she completely understands it is a potential problem, and commented that the language directing the court to approve the actions of the executive branch is not located in any other area in statute. For example, she said, if the court is on record as saying, "I believe in this tool and I believe it is accurate," that leaves little room for someone, likely a defense person in that scenario, to challenge the tool and allege that the tool did not take into account the person's employment history or something similar. The court is always neutral, and it wants to retain the ability to assess whether something is legal or good, with full briefing in the context of litigation. The court system does not give advisory opinions on whether something is good before it had been fully briefed to the court. Ms. Meade commented that how the Supreme Court would reach the approval or disapproval decision was puzzling because it would not have had all of the information to decide whether it was valid or not by not being fully briefed by interested parties. It would, in essence be an advisory opinion, which the court does not do, she reiterated.

12:04:49 PM

REPRESENTATIVE FANSLER referred to the decision approving the tool, and asked who would make these decisions in the court system, whether the Supreme Court would approve this, or someone else.

MS. MEADE pointed out that Amendment 2 reads that the Alaska Court System would have to approve something, and in her opinion, that would only be by a decision by the Alaska Supreme Court. The court system does not have superior court judges or administrators deciding whether something another branch does is valid or good policy. She explained that it would have be some decision by the Alaska Supreme Court, except it would not have the information to make a binding decision about whether something the DOC created was useful or efficient.

12:07:05 PM

CHAIR CLAMAN recessed the committee until 1:30 p.m.

1:30:59 PM

CHAIR CLAMAN called the House Judiciary Standing Committee meeting back to order at 1:30 p.m. Representatives Claman, Fansler, Eastman, and Millett (alternate for Representative Reinbold) were present at the call to order. Representatives LeDoux, Kopp, and Kreiss-Tomkins arrived as the meeting was in progress.

1:33:36 PM

CHAIR CLAMAN returned the committee to the discussion of Amendment 2.

REPRESENTATIVE MILLETT moved to adopt Conceptual Amendment 1 to Amendment 2, which would remove the Alaska Court System ...

1:34:49 PM

The committee took an at-ease from 1:34 p.m. to 1:39 p.m.

1:39:28 PM

CHAIR CLAMAN asked Clint Campion to broadly respond to questions regarding his service to the Department of Law as the Anchorage District Attorney, as well as his decision to leave the department and go into private practice.

1:39:58 PM

CLINT CAMPION, Attorney, advised he is a private citizen practicing law at a private firm in Anchorage, and from 2008 through 2017, he was a state prosecutor based in Anchorage. During the last two and one-half years of his time at the Department of Law (DOL), he was the Anchorage District Attorney and in that role, he oversaw state prosecutions in the Municipality of Anchorage, Bristol Bay, the Aleutians, and the Pribilof Islands.

CHAIR CLAMAN asked what factors were involved in Mr. Campion's decision to leave the department and go into private practice.

MR. CAMPION advised that he left the department because he had an interesting and challenging opportunity for himself and his career. He stated that he did not leave the district attorney's office because he was unhappy or unsatisfied with the direction of the department, the leadership of the department, or the resources available to his office to accomplish the mission. He stressed that he left because he believed and still believes it was an opportunity for him to advance his career intellectually and professionally.

CHAIR CLAMAN asked whether his departure had anything to do with the criminal justice reform process that began while he was serving as the Anchorage District Attorney.

MR. CAMPION responded, "No," and he said that he could clearly say that he did not leave the Department of Law due to criminal justice reform. He offered that he was involved at certain stages in many of the criminal justice reforms that were implemented, and that he still supports many of the reforms, and he still supports the concepts underpinning criminal justice reform.

1:41:52 PM

REPRESENTATIVE LEDOUX asked, based upon Mr. Campion's experience as a prosecutor, whether there are any changes to SB 54 that he would recommend.

MR. CAMPION advised the committee and the public that his primary motivation in appearing today and providing comment is out of a deep sense of loyalty to his former colleagues in the prosecutors' offices across the state. He stressed that he would like everyone to understand that in his perspective, all of those prosecutors are more or less overwhelmed by the number of cases they handle, and the severity and complexity of those cases. He remarked that he primarily wanted to articulate today the necessity of ensuring those prosecutors' offices have enough personnel support, and the support of legislators and leaders throughout the state for their work. The work prosecutors perform is not the only important factor in the criminal justice system because it includes probations officers, defense lawyers, and law enforcement officers, but his primary loyalty is to those prosecutors, he said.

MR. CAMPION, in response to Representative LeDoux's question, answered that he views Senate Bill 91 as a three-phased approach and that phases two and three make a lot of sense. Senate Bill

54 addresses some of the concerns of the prosecutors with regard to phase one, but his recommendation is that it will take continued evaluation and assessment as to how successful it has been, or how successful it will be in the future. He pointed out that he is not advocating for any specific changes currently because, from his perspective, it would be unproductive to go back and repeal phase one altogether, or repeal Senate Bill 91 altogether. Senate Bill 54 is a reasonable approach to addressing the concerns that have been raised about phase one of Senate Bill 91, he expressed.

1:44:21 PM

REPRESENTATIVE LEDOUX offered a scenario of going back to the time the legislature was just beginning to work on Senate Bill 91, and asked whether there was anything in the bill that he would have removed or added.

MR. CAMPION replied that the suspended entry of judgment (SEJ), included in phase one, has not proven to be as effective as was hoped. The concern is, with the court's rightful interpretation, that when someone is out on an SEJ, the courts do not retain any authority to place those people in jail. Therefore, he said, it is a situation where if someone receives an SEJ and they do not comply with the terms of the agreement they entered into with the state, the court really only has the choice to sentence them fully, which often might need a conviction of record, or to not impose any real sanctions. The SEJ is a small tweak, he described, that would need to be addressed, but that by itself is not really driving any of the real concerns being heard across communities and across the criminal justice system.

1:45:48 PM

REPRESENTATIVE MILLETT asked whether phase one of Senate Bill 91 negatively impacted prosecutors' ability to do their jobs.

MR. CAMPION responded that he would not say Senate Bill 91 has made the job any easier for prosecutors for two reasons, with the decrease in penalties, the prosecutors lost leverage to influence a defense attorney and defendant into a plea agreement. Therefore, he explained, prosecutors need to look more carefully about the cases they are charging because the reality is that once it is charged, it is less likely to be resolved through a plea agreement and; therefore, likely to go to a jury trial which is a considerable expenditure of resources

for the prosecutor's office and the court system. Also, he explained, in addition to reducing the leverage that prosecutors have, prosecutors were not given any alternatives to divert people out of the criminal justice system when confronted with a variety of charges. He further explained that prosecutors were not given any tools to put someone directly into a treatment program, or take other types of diversion other than what was already in existence. In some respects, he pointed out, some of those tools were taken away, in particular there were some changes to the Alcohol Safety Action Program (ASAP). He related that in a large sense it has not made the job any easier, and it has made the job somewhat more challenging for prosecutors.

1:47:26 PM

REPRESENTATIVE LEDOUX asked whether criminal justice reform has actually made it more expensive to prosecute cases in some instances.

MR. CAMPION answered, "I wouldn't say that," and he explained that in terms of going to a jury trial, there may be more expense, but when looking at the reductions and cost savings that might come from the lower sentence, he was not certain there would necessarily be more expense involved. From the prosecutor's perspective there would be more investment of resources on certain types of cases than previously, he said.

1:48:01 PM

REPRESENTATIVE EASTMAN asked whether it has not become more expensive to prosecute cases because prosecutors are simply pursuing fewer cases.

MR. CAMPION offered that prosecutors are looking more carefully at certain types of cases, most specifically the offenses previously characterized as misconduct involving a controlled substance in the fourth degree, possession of a controlled substance. Previously, he explained, the prosecutor's office had a robust number of those cases being prosecuted, and as a consequence of the reclassification of those offense, and the reduction of penalties, prosecutors are much less likely to take those cases to trial or charge those cases at all.

1:49:03 PM

CHAIR CLAMAN returned the committee to the discussion of Amendment 2.

1:49:09 PM

REPRESENTATIVE MILLETT moved to adopt Conceptual Amendment 1 to Amendment 2, page 1, lines 17-18, delete the language "and the Alaska Court System."

REPRESENTATIVE FANSLER objected.

1:49:52 PM

REPRESENTATIVE MILLETT explained that she would like to remove the Alaska Court System as one of the entities that must offer its approval for the risk assessment tool, and that deleting "and the Alaska Court System" removes the separation of powers issue and the possible decision by the Alaska Supreme Court issue.

REPRESENTATIVE EASTMAN surmised that the Department of Law (DOL), the Department of Public Safety (DPS), and the Department of Corrections (DOC) would work together on the risk assessment tool, and due to the language in paragraph (6) that would put the court system in that advisory capacity.

REPRESENTATIVE MILLETT said that he was correct, it will leave the Alaska Court System in an advisory capacity through the Alaska Criminal Justice Commission.

1:51:12 PM

CHAIR CLAMAN commented that paragraph (6) involves the regulations, and there is also the public defender's office and the office of victims' rights. He said that he sees the exclusion of those two entities as a problem to the extent that "we don't think we get enough of inclusion of other groups in paragraph (6)," and the exclusion of those groups in paragraph (5) is a problem, and he does not support the ...

REPRESENTATIVE MILLETT interrupted Chair Claman to advise that the conceptual amendment does not exclude the public defender and the office of victims' rights from anything in paragraph (5), as they are mentioned in paragraph (6). She explained that paragraph (5) reads that the commissioner shall obtain approval from the DOL and the DPS before implementing the risk assessment instrument, it does not say anything about taking any other entity out of an advisory role or taking them out of the development of the risk assessment tool.

REPRESENTATIVE FANSLER maintained his objection.

1:52:56 PM

A roll call vote was taken. Representatives LeDoux, Millett, Eastman, Kopp, Kreiss-Tomkins voted in favor of adopting Conceptual Amendment 1 to Amendment 2. Representatives Claman and Fansler voted against it. Therefore, Conceptual Amendment 1 to Amendment 2 was adopted by a vote of 5-2.

1:53:40 PM

REPRESENTATIVE MILLETT commented that with regard to amended Amendment 2, the continuity between the DOL, the DPS, and the DOC gives the state a solid risk assessment tool moving forward. She related that the risk assessment tool is one of the best parts of Senate Bill 91, and it will become one of the state's shining examples of how criminal justice system can be reformed in the correct manner.

REPRESENTATIVE EASTMAN recalled Mr. Skidmore's previous testimony and surmised that there would be no objection to the tool from the department, and that he hopes the tool would have the required buy-in from all parties, otherwise he could not see how the tool would be successful.

1:55:44 PM

REPRESENTATIVE FANSLER said he would speak against amended Amendment 2 for a couple of reasons, such that this unfairly puts "our thumb" on the scales of justice and weighs it in favor of the prosecutorial branch by excluding approval from the office of victims' rights and, more importantly, the public defender. The folks dealing with these situations directly in the public defender's office would know what is best for a risk analysis tool. The public defender and office of victims' right are a vital line in the justice system. Excluding these two entities is basically saying that they can offer their input, "but in the end, we don't listen to it because we don't need your approval," raises two of these groups above the other five groups, "which I can't stand for," he expressed. Also, it is his understanding that the risk assessment tool has been finalized, it has had the input, it is prepared and ready to go, and this would be step in the wrong direction, he pointed out.

1:57:13 PM

CHAIR CLAMAN commented that he also speaks in opposition to amended Amendment 2, and described that this legislation is in search of a problem that does not exist. Unequivocal testimony has been that the process of developing the risk assessment tool has been robust and effective. In the event the committee were to amend this statute by requiring the approval of these entities before the risk assessment tool was implemented, it would require going back and redoing the whole process for the risk assessment tool that is being worked on and is already in place. He reiterated that this is a solution in search of a problem that does not exist.

1:57:57 PM

REPRESENTATIVE MILLETT clarified that the risk assessment tool is not finished, it is still in the working group, and Ms. Meade advised that it is just being sent to the Supreme Court ...

CHAIR CLAMAN advised Representative Millett that the risk assessment tool is finished and the use of it is being practiced today.

REPRESENTATIVE MILLETT surmised from Ms. Meade's testimony that the tool is not for public view yet and it is still in a draft form.

1:58:45 PM

MS. MEADE clarified that the "tool is out" and finalized, but that does not mean that the pretrial services office might have some minor tweaks or changes in the future, but they are indeed starting to practice a "pilot" with it this week. Tomorrow, she noted, she will meet with the judges to explain the tool, but to her knowledge it is a public document and it is out there.

1:59:26 PM

REPRESENTATIVE MILLETT noted that Ms. Meade had said that it was in the pilot stage and was being used to determine if there are any issues with the tool.

MS. MEADE opined that the pretrial services office is ensuring that the logistics are going to work, and she described that it is quite a project to get it to the court and to the parties within 24-hours, so the office is performing blind tests for consistency. She clarified that she does not believe the pilot

means it would go back and change the factors that led to the score that is the tool itself.

2:00:16 PM

REPRESENTATIVE LEDOUX commented that she does not understand the phrase "it's final but there might be changes."

CHAIR CLAMAN explained that the risk assessment tool needs to be in use and working on January 1, 2018, and "they've" been going through and working out all of the details of assessment tool and now have a final product. The final product is being driven, such as when testing a car to see how it works, by letting the people who will use it, including judges, see how it works, rather than using it for the first time on January 1, 2018.

2:01:19 PM

MS. MEADE clarified that what she meant in her previous testimony was that the professionals who work on these tools have continuously advised that in the future, it should be re-analyzed and re-assessed to be certain it is performing in the correct manner. She said she expects that after six to twelve months of use, someone will look at it and determine whether the tool is on the right track, whether the state is getting better decisions, whether it is an effective tool, and whether something should be tweaked, but it is final at this point.

2:01:53 PM

REPRESENTATIVE MILLETT commented that with that being said, there are three months where "we can continue to look" at the results during the trial period. She said she heard from the DOL that it does not see any issues with it, so approval for this in the next three-months from the DOL and the DPS would be swift and would meet the deadline of January 1.

REPRESENTATIVE FANSLER maintained his objection.

2:02:48 PM

A roll call vote was taken. Representatives LeDoux, Millett, and Eastman voted in favor of adopting amended Amendment 2. Representatives Kopp, Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, amended Amendment 2 failed to be adopted by a vote of 3-4.

2:03:23 PM

REPRESENTATIVE MILLETT moved to adopt Amendment 3, labeled 30-LS0461\N.60, Martin, 10/23/17, which read as follows: [The text of Amendment 3 is listed at the end of these 10/24/17, 9:00 a.m., minutes of SB 54.]

REPRESENTATIVE FANSLER objected.

2:03:30 PM

REPRESENTATIVE MILLETT commented that she has issues with the newly created administrative parole and that she would like to go back to the prior statutes because administrative parole is an automatic release without going through the Parole Board. In the event, she said, the reason for the administrative parole is that the Parole Board has a backlog, or the application for parole is too difficult for the prisoners, then the committee should address those issues and not create an avenue in which prisoners are released automatically. The Parole Board and parole are set up to weigh all of the risks of that person returning to society, and to be held to the conditions of parole. The system should protect the victims and not put any responsibility on the victims to fill out the application to have the offender go before the Parole Board because in that manner, the responsibility is on the victim which is the opposite of the way things should work. The administrative parole process is a disservice to the public, public safety, and victims, she stressed.

MS. ABBOTT advised that the amendment removes all references to the creation of administrative parole from statute.

2:06:08 PM

REPRESENTATIVE KOPP asked how many people have been impacted by administrative parole, and how many people have actually used administrative parole since its implementation.

MS. ABBOTT answered that she does not have that information at her disposal. However, it did go into effect on January 1, 2016, and she was unsure whether regulations had been written.

2:06:57 PM

JORDAN SHILLING, Staff, Senator John Coghill, Alaska State Legislature, advised that three individuals have been released on administrative parole since January of 2017, and the information is contained within the 10/22/17, Alaska Criminal Justice Commission Report, [page 25].

CHAIR CLAMAN noted that the information is located in the above-mentioned report on page 25, in a blue column on the right-side of the page, and commented that zero inmates have been eligible for geriatric parole.

2:07:44 PM

REPRESENTATIVE EASTMAN, noting he was not in the legislature when Senate Bill 91 was passed, asked whether there are any other reasons administrative parole was generated.

MS. ABBOTT referred to the 12/2015 Alaska Criminal Justice Commission Report [page 21 Recommendation 9], which read as follows:

> Recommendation 9: Expand and streamline the use of discretionary parole.
>
> Current eligibility for discretionary parole is restricted to those non-sex offense felons convicted of the most serious crimes (Unclassified Felonies), and felonies towards the bottom of the severity scale (first- and second-time Class C Felonies, as well as first-time Class B Felonies). Offenders who fall between these two poles are ineligible for discretionary parole without the intervention of the three-judge panel. Additionally, no offenders convicted of a felony sex offense are able to apply for discretionary parole without the intervention of the three-judge panel.

REPRESENTATIVE EASTMAN offered that the state has a parole process and this amendment will not end that process. The advent of the new administrative parole process is probably excessive, and the committee needs to look at going back to a traditional parole process, he opined.

2:10:22 PM

REPRESENTATIVE KOPP clarified for the committee that Ms. Abbott had read the definition of discretionary parole and not the

definition of administrative parole. He pointed out that administrative parole is actually being considered with this amendment.

CHAIR CLAMAN advised that what is troubling to him about changing at this point, is that based on administrative parole being used only three times, it suggests that it rarely arises. The notion is to improve the state's results post-release for the appropriate folks and trying to get them integrated back into the community more easily. He suggested that to the extent this tool is seldom used, to keep it around at least long enough to see what happens with it because three times is not enough information to create a record.

2:11:36 PM

REPRESENTATIVE MILLETT reiterated that this is a solution looking for a problem. She offered her belief that what "the Alaska Criminal Justice Commission "recommended was that we have an issue with parole," and also an issue with the Parole Board probably having a backlog. She suggested that those are issues better addressed through additional opportunities for the Parole Board, such as expanding the hours of the Parole Board, or expanding the Parole Board. The commission had pointed to the application process, she said, in that many people in prison are eligible for parole, except because the parole process is so onerous, the prisoners do not apply. Administrative parole puts some victims in a position where they may not understand how administrative parole works, and it puts the onerous back on the victim, which is backwards. At this point, administrative parole has not been vetted well enough and it should be eliminated, she remarked.

REPRESENTATIVE FANSLER maintained his objection.

2:13:52 PM

A roll call vote was taken. Representatives Kopp, LeDoux, Millett, Eastman voted in favor of adopting Amendment 3. Representatives Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, Amendment 3 adopted by a vote of 4-3.

2:14:38 PM

The committee took an at-ease from 2:14 p.m. to 2:19 p.m.

2:19:53 PM

REPRESENTATIVE LEDOUX advised that at this time she would not move to adopt the following: Amendment 4, labeled 30-LS0461\N.50, Glover\Martin, 10/23/17; Amendment 5, labeled 30-LS0461\N.52, Martin, 10/23/17; Amendment 6, labeled 30-LS0461\N.42, Bruce/Martin, 10/23/17; Amendment 7, labeled 30-LS0461\N.40, Martin, 10/23/17; and Amendment 8, labeled 30-LS0461\N.39, Martin, 10/23/17, and asked to move these amendments to the bottom of the stack of amendments.
Sunshine2018

2:22:00 PM

The committee took an at-ease from 2:22 p.m. to 2:35 p.m.

2:35:33 PM

REPRESENTATIVE LEDOUX moved to adopt Amendment 9, labeled 30-LS0461\N.44, Glover/Martin, 10/23/17, which read as follows:

Page 5, following line 25:
Insert a new bill section to read:
"*** Sec. 11.** AS 12.55.135(m) is amended to read:
(m) A court may not impose a sentence of imprisonment for a definite term of more than **five days** [24 HOURS] for a person convicted of disorderly conduct under AS 11.61.110."

Renumber the following bill sections accordingly.

Page 15, line 18:
Delete "sec. 15"
Insert "sec. 16"

Page 15, following line 25:
Insert a new paragraph to read:
"(6) AS 12.55.135(m), as amended by sec. 11 of this Act;"

Renumber the following paragraphs accordingly.

Page 15, line 26:
Delete "sec. 11"
Insert "sec. 12"

Page 15, line 27:
Delete "sec. 12"

Insert "sec. 13"

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 19"

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 19"

Page 15, line 30:
Delete "Section 17"
Insert "Section 18"

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 25"

REPRESENTATIVE FANSLER objected.

2:35:44 PM

REPRESENTATIVE LEDOUX explained that Amendment 9 changes the maximum time for disorderly conduct from 24-hours to five-days. She offered her understanding that as a prosecutorial tool, assaults were sometimes pled down to misdemeanor disorderly conduct, and with the new rule for 24-hours, there is no teeth where what might actually be a felony assault.

2:36:51 PM

REPRESENTATIVE KREISS-TOMKINS asked what problem Amendment 9 would solve.

REPRESENTATIVE LEDOUX responded that it solves taking away a prosecutorial tool, such that in a case which may actually be an assault, it gives the prosecutor a tool to plead down to something.

CHAIR CLAMAN asked why prosecutors can't offer a plea deal to disorderly conduct today if the sentencing is 24-hours, and further asked how five-days changes the prosecution's ability to offer that as a plea deal.

2:37:57 PM

REPRESENTATIVE LEDOUX commented that 24-hours is really next to nothing and the cost of preparing for a trial for a 24-hour sentence would probably not be of interest to the prosecution. She offered that the defense attorney would realize that no prosecutor would actually prepare a prosecution with a 24-hour sentence and would tell the prosecutor "to pound sand."

CHAIR CLAMAN argued that as a plea deal tool, a person is charged with assault in the fourth degree, which is up to one-year in jail as a Class A misdemeanor. He asked whether the offer that the person can go to trial on assault in the fourth degree, or accept the plea deal of disorderly conduct, for example, is a tool. He related the tool would be available as a plea deal. Although, he said, the [prosecution] may not be prepared to take it to trial on disorderly conduct if the original charge was assault and they were cutting a deal, and asked how the prosecution loses that tool today.

REPRESENTATIVE LEDOUX replied that "they probably would not be willing to cut the deal" on the assault charge if they thought they were going to win at the assault charge, but still the person has committed a crime.

REPRESENTATIVE KOPP commented that disorderly conduct is a valuable tool in the law to help solve the many boots on the ground calls for officers, as to noise disturbance and fighting. Public nuisance of all types falls under disorderly conduct and it is a charge used to solve problems right away. He noted his discouragement as to the possible lack prosecutorial incentive with the 24-hour sentence, and changing it to five-days may see the law actually being used. It does give the defense something to plead down to from a misdemeanor assault, and he commented, "not that that's the reason we should be doing this." This is a good law to be kept on the books and if this amendment helps the law to be utilized, it is a good amendment, he stated.

REPRESENTATIVE FANSLER maintained his objection.

2:40:57 PM

A roll call vote was taken. Representatives Eastman, Kopp, LeDoux, and Millett voted in favor of adopting Amendment 9. Representatives Fansler, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 9 was adopted by a vote of 4-3.

2:41:31 PM

CHAIR CLAMAN offered his understanding that Representative LeDoux, at this point, would not offer any of her other amendments.

REPRESENTATIVE LEDOUX answered in the affirmative.

2:42:00 PM

REPRESENTATIVE MILLETT moved to adopt Amendment 22, 30-LS0461\N.34, Glover/Martin, 10/20/17, which read as follows:

Page 1, line 4, following "**program;**":
Insert "**relating to the Alaska Criminal Justice Commission;**"

Page 11, following line 31:
Insert a new bill section to read:
"*** Sec. 21.** AS 44.19.645(a) is amended to read:
(a) **The mission of the commission is to protect and improve public safety while working toward a more efficient and cost-effective criminal justice system.** The commission shall evaluate the effect of sentencing laws and criminal justice practices on the criminal justice system to evaluate whether those sentencing laws and criminal justice practices provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation. The commission shall make recommendations for improving criminal sentencing practices and criminal justice practices, including rehabilitation and restitution. The commission shall annually make recommendations to the governor and the legislature on how savings from criminal justice reforms should be reinvested to reduce recidivism. In formulating its recommendations, the commission shall consider
(1) statutes, court rules, and court decisions relevant to sentencing of criminal defendants in misdemeanor and felony cases;
(2) sentencing practices of the judiciary, including use of presumptive sentences;
(3) means of promoting uniformity, proportionality, and accountability in sentencing;
(4) alternatives to traditional forms of incarceration;

(5) the efficacy of parole and probation in ensuring public safety, achieving rehabilitation, and reducing recidivism;

(6) the adequacy, availability, and effectiveness of treatment and rehabilitation programs;

(7) crime and incarceration rates, including the rate of violent crime and the abuse of controlled substances, in this state compared to other states, and best practices adopted by other states that have proven to be successful in reducing recidivism;

(8) the relationship between sentencing priorities and correctional resources;

(9) the effectiveness of the state's current methodologies for the collection and dissemination of criminal justice data; and

(10) whether the schedules for controlled substances in AS 11.71.140 - 11.71.190 are reasonable and appropriate, considering the criteria established in AS 11.71.120(c)."

Renumber the following bill sections accordingly.

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 25"

REPRESENTATIVE FANSLER objected.

2:42:09 PM

REPRESENTATIVE MILLETT explained that, subsequent to the creation and direction given to the Alaska Criminal Justice Commission, and the public's reaction to some of the crime upticks in Alaska, the legislature should honor the Constitution of the State of Alaska. The legislature should go back and redefine the commission's role and put public safety in the forefront and not just as a sidebar or something that is weighed last, she said. Recidivism is important, she acknowledged, but protecting the citizens of Alaska is most important, and she would like to redefine and codify the commission's mission to protect and improve public safety while working toward a more efficient and cost efficient criminal justice system.

2:43:59 PM

REPRESENTATIVE KOPP referred to Amendment 22, Sec. 21, AS 44.19.645(a), page 1, lines 9-14, which read as follows:

> (a) ... The commission shall evaluate the effect of sentencing laws and criminal justice practices on the criminal justice system to evaluate whether those sentencing laws and criminal justice practices provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation.

REPRESENTATIVE KOPP asked how Amendment 22 adds to the above-mentioned language [located in Senate Bill 91], wherein almost the first directive is to protect the public.

REPRESENTATIVE MILLETT answered that it is about sending a message to the public that criminal justice reform includes public safety first and foremost, and everything else follows.

2:45:38 PM

REPRESENTATIVE EASTMAN recalled testimony from members of the commission last evening, and it was his impression that the commission was not prepared to include issues like crime rates. Public safety is part of the commission's work, he commented, and there is a challenge between focusing on recidivism and focusing on crime rates. He related that he would like to see the commission's public safety vision expanded to include public safety, crime rates, impacts on victims, and those sorts of issues, more so than was heard last evening.

2:46:34 PM

REPRESENTATIVE FANSLER, in response to Representative Eastman's comments, referred to Amendment 22, Sec. 21, AS 44.19.645(a)(7), page 2, lines 8-11,

> (7) crime and incarceration rates, including the rate of violent crime and the abuse of controlled substances, in this state compared to other states, and best practices adopted by other states that have proven to be successful in reducing recidivism;

REPRESENTATIVE FANSLER pointed out that paragraph (7) leads with "crime and incarceration rates, including the rate of violent

crime, and the abuse of controlled substances." He pointed out that it is already dominantly included, and the language takes into effect the protection of the public, community, and the condemnation of the offender. He pointed out that it has frequently been said that government is too bureaucratic with too much red tape, and he finds it ironic that the committee now has several amendments that have been nothing but more bureaucracy with red tape, and he will vote against the amendment.

REPRESENTATIVE LEDOUX commented that she does not see the need for Amendment 22, and referred to Amendment 22, page 1, lines 9-14, as follows:

> (a) ... The commission shall evaluate the effect of sentencing laws and criminal justice practices on the criminal justice system to evaluate whether those sentencing laws and criminal justice practices provide for protection of the public, community condemnation of the offender, the rights of victims of crimes, the rights of the accused and the person convicted, restitution from the offender, and the principle of reformation.

REPRESENTATIVE LEDOUX offered her belief that the committee does not need to amend the language for style.

2:48:15 PM

REPRESENTATIVE KREISS-TOMKINS advised that Representative LeDoux had shared his observations, and that he had no further comment.

CHAIR CLAMAN noted that everyone serving on the Alaska Criminal Justice Commission is a public official who took an oath to uphold the Constitution of the State of Alaska, and he referred to Article I, Section 12, Criminal Administration, which read as follows:

> Section 12. Criminal Administration
> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crime, restitution from the offender, and the principle of reformation.

CHAIR CLAMAN argued that Representative Eastman's observation that the Alaska Criminal Justice Commission is not concerned with crime rates is "just not true" because the commissioners discuss crimes rates in every meeting because they are concerned. He stressed that as a non-voting member of the commission, he is consistently impressed with (coughing) oath to uphold the Constitution of the State of Alaska, and that the commissioners are first and foremost concerned about public safety. He said he will not support the amendment.

REPRESENTATIVE MILLETT pointed the members to the 10/22/17 Alaska Criminal Justice Commission Report, Executive Summary, noting discussions about criminal justice reform and that two-pages discuss the crime rates. She argued that, as to the focus of the commission being on public safety, the crimes rates are two-pages of a 59-page report, and while she appreciates that the commission discusses crimes rates, that is the missing piece. The current crime rates were not reviewed when the legislature passed Senate Bill 91, and the state was involved in an uptick in crime, an opioid crisis, and a recession. She opined that if the discussion had been about public safety first, those things probably would have been closely considered, and the timing of the execution of Senate Bill 91 would not have taken place last year.

REPRESENTATIVE FANSLER maintained his objection.

2:50:57 PM

A roll call vote was taken. Representatives Millett, Eastman, and Kopp voted in favor of adopting Amendment 22. Representatives LeDoux, Fansler, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 22 failed to be adopted by a vote of 3-4.

2:51:55 PM

The committee took an at-ease from 2:51 p.m. to 3:33 p.m.

3:33:57 PM

REPRESENTATIVE FANSLER moved to adopt Amendment 25, labeled 30-LS0461\N.65, Martin, 10/24/17, which read as follows:

Page 3, line 6:
Delete "**one year**"
Insert "**90 days**"

REPRESENTATIVE MILLETT objected.

3:34:03 PM

REPRESENTATIVE FANSLER explained that Amendment 25 amends Sec. 6, AS 12.55.125(e)(1), page 3, line 6, Class C felony convictions. Currently, he explained, under Senate Bill 91 a Class C felony can have up to 18-months of probation. Under SB 54, the proposal is to allow for zero-to-one-year of active sentence time. Thereby, bringing SB 54 into alignment with the official majority recommendation of the commission, [located in the 10/22/17 Alaska Criminal Justice Commission Report, page F4, Recommendation 5-2017, Enact a 0-90-day presumptive sentencing range for first-time Class C Felonies].

3:35:33 PM

REPRESENTATIVE MILLETT asked that the Department of Law (DOL) describe first-time Class C felonies.

CHAIR CLAMAN reminded Representative Millett that the DOL provided the committee with a list of Class C felonies yesterday.

REPRESENTATIVE MILLETT pointed out that the list includes 142 Class C felonies that will move to 90-days, noting that some of these are egregious crimes. While she understands the goal of helping first-time felons, she said she is uncomfortable with lowering the sentences because a person can make their case in court for a lower sentence. Changing it to 90-days is not a deterrent for a Class C felony and she asked how this makes the public safer.

REPRESENTATIVE FANSLER responded that when looking at the safety issue, currently a person can be sentenced to zero-days, and numerous testimonies advised that, typically, any jailtime would be used as a deterrence for future and repeating crimes. At the same time, this is balanced with the fact that the more time a person spends in jail, the greater the chance of the person recidivating and increasing their criminal activity. This amendment offers a better balance. He acknowledged that the DOL list is an extensive list of 142 crimes, with a wide range of differing crimes on the list. His personal preference, he pointed out, is that he would much rather see several of these crimes reclassified. When comparing such a wide range of crimes, it is imperative that the committee make sure it is not

sending low-level crime individuals to long-term jail sentences. He remarked that with the disparity that exists in the court system when it comes to sentencing minorities, a situation could be seen where unfair sentences could be decided upon for folks of a certain race. This amendment is the correct road to take, which is probably why the commission recommended it, he said.

3:39:50 PM

REPRESENTATIVE EASTMAN asked that if the amendment changes the current bill from one-year to only 90-days, what would it look like once it was pled down, how much jailtime.

REPRESENTATIVE FANSLER answered that in each instance it would be from zero-to-90-days, and depending upon the circumstances, the judge could determine any range of ways to sentence a person and this is an appropriate range to allow for the differing crimes on this list. He explained that it allows for the intention of the original Senate Bill 91, rather than the lowest level of criminals wasting time in jail that they get into the programs they need and receive rehabilitation services, and this amendment allows that process to take place in a better manner.

3:41:12 PM

REPRESENTATIVE EASTMAN referred to the DOL's list of Class C felonies, line 139 - "selling up to 50 50 tablets, ampules, or syrettes containing a schedule IIA or schedule IIIA substance, misconduct involving a controlled substance in the third degree MICS3)," and commented that the maximum would be 90-days. He related, in that instance, a person is almost assured they will not receive the maximum sentence, and a drug dealer who got caught selling 50 doses will plea bargain the sentence down. He commented that the discussion is about "a very, very small amount" of time in jail (audio difficulties).

3:42:18 PM

The committee took an at-ease from 3:42 p.m. to 3:49 p.m.

3:49:19 PM

REPRESENTATIVE EASTMAN continued asking his question regarding the amount of jailtime a person is actually looking at once it had been pled down and gone through the process, whether that was sufficient. He pointed to DOL list and noted that intentionally killing a police dog is on the list, and said that

if someone is committing this type of violent acts resulting in the murder of a police dog, he does not think some small amount of jailtime is a sufficient deterrent and that it should be higher. He asked why Representative Fansler believes the small amount of jailtime would be sufficient.

REPRESENTATIVE FANSLER expressed that he does not consider 90-days a small amount of jailtime because any time spent in jail is life altering. Currently, he pointed out, it is zero jailtime on a first offense Class C felony, and this amendment makes the law stronger. It is what intelligent experts, who have studied these issues recommended, and it strikes him that is a good guidepost. He reminded the committee that "this group has kind of agreed with many of the recommendations from the commission already." This is a further situation where he believes the commission has the proper understanding when it looks at the numbers and research of what an appropriate sentence would be for someone in this class of felonies, he pointed out.

3:51:48 PM

REPRESENTATIVE MILLETT said she is uncomfortable changing the amount of jailtime to zero-90-days, rather than zero-one-year. She referred to the DOL list of Class C felonies and read as follows: holding a gun to someone's head and threatening to kill them; and chopping the head off of a cat. She said she believes the state's sentencing structure should not be for the least crime, that if the crimes are going to all be grouped together, it should be for the most expansive and dangerous crimes even though they are all under Class C felonies. Many people with drug and alcohol abuse issues receive 90-days maximum, and their sentence is reduced, and they possibly serve two-to-three-days, and asked whether the committee would want to allow the court a little more time and more opportunity to give a longer sentence. She said she agrees that possibly there should be a review as to recriminalization and the manner in which crimes are described and redefine them, but she does not think taking the step first of lowering the amount of time is the first step the legislature should be taking. She said she would be a no-vote on the adoption of this amendment.

3:53:37 PM

REPRESENTATIVE KOPP advised that this amendment is consistent with the Alaska Criminal Justice Commission's recommendation, and the members need to keep in mind that the zero-to-one-year

gives the Department of Law (DOL) a range within which to work with the particular circumstances of the offense and the nature of the offender themselves. He said he supports keeping the sentencing at zero-to-one-year because some violent and serious crimes are conducted under Class C felonies, and that range gives the department a tool to apply as necessary.

REPRESENTATIVE EASTMAN commented that Alaska is one of a few states with a list of 142 separate crimes that are classified under one heading and treats the crimes similarly. He said there is something to be learned from other states that simply assign a penalty to a specific crime and forego the classification process. He related that for some of the varied crimes listed, 90-days is not an appropriate or just sentence and he would be a no-vote on the adoption of the amendment.

REPRESENTATIVE KREISS-TOMKINS noted that given this special session, and what transpired over the summer, and the comments from the members of the Alaska Criminal Justice Commission, there appears to be an emerging concurrence around the language presently in the legislation, and he is comfortable with the current SB 54.

REPRESENTATIVE FANSLER asked the committee to recognize that a person can be released for good behavior. He clarified for the committee that judges' direct maximum penalties all of the time and "to act like they do not would just be a fallacy." Also, he pointed out, it is important to remember that first-time Class C felony offenders without aggravators or anything like that is the subject. Typically, he said, "what we're going to be seeing is, you know, a situation that -- that is quite honestly possibly pretty rare with a lot of these things." He reiterated that zero-to-90-days offers the desired latitude.

REPRESENTATIVE MILLETT maintained her objection.

3:59:04 PM

A roll call vote was taken. Representatives Fansler and Claman voted in favor of the adoption of Amendment 25. Representatives Kreiss-Tomkins, LeDoux, Millett, Eastman, and Kopp voted against it. Therefore, Amendment 25 failed to be adopted by a vote of 2-5.

3:59:50 PM

REPRESENTATIVE FANSLER moved to adopt Amendment 26, labeled 30-LS0461\N.66, Martin, 10/24/17, which read as follows:

Page 3, line 6:
Delete "**one year**"
Insert "**180 days**"

REPRESENTATIVE MILLETT objected.

3:59:49 PM

REPRESENTATIVE FANSLER noted that it had been stressed several times that the commission was split by vote or two when it made the recommendation for 90-days. Luckily, he commented, this committee compromises well and it can divide the days in half to a "nice 6-month period of 180-days."

REPRESENTATIVE EASTMAN commented that the committee has been talking about the impact of some of these sentences on the convicted person, but his focus begins with the impact to the public, and on past and future victims of crimes. He related that his constituents are not immune to some of the current crimes included in the DOL's list of Class C felonies, and he would be a no-vote. He opined that compromising justice is not what the committee is looking for because justice requires stiffer penalties, and focusing not just on the convicted person but on the larger impact it has to the public. The public is where the focus needs to start, and after that piece is shored up, the discussion can be about reducing penalties, he said.

4:03:19 PM

REPRESENTATIVE FANSLER clarified that Senate Bill 91's focus was in making society a better place and eliminating crime. The statistics show that reducing recidivism is the correct avenue and offering rehabilitation programs and opportunities, not locking people away for years of their lives. He pointed out that, not only is locking people away costly, but it ruins people's lives and it creates more victims. Therefore, he further pointed out, the real manner in which to solve this problem, the real way to help Alaskans, and the real way to concentrate on Alaskans, is to make sure the state is not producing more criminals or more hardened criminals, but rather that the state is releasing criminals who will not recidivate and transfer into society through these programs, and will contribute to society. It is known that these goals are not accomplished by locking people away, as has been seen in the

State of Texas, and this is a step toward those successes. He stressed that this is something he feels passionately about, which is why he is offering amendments that are closer to the recommendations of the Alaska Criminal Justice Commission, of which has studied these issues for many years.

REPRESENTATIVE MILLETT maintained her objection.

4:04:40 PM

A roll call vote was taken. Representatives Fansler and Claman voted in favor of the adoption of Amendment 26. Representatives Kopp, Kreiss-Tomkins, LeDoux, Millett, and Eastman voted against it. Therefore, Amendment 26 failed to be adopted by a vote of 2-5.

CHAIR CLAMAN noted that Amendment 27 is the subject of a bill that passed the House of Representatives and is currently located in the limbo file.

4:05:27 PM

REPRESENTATIVE MILLETT moved to adopt Amendment 27, labeled 30-LS0461\N.62, Martin, 10/24/17, which read as follows: [The text of Amendment 27 is listed at the end of the 10/24/2017, 9:00 am, minutes of SB 54.]

REPRESENTATIVE FANSLER objected.

4:05:40 PM

REPRESENTATIVE MILLETT said that Chair Claman was correct, Amendment 27 is a bill that passed the House of Representatives and came back from the Senate with the addition of the drug tramadol. She advised that the Controlled Substance Advisory Board offers recommendations regarding controlled substances, and both of these substances, especially U-47700 with street name "Pink," "which is about 20 times stronger than fentanyl, which is about 20 times stronger than meth and heroin." There is no medical use for U-47700, and Amendment 27 puts it in schedule IA controlled substance. Tramadol, she explained, is being used as a street drug, and Alaska is seeing the uptake in the abuse of Tramadol, in addition to the uptake in the use of U-47700. She offered that because the bill is in the limbo file and the legislature is not in regular session, she is not breaking any rules in special session by offering Amendment 27.

CHAIR CLAMAN clarified that Amendment 27 is not the version that was passed by the House of Representatives, it is the somewhat modified version passed by the Senate.

4:07:16 PM

REPRESENTATIVE FANSLER surmised that this will include a title change for SB 54.

REPRESENTATIVE MILLETT answered yes, and opined that other amendments have passed and will require a title change also.

4:07:44 PM

REPRESENTATIVE FANSLER removed his objection.

REPRESENTATIVE EASTMAN objected to Amendment 27 for purposes of discussion, and asked that the sponsor explain the meaning of schedule IA controlled substances.

CHAIR CLAMAN reminded Representative Eastman that this bill was debated in this committee last year, and in that regard, he does not see a reason to not move forward. He opined that it passed the House of Representatives unanimously.

REPRESENTATIVE EASTMAN commented that he was pretty sure it did not pass unanimously, and he wanted to be sure schedule IA classification is appropriate.

REPRESENTATIVE MILLETT responded that schedule IA is basically any drug without a medical use, and U-47700 has zero medical use.

REPRESENTATIVE EASTMAN maintained his objection.

4:09:27 PM

REPRESENTATIVE KOPP referred to AS 11.71.140(a), which read as follows:

> AS 11.71.140. Schedule Ia.
> (a) A substance shall be placed in schedule IA if it is found under AS 11.71.120(c) to have the highest degree of danger or probable danger to a person or the public.

REPRESENTATIVE KOPP noted that the Controlled Substance Advisory Board recommended this change, the DOL chairs the Controlled Substance Advisory Board, the DOL is fine with Amendment 27, and he supports the amendment.

4:10:07 PM

REPRESENTATIVE FANSLER thanked the sponsor for bringing this legislation forward as Alaska has an unprecedented opioid crisis and this amendment should be fast-tracked.

REPRESENTATIVE KREISS-TOMKINS said he seconds Representative Fansler's appreciation and suggested looking at a more efficient way to approach listing these types of drugs, so a piece of legislation is not required each time something new emerges from the chemists of the under-world and hits the streets.

REPRESENTATIVE MILLETT advised that Governor Bill Walker's office came to her with this piece of legislation due to the opioid crisis. She reiterated that the Controlled Substance Advisory Board reviews Alaska's drugs with the mission of looking at drugs and street drugs to make sure the classifications are correct. Amendment 27 will give the state more tools in the toolbox to combat the state's opioid crisis, she explained.

REPRESENTATIVE EASTMAN continued to maintain his objection.

4:11:49 PM

A roll call vote was taken. Representatives Kopp, Kreiss-Tomkins, LeDoux, Millett, Fansler and Claman voted in favor of adopting Amendment 27. Representative Eastman voted against it. Therefore, Amendment 27 was adopted by a vote of 6-1.

4:12:31 PM

REPRESENTATIVE MILLETT moved to adopt Amendment 28, labeled 30-LS0461\N.68, Martin, 10/24/17, which read as follows:

> Page 2, following line 29:
> Insert a new bill section to read:
> "*** Sec. 6.** AS 12.55.125(c) is amended to read:
> (c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a

definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, three to six years;

(2) if the offense is a first felony conviction and the defendant

(A) possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, **five to nine years;** or

(B) knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, **seven** [FIVE] to **11** [NINE] years;

(3) if the offense is a second felony conviction, eight to 12 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (*l*) of this section, 13 to 20 years."

Renumber the following bill sections accordingly.

Page 15, line 18:
Delete "sec. 15"
Insert "sec. 16"

Page 15, following line 20:
Insert a new paragraph to read:
"(1) AS 12.55.125(c), as amended by sec. 6 of this Act;"

Renumber the following paragraphs accordingly.

Page 15, line 21:
Delete "sec. 6"
Insert "sec. 7"

Page 15, line 22:
Delete "sec. 7"
Insert "sec. 8"

Page 15, line 23:
Delete "sec. 8"
Insert "sec. 9"

Page 15, line 24:
Delete "sec. 9"
Insert "sec. 10"

Page 15, line 25:
Delete "sec. 10"
Insert "sec. 11"

Page 15, line 26:
Delete "sec. 11"
Insert "sec. 12"

Page 15, line 27:
Delete "sec. 12"
Insert "sec. 13"

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 19"

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 19"

Page 15, line 30:
Delete "Section 17"
Insert "Section 18"

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 25"

REPRESENTATIVE FANSLER objected.

4:12:35 PM

REPRESENTATIVE MILLETT referred to the issue of uniformed police officers, emergency medical technicians, paramedic, ambulance attendant, or any other emergency responder hurt in the line of duty, and offered that she did not know whether this issue was an unintended consequence of Senate Bill 91. The issue, she explained, is that Senate Bill 91 lowered the sentence for

severely injuring these individuals, and Amendment 28 carves out the presumptive sentencing range and puts it back to the pre-Senate Bill 91 range of seven to eleven years.

4:13:46 PM

REPRESENTATIVE EASTMAN surmised that all of the changes in this amendment are strictly going back to pre-Senate Bill 91 status.

REPRESENTATIVE MILLETT confirmed that these would go back to pre-Senate Bill 91 levels for just this class of uniformed police officers, emergency medical technicians, paramedic, ambulance attendant, or any other emergency responder hurt in the line of duty.

4:14:23 PM

REPRESENTATIVE KOPP asked Mr. Skidmore whether there are any other issues. He commented that he appreciates that this amendment is sending a strong message about community condemnation of those people who would assault any uniformed first responder, and he wants to be certain the goal is covered in the amendment.

MR. SKIDMORE answered that he does not see any issues with this particular amendment, although he did have questions earlier about aggravators. He clarified that special circumstances, under AS 12.55.125(c), in this instance only addresses those offenses that were a Class A felony, as opposed to all of the other crimes. These special circumstances only apply to those most serious injuries, he explained, and the aggravator he spoke of earlier, only applies to other offenses which would have been a Class B or Class C felony. This is the presumptive range that would apply for the Class A, and this is what controls in terms of what happens for an officer or a first responder that is harmed, he explained. An aggravator and a special circumstance cannot be used together to enhance a sentence, it must be one or the other. For example, he explained, when the law offers a special circumstance, an aggravator cannot be added. In the event the prosecution used an aggravator, the aggravator would have authorized a maximum sentence and that is not allowed for a Class A felony, which is what this special circumstance addresses. He noted that "this says your sentencing range for that is seven to eleven," and he wanted to make clear how these two legal concepts interact with one another."

4:16:57 PM

REPRESENTATIVE MILLETT asked for clarification that Amendment 28 identifies the statute prior to pre-Senate Bill 91.

MR. SKIDMORE answered in the affirmative.

CHAIR CLAMAN said that special circumstances were not available, and the prosecution was just using the aggravator because a Class A felony is up to 20-years in jail. Under Amendment 28, because the definition of special circumstances includes the firearm against a public safety officer, that by adopting Amendment 28, the committee is saying that the judge's discretion to get to the maximum sentence is removed because with an aggravator for a firearm at a public safety officer, if "you didn't have this special circumstance you could go up to 20, but because of this with a firearm against a public safety officer, the sentence is limited to seven to eleven years."

MR. SKIDMORE clarified that the firearm is the first special circumstance, and then there is the "or," so it is not a firearm directed at a first responder. He explained that the firearm is when a person possesses a firearm, or uses a dangerous instrument, or causes serious physical injury to anyone, that is a special circumstance for those Class A felonies. He referred to Amendment 28, AS 12.55.125(2)(B), page 1, lines 14-18, and advised that AS 12.55.125(2)(B) is directly affected by this amendment when changing it to seven to eleven years, that is only when it applies to first offenders. The Class A felony can be causing serious physical injury but need not involve a dangerous instrument or a firearm. There is a differentiation, he said, and his point is that when the victim in a case is the first responder, it need not be an injury caused by a firearm.

4:19:12 PM

CHAIR CLAMAN offered a scenario of a Class A felony assault in the first degree, and a person directed that conduct at a public safety officer or first responder. He explained that if there wasn't this statute, the prosecution could prove up an aggravator that the person knowingly directed the conduct at a public safety officer. At that point, he explained, without this special circumstance, the sentencing range would be five to twenty years under the Class A felony.

MR. SKIDMORE advised that Chair Claman's legal analysis is accurate, but this special circumstance existed prior to any criminal justice reform.

4:19:59 PM

CHAIR CLAMAN surmised that, in terms of the maximum sentence in this special circumstance, it restricts the judge's discretion when there is an injury to a first responder. The judge could not give them the maximum of 20-years because the judge would be limited to five to eleven years, unless the prosecution proved up a different aggravator that was not incorporated in this special circumstance.

MR. SKIDMORE said that he thought Chair Claman was correct, but Chair Claman's analysis assumes that this special circumstance was removed entirely. Currently, he explained, this special circumstance limits it to five to nine years.

CHAIR CLAMAN asked for clarification that these are actually special circumstances when talking about the maximum sentence, such that the judge's discretion to go to the maximum on a first offender, under these circumstances, is removed. He said he is not saying that is not a reasonable policy choice ...

MR. SKIDMORE said that is how the law was prior [to criminal justice reform].

4:20:57 PM

REPRESENTATIVE KREISS-TOMKINS surmised that special circumstances, prior to criminal justice reform, limited a judge's discretion if the judge wanted to sentence someone to up to 20-years, because that would be what an aggravator would allow for a Class A felony. He related that he is struggling to express himself.

MR. SKIDMORE explained that with the presumptive sentencing established for a Class A felony for a first offender, if there are special circumstances, it would allow that presumptive sentencing to be higher when one of these special circumstances was found by a jury beyond a reasonable doubt. As to aggravators, he explained, the prosecution can look at whether there are any aggravators that allow this crime to go higher than that presumptive sentencing range. He explained that there is an aggravator that uses this same language, and that aggravator would not be allowed to be used to aggravate this particular offense, although a different aggravator could be used to elevate the sentence. He advised that special circumstances start with the premise to increase the presumptive

range for this particular crime, and he does not know the criminal history of how it ended up as both a special circumstance and an aggravator and is in both places. He said he could only explain how the two things work in conjunction with each other.

4:23:26 PM

REPRESENTATIVE KREISS-TOMKINS commented that throughout decades of the legislative process "it seems maybe a little bit clunky the way things were prior to Senate Bill 91" in that if there were no other aggravators that could be proven, "this this sort of" moving up the presumptive range, but also preventing an aggravator from being applied to the crime would actually handicap or limit sentencing potentials associated with a crime.

MR. SKIDMORE commented that he was unsure there was a question.

REPRESENTATIVE KREISS-TOMKINS asked whether his thinking was "going off the rails."

MR. SKIDMORE said that he does not believe Representative Kreiss-Tomkins was going off the rails.

4:24:40 PM

REPRESENTATIVE KOPP commented that the unexplainable history that Mr. Skidmore pointed out highlights why criminal law should always be vetted through a body that thinks through these issues at length. Thereby preventing internal conflicts or things that cannot be reconciled. Ideally, he said, the Alaska Criminal Justice Commission would be reviewing all criminal related bills because it would help the process. He pointed to Class A felonies and the possible death of a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, EMT, paramedic, and asked whether necessarily the discussion was about manslaughter and not murder, otherwise it would not be a Class A felony, it would be an unclassified felony.

MR. SKIDMORE asked whether the question was limited only to manslaughter as opposed to ...

4:26:57 PM

REPRESENTATIVE KOPP explained that if it was death, it would have to be a manslaughter offense that was being discussed here

because it is a Class A felony versus and an unclassified felony.

MR. SKIDMORE responded that this would apply to two Class A felonies, assault in the first degree and potentially manslaughter if talking about death. Predominantly, he said, he thinks of this more as assault in the first degree as opposed to manslaughter.

REPRESENTATIVE KOPP offered a scenario of a person fleeing a traffic stop and they accidentally run over and kill an officer. He commented that his reading of this bill is that it would be presumptive to a seven to eleven-year sentence, as amended. He asked whether Mr. Skidmore could think of any other aggravators that that could increase that sentence.

MR. SKIDMORE, in response to the scenario, answered that it depends upon all of the specific facts of the case, such that a responsible prosecutor would sit down with the statutes and sentencing manual and look for all of the provisions of law that might apply. He opined that the scenario applies to Class A felonies, and the Class A felonies he thinks of off the top of his head are assault in the first degree, and manslaughter. There could be a manslaughter that involved the first responder, and this is what would control, seven to eleven years, he said.

4:28:15 PM

REPRESENTATIVE LEDOUX referred to the language located in Amendment 28, AS 12.55.125(c), page 1, line 15, "clearly identified peace officer," and asked why it does not apply to someone working in an undercover operation when the intent is to protect peace officers.

MR. SKIDMORE explained that the state wants to penalize an individual who knowingly kills a law enforcement officer. In the event the person is undercover, it may not be a situation in which that undercover officer was killed because they were a law enforcement officer. Hypothetically, he offered, if a law enforcement officer is working undercover, and the person being investigated does not realize they are an officer, and there is some other reason the person chooses to harm that officer, the killing is not about them being a law enforcement officer, it is for some other rationale. He offered that there are other crimes that the DOL would be able to use to prosecute that offender. In the event the goal is to enhance the penalty because it was an officer, then the law does require the mental

state he discussed earlier, the knowingly, recklessly, and those sorts of things. He reiterated that it does require a mental state to go along with that, and to have zero mental state would be a strict liability, and the state does not send people to jail on strict liability offenses as a general rule.

4:29:54 PM

REPRESENTATIVE LEDOUX commented that the state does not send people to jail for strict liability offenses, but this involves sentencing. She related that if the intent is to protect law enforcement officers as a category, she is confused as to why those not in uniform and not otherwise clearly identifiable, should not be included. She said she may be going down a rabbit hole, but this was not the situation prior to Senate Bill 91.

MR. SKIDMORE related that he was not suggesting what policy the legislature does or does not take, but rather he was offering an explanation as to why the law is crafted in this manner. He remarked that Representative LeDoux's point that it relates to sentencing as opposed to an element of the crime was well taken.

4:31:25 PM

REPRESENTATIVE EASTMAN asked the sponsor whether she would consider an amendment that would add to the "knowingly directed not uniformed peace officers?" Thereby, he clarified, maintaining the knowingly, and opening it up not to just clearly identified peace officers, but for sentencing purposes "peace officers." In the event the person knew they were peace officers, he said he did not think the crime should have a different sentence just because they were wearing a uniform.

CHAIR CLAMAN clarified that the language does not require the peace officers be uniformed, it read "clearly identified," and he suggested that a law enforcement officer could vocally identify themselves as a police officer. The officer would be clearly identified, and it would then become a fact question as to whether if knowingly directed conduct at that officer. There is nothing in this language that requires a uniform, he said.

REPRESENTATIVE EASTMAN commented that that would not cover the situation being discussed earlier as to an undercover officer. He related that the person could know they were an undercover officer, but they would not be covered under this language because the officer was not clearly identified.

4:31:51 PM

REPRESENTATIVE MILLETT responded to Representative Eastman that she is not opposed to a conceptual amendment, but if the conceptual amendment is offered, then the committee "should do a uniform change also" to the murder statute for a peace officer. She opined that that is where the confusion comes in, and she is trying to fix an oversight in Senate Bill 91 where this portion of a uniformed peace officer or first responder was inadvertently changed in the overall reduction in presumptive sentencing. She said she is not opposed to a conceptual amendment, although the immediate need is to change the unintended consequence in Senate Bill 91.

REPRESENTATIVE LEDOUX remarked that for purposes of sentencing, the person would not have to know the person was a peace officer, just that they knowingly directed a weapon at that person.

4:34:17 PM

REPRESENTATIVE KOPP commented that the committee was going down a rabbit hole, "a big one." He then referred to clear legislative intent, and read as follows: "uniformed personnel, uniformed peace officers, fire fighters, correctional employee, EMTs, paramedics, ambulance attendants, or emergency responders engaged in the performance of official duties at the time of the offense." He advised that undercover officers or not clearly identified officers is a whole other section of law, and it is a much higher standard to say whether someone knowingly directed their conduct at someone who was not identifiable in an official role. He related that in the event the concern is about that, the law already covers it extensively under AS 12.55.155(c)(13), Factors in Aggravation and Mitigation, which read as follows:

> (13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

REPRESENTATIVE KOPP advised that these factors in aggravation can be completely outside of any presumptive sentence and can be taken to the maximum for murder. He described that the

committee is trying to do "way more" than just debate the straight forward amendment, and the committee should speak solely to the amendment. He said he supports the amendment as currently written.

4:36:08 PM

REPRESENTATIVE LEDOUX commented that even though she got the committee into the rabbit hole, she suggested that the committee think about this issue for another bill, and to keep this amendment clear.

REPRESENTATIVE EASTMAN said the amendment is an improvement over existing law and that stiffer penalties would be appropriate.

4:36:54 PM

REPRESENTATIVE FANSLER removed his objection. There being no objection Amendment 28 was adopted.
#
4:37:40 PM

The committee took an at-ease from 4:37 p.m. to 4:38 p.m.
#
4:38:14 PM

[CHAIR CLAMAN discussed upcoming amendments.]

[SB 54 was held over.]

4:40:03 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was [adjourned] at 4:40 p.m.

AMENDMENTS

The following amendments to HB 54 were either discussed or adopted during the hearing. [Shorter amendments are provided in the main text only.]

AMENDMENT 3 [30-LS0461\N.60, Martin, 10/23/17]

Page 2, following line 29:

Insert new bill sections to read:

"*** Sec. 6.** AS 12.55.025(a) is amended to read:

(a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report that includes the following:

(1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;

(3) a clear statement of the terms of the sentence imposed; if a term of imprisonment is imposed, the statement must include

(A) the approximate minimum term the defendant is expected to serve before being released or placed on mandatory parole if the defendant is eligible for and does not forfeit good conduct deductions under AS 33.20.010; and

(B) if applicable, the approximate minimum term of imprisonment the defendant must serve before becoming eligible for release on discretionary [OR ADMINISTRATIVE] parole;

(4) any recommendations as to the place of confinement or the manner of treatment; and

(5) in the case of a conviction for a felony offense, information assessing

(A) the financial, emotional, and medical effects of the offense on the victim;

(B) the need of the victim for restitution; and

(C) any other information required by the court.

*** Sec. 7.** AS 12.55.115 is amended to read:

Sec. 12.55.115. Fixing eligibility for discretionary [OR ADMINISTRATIVE] parole at sentencing. The court may, as part of a sentence of imprisonment, further restrict the eligibility of a prisoner for discretionary [OR ADMINISTRATIVE] parole for a term greater than that required under **AS 33.16.090** [AS 33.16.089, 33.16.090,] and 33.16.100."

Renumber the following bill sections accordingly.

Page 11, following line 12:
Insert new bill sections to read:

"*** Sec. 20.** AS 33.16.010(c) is amended to read:

(c) A prisoner who is not eligible for special medical [, ADMINISTRATIVE,] or discretionary parole, or who is not released on special medical [, ADMINISTRATIVE,] or discretionary parole, shall be released on mandatory parole for the term of good time deductions credited under AS 33.20, if the term or terms of imprisonment are two years or more.

*** Sec. 21.** AS 33.16.010(d) is amended to read:

(d) A prisoner released on special medical, [ADMINISTRATIVE,] discretionary, or mandatory parole is subject to the conditions of parole imposed under AS 33.16.150. Parole may be revoked under AS 33.16.220.

*** Sec. 22.** AS 33.16.060(a) is amended to read:

(a) The board shall

(1) serve as the parole authority for the state;

(2) consider the suitability for parole of a prisoner who is eligible for discretionary parole at least 90 days before the prisoner's first date of eligibility and upon receipt of the prisoner's application for special medical parole;

(3) impose parole conditions on all prisoners released under special medical, [ADMINISTRATIVE,] discretionary, or mandatory parole;

(4) under AS 33.16.210, discharge a person from parole when custody is no longer required;

(5) maintain records of the meetings and proceedings of the board;

(6) recommend to the governor and the legislature changes in the law administered by the board;

(7) recommend to the governor or the commissioner changes in the practices of the department and of other departments of the executive branch necessary to facilitate the purposes and practices of parole;

(8) upon request of the governor, review and recommend applicants for executive clemency; and

(9) execute other responsibilities prescribed by law.

*** Sec. 23.** AS 33.16.090(a) is amended to read:

(a) A prisoner sentenced to an active term of imprisonment of at least 181 days [AND WHO HAS NOT BEEN RELEASED ON ADMINISTRATIVE PAROLE AS PROVIDED IN AS 33.16.089] may, in the discretion of the board, be released on discretionary parole if the prisoner

(1) has served the amount of time specified under (b) of this section, except that

(A) a prisoner sentenced to one or more mandatory 99-year terms under AS 12.55.125(a) or one or more definite terms under AS 12.55.125(*l*) is not eligible for consideration for discretionary parole;

(B) a prisoner is not eligible for consideration of discretionary parole if made ineligible by order of a court under AS 12.55.115;

(C) a prisoner imprisoned under AS 12.55.086 is not eligible for discretionary parole unless the actual term of imprisonment is more than one year; or

(2) is at least 60 years of age, has served at least 10 years of a sentence for one or more crimes in a single judgment, and has not been convicted of an unclassified felony or a sexual felony as defined in AS 12.55.185.

*** Sec. 24.** AS 33.16.100(f) is amended to read:

(f) The board shall authorize the release of a prisoner who has been convicted of a class A, class B, or class C felony, or a misdemeanor, who is eligible for parole under AS 12.55.115 and AS 33.16.090, has met the requirement of a case plan created under AS 33.30.011(8), **and** has agreed to and signed the condition of parole under AS 33.16.150, [AND HAS NOT BEEN RELEASED ON ADMINISTRATIVE PAROLE UNDER AS 33.16.089,] unless the board finds by clear and convincing evidence on the record that the prisoner poses a threat of harm to the public if released on parole. If the board finds that the incomplete case plan is not the fault of the prisoner or that the prisoner would not pose a threat of harm to the public if released on parole, the board may waive the case plan requirement.

*** Sec. 25.** AS 33.16.120(f) is amended to read:

(f) Upon request of the victim, if a prisoner is released under AS 33.16.010(c) [, 33.16.089,] or 33.16.090, the board shall make every reasonable effort to notify the victim before the prisoner's release date. Notification under this subsection must include the expected date of the prisoner's release,

the geographic area in which the prisoner is required to reside, and other pertinent information concerning the prisoner's conditions of parole that may affect the victim.

*** Sec. 26.** AS 33.16.130(a) is amended to read:

(a) The parole board shall hold a hearing before granting an eligible prisoner special medical or discretionary parole. [THE BOARD SHALL ALSO HOLD A HEARING IF REQUESTED BY A VICTIM UNDER PROCEDURES ESTABLISHED FOR THE REQUEST FOR A PRISONER ELIGIBLE FOR ADMINISTRATIVE PAROLE.] A hearing shall be conducted within the following time frames:

(1) for prisoners eligible under AS 33.16.100(a) or (f), not less than 90 days before the first parole eligibility date [, UNLESS THE PRISONER IS ELIGIBLE FOR ADMINISTRATIVE PAROLE];

(2) for all other prisoners, not less than 30 days after the board is notified of the need for a hearing by the commissioner or the commissioner's designee."

Renumber the following bill sections accordingly.

Page 11, following line 21:
Insert new bill sections to read:

"*** Sec. 28.** AS 33.16.140 is amended to read:

Sec. 33.16.140. Order for parole. An order for parole issued by the board, setting out the conditions imposed under AS 33.16.150(a) and (b) and the date parole custody ends, shall be furnished to each prisoner released on special medical, [ADMINISTRATIVE,] discretionary, or mandatory parole.

*** Sec. 29.** AS 33.16.150(a) is amended to read:

(a) As a condition of parole, a prisoner released on special medical, [ADMINISTRATIVE,] discretionary, or mandatory parole

(1) shall obey all state, federal, or local laws or ordinances, and any court orders applicable to the parolee;

(2) shall make diligent efforts to maintain steady employment or meet family obligations;

(3) shall, if involved in education, counseling, training, or treatment, continue in the program unless granted permission from the parole officer assigned to the parolee to discontinue the program;

(4) shall report

(A) upon release to the parole officer assigned to the parolee;

(B) at other times, and in the manner, prescribed by the board or the parole officer assigned to the parolee that accommodate the diligent efforts of the parolee to secure and maintain steady employment or to participate in educational courses or training programs;

(5) shall reside at a stated place and not change that residence without notifying, and receiving permission from, the parole officer assigned to the parolee;

(6) shall remain within stated geographic limits unless written permission to depart from the stated limits is granted the parolee;

(7) may not use, possess, handle, purchase, give, distribute, or administer a controlled substance as defined in AS 11.71.900 or under federal law or a drug for which a prescription is required under state or federal law without a prescription from a licensed medical professional to the parolee;

(8) may not possess or control a firearm; in this paragraph, "firearm" has the meaning given in AS 11.81.900;

(9) may not enter into an agreement or other arrangement with a law enforcement agency or officer that will place the parolee in the position of violating a law or parole condition without the prior approval of the board;

(10) may not contact or correspond with anyone confined in a correctional facility of any type serving any term of imprisonment or a felon without the permission of the parole officer assigned to a parolee;

(11) shall agree to waive extradition from any state or territory of the United States and to not contest efforts to return the parolee to the state;

(12) shall provide a blood sample, an oral sample, or both, when requested by a health care professional acting on behalf of the state to provide the sample or samples, or an oral sample when requested by a juvenile or adult correctional, probation, or parole officer, or a peace officer, if the prisoner is being released after a conviction of an offense requiring the state to collect the sample or samples for the deoxyribonucleic acid

identification registration, per state editorial review of AS 33 system under AS 41.41.035;

(13) from a conviction for a sex offense shall submit to regular periodic polygraph examinations; in this paragraph, "sex offense" has the meaning given in AS 12.63.100.

*** Sec. 30.** AS 33.16.150(b) is amended to read:

(b) The board may require as a condition of special medical, [ADMINISTRATIVE,] discretionary, or mandatory parole, or a member of the board acting for the board under (e) of this section may require as a condition of [ADMINISTRATIVE OR] mandatory parole, that a prisoner released on parole

(1) not possess or control a defensive weapon, a deadly weapon other than an ordinary pocket knife with a blade three inches or less in length, or ammunition for a firearm, or reside in a residence where there is a firearm capable of being concealed on one's person or a prohibited weapon; in this paragraph, "deadly weapon," "defensive weapon," and "firearm" have the meanings given in AS 11.81.900, and "prohibited weapon" has the meaning given in AS 11.61.200;

(2) refrain from possessing or consuming alcoholic beverages;

(3) submit to reasonable searches and seizures by a parole officer, or a peace officer acting under the direction of a parole officer;

(4) submit to appropriate medical, mental health, or controlled substance or alcohol examination, treatment, or counseling;

(5) submit to periodic examinations designed to detect the use of alcohol or controlled substances; the periodic examinations may include testing under the program established under AS 33.16.060(c);

(6) make restitution ordered by the court according to a schedule established by the board;

(7) refrain from opening, maintaining, or using a checking account or charge account;

(8) refrain from entering into a contract other than a prenuptial contract or a marriage contract;

(9) refrain from operating a motor vehicle;

(10) refrain from entering an establishment where alcoholic beverages are served, sold, or otherwise dispensed;

(11) refrain from participating in any other activity or conduct reasonably related to the parolee's offense, prior record, behavior or prior behavior, current circumstances, or perceived risk to the community, or from associating with any other person that the board determines is reasonably likely to diminish the rehabilitative goals of parole, or that may endanger the public; in the case of special medical parole, for a prisoner diagnosed with a communicable disease, comply with conditions set by the board designed to prevent the transmission of the disease;

(12) refrain from traveling in the state to make diligent efforts to secure or maintain steady employment or to participate in educational courses or training programs only if the travel violates other conditions of parole.

*** Sec. 31.** AS 33.16.150(e) is amended to read:

(e) The board may designate a member of the board to act on behalf of the board in imposing conditions of [ADMINISTRATIVE OR] mandatory parole under (a) and (b) of this section, in delegating imposition of conditions of [ADMINISTRATIVE OR] mandatory parole under (c) of this section, and in setting the period of compliance with the conditions of [ADMINISTRATIVE OR] mandatory parole under (d) of this section. The decision of a member of the board under this section is the decision of the board. A prisoner or parolee aggrieved by a decision of a member of the board acting for the board under this subsection may apply to the board under AS 33.16.160 for a change in the conditions of [ADMINISTRATIVE OR] mandatory parole.

*** Sec. 32.** AS 33.16.150(f) is amended to read:

(f) In addition to other conditions of parole imposed under this section, the board may impose as a condition of special medical, [ADMINISTRATIVE,] discretionary, or mandatory parole for a prisoner serving a term for a crime involving domestic violence (1) any of the terms of protective orders under AS 18.66.100(c)(1) - (7); (2) a requirement that, at the prisoner's expense, the prisoner participate in and complete, to the satisfaction of the board, a program for the rehabilitation of perpetrators of domestic violence that meets the standards set by, and that is approved by, the department under AS 44.28.020(b); and (3) any other condition necessary

to rehabilitate the prisoner. The board shall establish procedures for the exchange of information concerning the parolee with the victim and for responding to reports of nonattendance or noncompliance by the parolee with conditions imposed under this subsection. The board may not under this subsection require a prisoner to participate in and complete a program for the rehabilitation of perpetrators of domestic violence unless the program meets the standards set by, and is approved by, the department under AS 44.28.020(b).

*** Sec. 33.** AS 33.16.150(g) is amended to read:

(g) In addition to other conditions of parole imposed under this section for a prisoner serving a sentence for an offense where the aggravating factor provided in AS 12.55.155(c)(29) has been proven or admitted, the board shall impose as a condition of special medical, [ADMINISTRATIVE,] discretionary, and mandatory parole a requirement that the prisoner submit to electronic monitoring. Electronic monitoring under this subsection must comply with AS 33.30.011(10) and provide for monitoring of the prisoner's location and movements by Global Positioning System technology. The board shall require a prisoner serving a period of parole with electronic monitoring as provided under this subsection to pay all or a portion of the costs of the electronic monitoring, but only if the prisoner has sufficient financial resources to pay the costs or a portion of the costs. A prisoner subject to electronic monitoring under this subsection is not entitled to a credit for time served in a correctional facility while the defendant is on parole. In this subsection, "correctional facility" has the meaning given in AS 33.30.901.

*** Sec. 34.** AS 33.16.150(h) is amended to read:

(h) In addition to other conditions of parole imposed under this section, for a prisoner serving a sentence for an offense involving the use of alcohol or controlled substances, the board may impose, as a condition of special medical, [ADMINISTRATIVE,] discretionary, or mandatory parole, a requirement that the prisoner comply with a program established under AS 33.16.060(c) or AS 47.38.020. The board may require a prisoner serving a period of parole and complying with a program established under AS 33.16.060(c) or

AS 47.38.020 to pay all or a portion of the costs associated with the program.

*** Sec. 35.** AS 33.16.180 is amended to read:

Sec. 33.16.180. Duties of the commissioner. The commissioner shall

(1) conduct investigations of prisoners eligible for [ADMINISTRATIVE OR] discretionary parole, as requested by the board and as provided in this section;

(2) supervise the conduct of parolees;

(3) appoint and assign parole officers and personnel;

(4) [PROVIDE THE BOARD, WITHIN 30 DAYS AFTER SENTENCING, INFORMATION ON A SENTENCED PRISONER WHO MAY BE ELIGIBLE FOR ADMINISTRATIVE PAROLE UNDER AS 33.16.089 OR DISCRETIONARY PAROLE UNDER AS 33.16.090;

(5)] notify the board and provide information on a prisoner 120 days before the prisoner's mandatory release date, if the prisoner is to be released on mandatory parole;

(5) [(6)] maintain records, files, and accounts as requested by the board;

(6) [(7)] prepare preparole reports under AS 33.16.110(a);

(7) [(8)] notify the board in writing of a prisoner's compliance or noncompliance with the prisoner's case plan created under AS 33.30.011(8) not less than 30 days before the prisoner's next parole eligibility date or the prisoner's parole hearing date, whichever is earlier;

(8) [(9)] establish an administrative sanction and incentive program to facilitate a swift and certain response to a parolee's compliance with or violation of the conditions of parole and shall adopt regulations to implement the program; at a minimum, the regulations must include

(A) a decision-making process to guide parole officers in determining the suitable response to positive and negative offender behavior that includes a list of sanctions for the most common types of negative behavior, including technical violations of conditions of parole, and a list of incentives for compliance with conditions and positive behavior that exceeds those conditions;

(B) policies and procedures that ensure

(i) a process for responding to negative behavior that includes a review of previous violations and sanctions;

(ii) that enhanced sanctions for certain negative conduct are approved by the commissioner or the commissioner's designee; and

(iii) that appropriate due process protections are included in the process, including notice of negative behavior, an opportunity to dispute the accusation and the sanction, and an opportunity to request a review of the accusation and the sanction; and

(9) [(10)] within 30 days after sentencing of an offender, provide the victim of a crime information on the earliest dates the offender could be released on furlough, probation, or parole, including deductions or reductions for good time or other good conduct incentives, and the process for release, including contact information for the decision-making bodies.

*** Sec. 36.** AS 33.16.200 is amended to read:

Sec. 33.16.200. Custody of parolee. Except as provided in AS 33.16.210, the board retains custody of special medical, [ADMINISTRATIVE,] discretionary, and mandatory parolees until the expiration of the maximum term or terms of imprisonment to which the parolee is sentenced."

Renumber the following bill sections accordingly.

Page 11, following line 31:
Insert a new bill section to read:

"*** Sec. 39.** AS 44.19.645(g) is amended to read:

(g) The Department of Corrections shall report quarterly to the working group authorized in (b)(3) of this section. The report shall include the following information:

(1) data on pretrial decision making and outcomes, including information on pretrial detainees admitted for a new criminal charge; detainees released at any point before case resolution; time spent detained before first release or case resolution; pretrial defendant risk level and charge; pretrial release recommendations made by pretrial services officers; pretrial conditions imposed on pretrial detainees by judicial officers, including amount of bail, and supervision conditions; and information on

pretrial outcomes, including whether or not the defendant appeared in court or was re-arrested during the pretrial period;

(2) data on offenders admitted to the Department of Corrections for a new criminal conviction, including the offense type, number of prior felony convictions, sentence length, and length of stay;

(3) data on the population of the Department of Corrections, using a one-day snapshot on the first day of the first month of each quarter, broken down by type of admission, offense type, and risk level;

(4) data on offenders on probation supervised by the Department of Corrections, including the total number of offenders supervised using a one-day snapshot on the first month of each quarter; admissions to probation; assignments to a program under AS 33.05.020(f); probation sentence length; time served on the sentence; whether probation was successfully completed, any new convictions for a felony offense, and any sentences to a term of imprisonment while on probation;

(5) data on parole, including the number of offenders supervised on parole, using a one-day snapshot on the first month of each quarter; the number of parole hearings; the parole grant rate and number of parolees released on [ADMINISTRATIVE,] discretionary [,] and special medical parole; and information on parolees, including time spent on parole, whether parole was successfully completed, any new convictions for a new felony offense, and any sentences to a term of imprisonment while on parole;

(6) data on the implementation of policies from the 2015 justice reinvestment report, including the number and percentage of offenders who earn compliance credits under AS 33.05.020(h) or AS 33.16.270 in one or more months, and the total amount of credits earned; the average number of sanctions issued under AS 33.05.020(g) before a petition to revoke probation or parole is filed; and the most common violations of probation or parole; and

(7) data on probation and parole revocations, including information on probationers and parolees admitted for a supervision violation pre-case and post-case resolution; probationers and parolees admitted solely for a technical violation;

probationers and parolees admitted for a new arrest; the number of previous revocations on the current sentence, if any; the length of time held pre-case resolution; the length of time to case resolution; and the length of stay."

Renumber the following bill sections accordingly.

Page 15, line 7:
Delete "and"

Page 15, line 8, following "12.55.125(e)(4)(D)":
Insert "; AS 33.16.010(f), 33.16.089, and 33.16.900(1)"

Page 15, line 18:
Delete "sec. 15"
Insert "sec. 17"

Page 15, line 21:
Delete "sec. 6"
Insert "sec. 8"

Page 15, line 22:
Delete "sec. 7"
Insert "sec. 9"

Page 15, line 23:
Delete "sec. 8"
Insert "sec. 10"

Page 15, line 24:
Delete "sec. 9"
Insert "sec. 11"

Page 15, line 25:
Delete "sec. 10"
Insert "sec. 12"

Page 15, line 26:
Delete "sec. 11"
Insert "sec. 13"

Page 15, line 27:
Delete "sec. 12"
Insert "sec. 14"

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 27"

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 27"

Page 15, line 30:
Delete "Section 17"
Insert "Section 19"

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 43"

AMENDMENT 27 [30-LS0461\N.62, Martin, 10/24/17]

Page 1, line 2, following "**trafficking;**":
Insert "**classifying U-47700 as a schedule IA controlled substance; classifying tramadol and related substances as schedule IVA controlled substances;**"

Page 2, following line 29:
Insert new bill sections to read:
"* Sec. 6. AS 11.71.140(c) is amended to read:
(c) Schedule IA includes, unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:
(1) acetylmethadol;
(2) allylprodine;
(3) alphacetylmethadol;
(4) alphameprodine;
(5) alphamethadol;
(6) alphaprodine;
(7) anileridine;
(8) benzethidine;
(9) betacetylmethadol;
(10) betameprodine;
(11) betamethadol;
(12) betaprodine;
(13) bezitramide;

(14) clonitazene;
(15) dextromoramide;
(16) diampromide;
(17) diethylthiambutene;
(18) difenoxin;
(19) dihydrocodeine;
(20) dimenoxadol;
(21) dimepheptanol;
(22) dimethylthiambutene;
(23) dioxaphetyl butyrate;
(24) diphenoxylate;
(25) dipipanone;
(26) ethylmethythiamutene;
(27) etonitazene;
(28) etoxeridine;
(29) fentanyl;
(30) furethidine;
(31) hydroxpethidine;
(32) isomethadone;
(33) ketobemidone;
(34) levomethorphan;
(35) levomoramide;
(36) levorphanol;
(37) levophenacylmorphan;
(38) meperidine, also known as pethidine;
(39) metazocine;
(40) methadone;
(41) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(42) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenyl- propane-carboxylic acid;
(43) morpheridine;
(44) noracymethadol;
(45) norlevorphanol;
(46) normethadone;
(47) norpipanone;
(48) pethidine, also known as merperidine;
(49) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(50) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carbox-ylate;
(51) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(52) phenadoxone;
(53) phenampromide;
(54) phenazocine;
(55) phenomorphan;

(56) phenoperidine;
(57) piminodine;
(58) piritramide;
(59) propheptazine;
(60) properidine;
(61) propiram;
(62) racemethorphan;
(63) racemoramide;
(64) racemorphan;
(65) trimeperidine;
(66) alfentanil;
(67) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)-ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4(N-propanilido) piperidine);
(68) bulk dextropropoxyphene (non-dosage form);
(69) carfentanil;
(70) sufentanil;
(71) tilidine;
(72) para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
(73) 3-methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
(74) acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenetnyl)-4-piperidinyl]-N-phenylacetamide);
(75) alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);
(76) beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropan amide);
(77) beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
(78) 3-methylthiofentanyl (N-[(3-methyl-l-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
(79) thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
(80) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(81) PEPAP (1-(-2-pheynethyl)-4-phenyl-4-acetoxypiperidine)**;**
(82) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide, also known as U-47700.

*** Sec. 7.** AS 11.71.170 is amended by adding a new subsection to read:

(g) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance or its salts calculated as the free anhydrous base or alkaloid: 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers, including tramadol."

Renumber the following bill sections accordingly.

Page 15, line 18:
Delete "sec. 15"
Insert "sec. 17"

Page 15, line 21:
Delete "sec. 6"
Insert "sec. 8"

Page 15, line 22:
Delete "sec. 7"
Insert "sec. 9"

Page 15, line 23:
Delete "sec. 8"
Insert "sec. 10"

Page 15, line 24:
Delete "sec. 9"
Insert "sec. 11"

Page 15, line 25:
Delete "sec. 10"
Insert "sec. 12"

Page 15, line 26:
Delete "sec. 11"
Insert "sec. 13"

Page 15, line 27:
Delete "sec. 12"
Insert "sec. 14"

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 20"

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 20"

Page 15, line 30:
Delete "Section 17"
Insert "Section 19"

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 26"