ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
October 25, 2017
8:03 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Louise Stutes (alternate)

OTHER MEMBERS

Representative Andy Josephson
Representative Mike Chenault
Representative Dan Ortiz
Representative Justin Parrish
Representative DeLena Johnson

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
10/24/17	(H)	Heard & Held
10/24/17	(H)	MINUTE(JUD)
10/24/17	(H)	JUD AT 6:00 PM GRUENBERG 120
10/24/17	(H)	Heard & Held
10/24/17	(H)	MINUTE(JUD)
10/25/17	(H)	JUD AT 8:00 AM GRUENBERG 120

WITNESS REGISTER

JOHN SKIDMORE, Division Director
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, answered a question.

DEAN WILLIAMS, Commissioner
Department of Corrections
Juneau, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

RANDALL BURNS, Director
Division of Behavioral Health
Department of Health and Social Services
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

TONY PIPER, Coordinator
Alcohol Safety Action Program

Division of Behavioral Health
Department of Health and Social Services
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

BARBARA DUNHAM, Project Attorney
Alaska Criminal Justice Commission
Alaska Judicial Council
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

JEFF EDWARDS, Director
Alaska Board of Parole
Department of Corrections
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

SUSANNE DiPETRO, Executive Director
Alaska Judicial Council
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered a question.

ACTION NARRATIVE

8:03:02 AM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 8:03 a.m. Representatives Claman, Fansler, Kopp, Kreiss-Tomkins, LeDoux, and Eastman were present at the call to order. Representative Millett (alternate for Representative Lora Reinbold) 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

8:03:42 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 the committee that Legislative Legal and Research Services has permission to make any technical and conforming changes to this bill. During the hearing of 10/24/17, 9:00 a.m., meeting, the committee considered Amendments 1 through 28: Amendment 1 was withdrawn, Amendments 2, 22, 25, 26 failed to be adopted; Amendments 3, 9, 27, 28 were adopted, and all of the other amendments were rolled to the bottom of the stack for possible consideration. Chair Claman explained the amendment process.

CHAIR CLAMAN then turned the committee to Amendment 29.

8:05:25 AM

[Chair Claman and Representative Eastman discussed the amendment process.]

8:06:02 AM

REPRESENTATIVE KREISS-TOMKINS moved to adopt Amendment 29, Version 30-LS0461\N.63, Martin, 10/24/17, which read as follows:

> Page 1, line 4, following "**program;**":
> Insert "**relating to peremptory challenges; amending Rule 24(d), Alaska Rules of Criminal Procedure;**"
>
> Page 15, following line 6:
> Insert a new bill section to read:
> "*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:
> DIRECT COURT RULE AMENDMENT. Rule 24(d), Alaska Rules of Criminal Procedure, is amended to read:
> (d) **Peremptory Challenges.** A party who waives peremptory challenge as to the jurors in the box does not thereby lose the challenge but may exercise it as to new jurors who may be called. A juror peremptorily challenged is excused without cause. If the offense is

punishable by imprisonment for more than one year, each side is entitled to **six** [10] peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year, or by a fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly."

Renumber the following bill sections accordingly.

Page 15, following line 29:
Insert a new bill section to read:
"*** Sec. 25.** Section 22 of this Act takes effect only if sec. 22 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska."

Renumber the following bill sections accordingly.

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

REPRESENTATIVE FANSLER objected.

8:06:18 AM

REPRESENTATIVE KREISS-TOMKINS noted that when discussing the criminal justice process a number of preemptory challenges are involved, particularly in some rural court systems wherein that number of preemptory challenges have the propensity to gum up the works. He advised that Alaska was at six preemptory challenges for a long period of time and a few years ago the legislature raised that number to ten preemptory challenges for the prosecution and the defense, while noting that 10 preemptory challenges are well above the national median. In some rural court systems that means flying jurors into the small community just to be challenged, rejected, and then fly back to their home, thereby, possibly taking days to find a jury for what can often be a short trial. He pointed to the narrower frame of this legislation and suggested that the conversation be continued during the regular session via a different vehicle. Representative Kreiss-Tomkins withdrew Amendment 29.

8:07:28 AM

REPRESENTATIVE LEDOUX moved to adopt Amendment 30, Version 30-LS0461\N.81, Glover/Martin, 10/24/17, which read as follows:

Page 2, following line 29:
Insert a new bill section to read:
"*** Sec. 6.** AS 12.55.027(g) is amended to read:

(g) A court granting credit against a sentence of imprisonment under (d) of this section may grant credit of not more than **120** [360] days against a total term of imprisonment imposed for

(1) a felony crime against a person under AS 11.41;

(2) a crime involving domestic violence as defined in AS 18.66.990;

(3) a sex offense as defined in AS 12.63.100;

(4) an offense under AS 11.71 involving the delivery of a controlled substance to a person under 19 years of age;

(5) burglary in the first degree under AS 11.46.300; or

(6) arson in the first degree under AS 11.46.400."

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 12.55.027(g), 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.

8:07:45 AM

REPRESENTATIVE LEDOUX explained that Amendment 30 reduces the maximum credit, against a prison sentence for time served under electronic monitoring (EM), from 360-days to 120-days. She further explained that this would only apply to felony crimes against people, domestic violence crimes, sex offenses, delivery of controlled substances to a person under 19-years of age, burglary in the first degree, and arson in the first degree.

8:08:39 AM

REPRESENTATIVE MILLETT offered strong support for Amendment 30 because those individuals who committed the above-mentioned offenses should not be allowed to receive the same credit as folks charged with lesser crimes.

8:09:07 AM

REPRESENTATIVE LEDOUX, in response to Representative Kopp, agreed that this amendment applies to all felonies under crimes against persons.

REPRESENTATIVE KOPP noted that Amendment 30 is geared toward a sentence of imprisonment, except pretrial is the only time a person would be on electronic monitoring (EM). At pretrial, he explained, a person is presumed innocent until they had moved through their due process procedures, had a chance to confront witnesses, and all lawful protections were applied to that individual. A person would only be on electronic monitoring (EM) if they were deemed to be low-risk pretrial. In the event the court determined there was not a single violation which would put them back in prison, this [credit] would only be taken off at the end of their sentence. He asked whether the amendment was trying to say that under no circumstances, in a pretrial and pre-conviction setting, would the court have any discretion in letting someone out on EM, or whether the amendment was trying to severely limit the court's discretion.

REPRESENTATIVE LEDOUX pointed out that under current law, the court is limited in granting EM because the language read "may grant" up to 360 days. Amendment 30 cuts that discretion from 360 days to 120 days and, she pointed out, these are only for the "really bad crimes," she pointed out.

8:11:54 AM

REPRESENTATIVE EASTMAN asked whether the credit being given would count toward the amount of time someone would have to serve on a sentence before being eligible for parole. He referred to a previous discussion about time kicking in at the end of the sentence, and if that were the case, would it kick in at the beginning of the sentence, he asked.

REPRESENTATIVE LEDOUX clarified that Amendment 30 does not change current law other than change the time from 360 days to 120 days. Representative Eastman's question would equally apply

if she had reduced it to 359 days, although, she then opined that she was not absolutely certain about her answer.

CHAIR CLAMAN clarified that because Amendment 30 is under AS 12.55.027, where a court grants credit for time served, the court never comes into play about probation or earlier credit after a sentence begins, because once a defendant is sentenced, the defendant is put into the custody of the Department of Corrections (DOC) and DOC makes those decisions. Therefore, he explained, the court making a decision about credit for time served is necessarily addressing pretrial release conditions. For example, someone was released on EM and had no problems for 240 days, the court would be limited by Amendment 30 to grant only 120 days of the 240 days toward the person's service of their sentence, he explained.

8:14:50 AM

JOHN SKIDMORE, Division Director, Criminal Division, Department of Law (DOL), answered that Chair Claman's explanation is correct. AS 12.55.027(g) is when the court awards someone credit against their time in jail based on the amount of time they had been in a confining facility.

REPRESENTATIVE EASTMAN noted that he did not see anything specifically dealing with electronic monitoring (EM), although he understands that EM would be involved. He asked whether it would be any type of confinement, including EM.

MR. SKIDMORE answered in the affirmative.

REPRESENTATIVE EASTMAN asked for clarification that Amendment 30 deals with the courts, and it does not deal with any types of days counting toward good behavior or anything similar. He asked whether this credit comes off the sentence before incarceration, and that after the person is incarcerated, good time and those sorts of credits kick in.

REPRESENTATIVE LEDOUX replied that she thinks Representative Eastman is correct.

8:17:00 AM

REPRESENTATIVE KOPP noted that this discussion has been ongoing within the Alaska Criminal Justice Commission for over two-years and opined that there are various pretrial treatments for mental health and substance abuse for individuals. In the event the

court decides the person is a low enough risk to be out of a DOC facility and into treatment, the person can be on intensive supervision in those facilities. The questions become, if a person is under intensive EM supervision in these programs and they are not free to do anything else in their life, should that apply to their sentence, and whether the legislature wants individuals in those recovery environments to have any time taken off of the end of their sentence. After "batting this around" for two years, he offered that the commission arrived at no more than 360 days because the range of felony sentences, generally, are from 5 years to 99 years. He remarked that he does not support Amendment 30 and described it as dangerous when the committee tries to get into all of the technical discussions that have been considered at the commission level on these types of issues, it is better left in its current form.

8:18:37 AM

CHAIR CLAMAN stated that he does not support Amendment 30 because some treatment programs are up to one-year in length. For example, he offered, say a person with major drug and alcohol problem was released to such a treatment program and succeeded in that program after committing any of the assaults listed, this amendment would force them back into prison. Thereby, he stressed, undoing the very treatment criminal justice reform is trying to encourage.

REPRESENTATIVE LEDOUX described Amendment 30 as a judgement call.

REPRESENTATIVE FANSLER maintained his objection.

8:19:23 AM

A roll call vote was taken. Representatives LeDoux, Millett, and Eastman voted in favor of the adoption of Amendment 30. Representatives Kopp, Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, the adoption of Amendment 30 failed to be adopted by a vote of 3-4.

8:20:01 AM

REPRESENTATIVE MILLETT moved to adopt Amendment 31, Version 30-LS0461\N.67, Glover/Martin, 10/24/17, which read as follows:

Page 2, following line 29:

Insert a new bill section to read:

"*** Sec. 6.** AS 12.30.011, as repealed and reenacted by sec. 59, ch. 36, SLA 2016, is amended by adding a new subsection to read:

(*l*) If the supreme court establishes a schedule of bail amounts or conditions of release for misdemeanor offenses, the schedule must include a condition providing that a correctional facility shall, at the time of release, conduct a chemical test of the breath of a person who has been arrested and who is intoxicated and may detain the person until the test result indicates that the person'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 17:
Delete "and"

Page 15, following line 17:
Insert a new paragraph to read:
"(6) AS 12.30.011(*l*), enacted by sec. 6 of this Act; and"

Renumber the following paragraph accordingly.

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

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 of this Act takes"
Insert "Sections 6 and 18 of this Act take"

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

REPRESENTATIVE FANSLER objected.

8:20:06 AM

REPRESENTATIVE MILLETT described Amendment 31 as the "sober law" and advised that it would only apply to misdemeanors because the bail schedule only applies to misdemeanors. The amendment allows law enforcement to hold a person until they are under the legal limit of alcohol. She related that she would like to add the language "or a sober adult" as a third party because it would alleviate the constitutionality of this issue. Judges previously allowed this practice even though the specific language was not in statute, and this amendment codifies that previous practice. Amendment 31 allows a judge the discretion to hold a misdemeanant in jail until they could be released on their own recognizance (OR), or, if they were unable to pass a breathalyzer test they could be released to a sober third-party, she explained. This is a tool in the toolbox for public safety she described, and after speaking with the Alaska State Troopers

and the Anchorage Police Department, the amendment is prudent. She related that judges were squeamish because they could not point to the bail schedule or a statute allowing them authority to hold an inebriated individual until they were sober.

8:23:21 AM

REPRESENTATIVE MILLETT moved to adopt Conceptual Amendment 1 to Amendment 31, on [page 1, line 10], after the language "210 liters of breath" add the language "or a sober adult."

8:23:36 AM

GRACE ABBOTT, Staff, Representative Charisse Millett, Alaska State Legislature, noted that the language in the bail statute read "may," and the Alaska Court System and Legislative Legal and Research Services advised that "may" would allow for a release to a third-party. Except, she opined, it may be appropriate to insert, "or released to a sober ..." noting that the word "responsible" adult was previously discussed.

CHAIR CLAMAN asked Ms. Abbott to clarify the location that the language "or a sober adult" would be inserted.

MS. ABBOTT answered that it would be "after the word breath, or released to ..." She then clarified that it would be on line 10.

8:24:54 AM

CHAIR CLAMAN stated that Conceptual Amendment 1 to Amendment 31, page 1, line 10, adds the words "or released to a sober adult" after the word "breath."

REPRESENTATIVE KOPP commented that possibly the word should be "responsible."

8:25:40 AM

MR. SKIDMORE, in response to whether the words should be "responsible" or "sober," advised that Reeves v. State, 599 P.2d 727 (1979) fn 9, read as follows:

> Even if a bail schedule is furnished, in order to protect the public and the arrestee, law enforcement officials in some cases might reasonably detain an

intoxicated arrestee until he is sufficiently sober or a responsible person arrives to take custody of him.

MR. SKIDMORE explained that when the 1979 Alaska Supreme Court reviewed this issue, it chose the word "reasonable," which follows precisely with this amendment.

8:26:40 AM

REPRESENTATIVE MILLETT, in response to Chair Claman, deferred to Mr. Skidmore as to whether the word should be: responsible, reasonable, or sober.

MR. SKIDMORE explained that he had suggested the word "responsible" because that is the word the Alaska Supreme Court used in Reeves; therefore, it has the least likelihood of any sort of legal challenge.

8:27:20 AM

CHAIR CLAMAN offered the language contained in Conceptual Amendment 1 to Amendment 31, page 1, line 10, after the word "breath" add the language "or release to a responsible adult."

REPRESENTATIVE FANSLER objected to the adoption of Conceptual Amendment 1 to Amendment 31.

8:27:40 AM

REPRESENTATIVE LEDOUX commented that while it follows that a responsible adult would necessarily be a sober adult, it is actually broader because a sober adult would not necessarily be responsible. For example, she said, a person could be a sober total loser and not necessarily responsible; therefore, a responsible person is a broader description than simply being a sober third-party. She asked Mr. Skidmore whether she was correct.

CHAIR CLAMAN noted that some of the most interesting issues in caselaw appear in the footnotes.

MR. SKIDMORE agreed that an individual could be sober and not necessarily be deemed responsible, and a responsible adult could be deemed not completely sober. He offered a scenario of one of his daughters being arrested for something after he had had consumed a beer or a glass of wine, he said he was unsure he was necessarily sober, but he still considered himself to be

responsible under those circumstances. Mr. Skidmore described that this is a policy question, and that he deferred to the word "responsible" because that is the word the 1979 Alaska Supreme Court used when deciding the Reeves lawsuit.

8:29:44 AM

REPRESENTATIVE FANSLER asked the definition of responsible.

MR. SKIDMORE reiterated that "responsible" was the word choice made by the 1979 Alaska Supreme Court and it is up to the committee to determine the definition of responsible. He related that he could look at responsible as someone who had a legal responsibility for an individual or, he offered, responsible is someone to be trusted without a legal responsibility for the individual that they were taking into their care. Amendment 31 was not offered by the Department of Law (DOL), and he only knows about this case due to the discussions within the Alaska Criminal Justice Commission.

8:30:55 AM

REPRESENTATIVE FANSLER asked whether responsible had been defined anywhere in statute because he could think of different definitions for responsible, for example: responsible in that moment; responsible in the last week; or responsible over their life time. Suddenly, the legislature is directing a judge to make this determination, and he remarked that he is against the idea of letting a judge determine who is responsible and who is not, such that someone was not wearing a shirt, for example. He remarked that all kinds of issues could come from this when directing a judge to determine who is a responsible human being.

MR. SKIDMORE clarified that setting this as a condition means the court would simply set the condition. Whereas, he explained, the determination of whether the person who shows up is responsible, is a determination for the Department of Corrections (DOC) because this occurs when the person is released. In the event a sober or responsible person showed up, the DOC must decide whether it could legitimately release the inebriated individual at that moment because no one conducts an analysis of the person's background to determine whether the person could be trusted with the inebriant's care.

8:32:43 AM

REPRESENTATIVE FANSLER commented that Mr. Skidmore had hit on his exact point, there is no analysis for this action and it would come down to an employee in a correctional facility deciding that they did not like the person who showed up and the inebriate would not be released to their care. He related the need for the committee to include some type of strict definition or strict legality in the [conceptual] amendment, such as "responsible in the sense that you are a parent or child, or something like that." This [conceptual] amendment leaves too much latitude for the person to "play God" as to whether the person could be released to the individual who showed up at the facility, he expressed.

MR. SKIDMORE offered that the committee could attempt to craft a definition, or the DOC would likely come up with some sort of regulation to provide guidance to its employees as to how that would be pursued.

8:33:49 AM

REPRESENTATIVE MILLETT reiterated that this was the practice for many years, the Anchorage Police Department (APD) and the Alaska State Troopers (AST) used it as a tool even though it was not codified, and it was not in the bail schedule. She referred to Alaska Supreme Court caselaw that talks about "responsible," and although the word is undefined, it seems to be something the DOC officers and judges would not use as a discriminatory factor. She reiterated that this is a public safety issue for the public and for those people released from prison while still under the influence. She asked whether this was an issue for the court system, DOC, or DOL.

MR. SKIDMORE responded that from his 20 years of experience throughout the state, he has frequently seen well respected impose a condition of release requiring that the person is sober before being released from prison.

This issue was raised through the work of the Alaska Criminal Justice Commission and he noted that the courts, law enforcement, and prosecutors have voiced their concerns. The commission has not yet reached any decisions or recommendations, but it is a hot topic. He pointed out that "we are always concerned" about almost all of the state's laws and whether the laws are being applied in some discriminatory manner because there is always that possibility, but steps are in the system to provide recourse if someone believes discrimination had taken place.

8:37:55 AM

CHAIR CLAMAN asked whether Mr. Skidmore was involved with Alaska Criminal Justice Commission subcommittee reviewing this issue.

MR. SKIDMORE answered that he is on the subcommittee, there has been one meeting and other meetings are scheduled, and Captain Sean Case is the chair of that subcommittee.

8:38:25 AM

REPRESENTATIVE EASTMAN surmised that the only time this definition of responsible would come into play would be after a time of detainment and an intoxicated person was being released. He asked whether giving the inmate the opportunity to go with a responsible adult would be in the inmate's favor.

MR. SKIDMORE answered that Representative Eastman was correct. The goal of Amendment 31, he explained, is to ensure that the person being released was either sober, or that the person could be released while intoxicated to a person who would take them under their care.

8:39:29 AM

[Chair Claman and Representative Eastman discussed the fact that the maker of the conceptual amendment used the word "responsible" in Conceptual Amendment 1 to Amendment 31.]

REPRESENTATIVE EASTMAN asked whether the word sober has a legal definition, and how the DOC would assess whether someone was sober.

MR. SKIDMORE advised that there are multiple ways upon which DOC may make that assessment, for most folks in the criminal justice system, sober is under the .08 legal limit to drive. He then offered the argument that a field sobriety test is a better assessment than the alcohol breathalyzer test because alcohol can affect different people at different levels.

8:41:39 AM

REPRESENTATIVE KOPP noted that the Bristol Bay jail holds a maximum of eight people; therefore, it is important that, if there was no other reason to hold a person, that they were released under the legal limit of sobriety, or safely delivered

to a person offering them a safe standard of care. He suggested that using the word "sober" is unfortunate because this discussion is simply about a legal limit of intoxication. While he appreciates Representative Fansler's concerns of judgment, he advised that the DOC officers try every day to retain the desperately needed bed space for higher-level offenders. These officers generally exercise good judgment when delivering folks to a person willing and able to provide a safe standard of care to the person being released. He said he supports Conceptual Amendment 1 to Amendment 31.

8:43:49 AM

REPRESENTATIVE KREISS-TOMKINS surmised that this is a new tool in the toolbox that has not yet been field tested.

MR. SKIDMORE clarified that this practice did occur throughout the system for many years, and during his practice in Bethel, Dillingham, Kenai, and Anchorage, this tool was used effectively. He explained that during the process of criminal justice reform and looking at revising bail schedules, it was unclear which statute gave the judges authority to impose this particular condition, so judges stopped using that condition of release. He reiterated that this tool has been field tested and used successfully for over a decade, and the Alaska Criminal Justice Commission is attempting to determine how the tool could be utilized again, how it could be authorized, and what statutory language could be used for that purpose.

REPRESENTATIVE KREISS-TOMKINS surmised that this conceptual amendment is basically codifying something that informally emerged in the criminal justice system. He asked whether any concerns had emerged from the subcommittee, or whether any deliberations depart from the language contained in Conceptual Amendment 1 to Amendment 31.

MR. SKIDMORE noted that the subcommittee's scope was broader, in that it also looks at issues regarding Title 47, how those laws work, where people are supposed to be taking them, and under what circumstances. The subcommittee is also looking at intoxicated people and incapacitated people who had been arrested, and a whole gamut of issues.

REPRESENTATIVE KREISS-TOMKINS asked Commissioner Dean Williams how he sees this amendment being enacted, and whether he had concerns about how it read as conceptually amended.

8:48:21 AM

DEAN WILLIAMS, Commissioner, Department of Corrections, related that it is not good when an issue is grey regarding someone making a determination as to when an inmate should be released. His concern, he offered, is that this committee is making these types of calls at the same time the Alaska Criminal Justice Commission subcommittee, comprised of law enforcement representatives, the DOC, and people from mental health field, are currently working on this problem issue. He remarked that asking staff to determine who is responsible may sound simple, except, he stressed, a remand facility is complicated with things moving fast, and; therefore, staff will error on the side of keeping someone in prison. It is important to get this right, and he suggested giving the commission's subcommittee an opportunity to offer the legislature a solution to this issue, while stressing that he "totally agrees" that this is a problem.

8:50:14 AM

REPRESENTATIVE MILLETT asked Mr. Skidmore whether this amendment would only apply to people charged with a crime and that it is not about picking up intoxicated people. Some people may believe a police officer can pick a person up for being intoxicated and hold them, she said.

MR. SKIDMORE explained that this amendment applies solely to individuals who have been arrested for a crime, it does not authorize law enforcement to go out and pick someone up for being intoxicated. This solely applies to people who have committed a crime and were intoxicated at the time of committing that crime, and the person must have sobered up before being released, or they can be released to a responsible person. He added that this amendment falls in line with the law of the State of Indiana.

8:51:40 AM

REPRESENTATIVE MILLETT noted concern that the commission's subcommittee may slowly come to a solution because that subcommittee has many issues to consider. She suggested that this amendment could be a placeholder in the event the commission later offered additional recommendations. Law enforcement advised, she related, that the more immediate this issue is codified, better outcomes will take place. She asked Commissioner Williams whether this policy could go into effect and then be modified through the commission process.

COMMISSIONER WILLIAMS explained that this practice was applied inconsistently and pointed to the importance of the presiding judges debating this particular issue. He reiterated that this is a problem for law enforcement when making decisions as to who is a responsible adult, and that he wants to get that right with Representative Millett. In his position as commissioner, he stressed that he does not want intoxicated people sitting in the DOC facilities who have another place to go, which could be the "sobering centers" the DOC is beginning to develop in Fairbanks. He pointed out that different strategies are in order for whatever resources are available in each community. The Department of Corrections (DOC) could live with this amendment, but he asked that the commission's subcommittee have 2-3 months to work on the problem, and if it did not then offer the best solution, to introduce the amendment at that time.

REPRESENTATIVE MILLETT countered that she does not want another death because the legislature did not pass an amendment that could have saved someone's life which, she stressed, is more important than getting it right.

8:55:25 AM

REPRESENTATIVE EASTMAN referred to page 1, lines 7-8 of Amendment 31, and noted that it read as follows:

> ... that a correctional facility shall, at the time of release, conduct a chemical test of the breath of a person who has been arrested and who is intoxicated ...

REPRESENTATIVE EASTMAN commented that he could see that language being interpreted as someone arrested and intoxicated at the initial time of arrest, or the person was arrested and then was intoxicated at the time of release, or both. He asked Mr. Skidmore to clarify the interpretation of that language.

MR. SKIDMORE answered that line 7 talks about the person at the time of release, and line 8 talks about the person at the time of arrest. He submitted that with both of those, the time of release and the time of arrest, it would have to be that the person was intoxicated at the time they were arrested, and then also looking at the time they are released. He explained that the language looks at that short duration of time because if someone was arrested and not released for days later, they would

be sober. The language must have the events close in time because the intoxication must be associated with both events.

8:58:28 AM

The committee took an at-ease from 8:58 a.m. to 9:40 a.m.

9:40:42 AM

CHAIR CLAMAN brought the committee back to questions on Amendment 31.

9:41:17 AM

REPRESENTATIVE EASTMAN referred to line 8, "who has been arrested and who is intoxicated ..." and asked how the department would make that determination as to whether someone would qualify under this language.

COMMISSIONER WILLIAMS responded that currently, the protocol for intoxicated people entering the facility is to ask the person for compliance in terms of obtaining their blood alcohol content (BAC).

REPRESENTATIVE EASTMAN asked whether this amendment would significantly change the current protocol.

COMMISSIONER WILLIAMS explained that this amendment contemplates that the DOC would make a determination at the end of the release process as to whether the person was competent and safe to be released. Therefore, he answered, this amendment would change the current protocol because it requires the DOC staff to perform another formalized process and make a determination as to whether to release the person.

9:43:27 AM

REPRESENTATIVE EASTMAN asked whether that currently involves conducting a BAC test and whether DOC has the authority to do that, or would this amendment give the DOC authority it does not currently possess.

COMMISIONER WILLIAMS replied that "the devil's in the details," and even though it may sound like a small thing to go back and perform a BAC test, each time the DOC staff touches a person admitted into the facility it requires more hours and more people to run a busy remand facility. He noted that all of the

DOC facilities probably have the BAC devices, but the process requires more involved time when dealing with the person.

REPRESENTATIVE EASTMAN asked what is the percentage of intoxicated people that come into the DOC facilities.

COMMISSIONER WILLIAMS answered that that is a hard question for him to answer as commissioner, but he could speak with the remand facilities. He estimated that many people come to the facilities intoxicated, affected by drugs, or otherwise.

CHAIR CLAMAN advised Commissioner Williams that if he did not have the statistics, he was not required to offer an estimate.

9:45:37 AM

REPRESENTATIVE EASTMAN noted that a previous public testifier advised the committee that the state's prisons are overflowing with drugs and people are released addicted to various substances. He asked the percentage of people released who are in an addicted status.

CHAIR CLAMAN reiterated that if Commissioner Williams did not have the data, he was not required to answer.

COMMISSIONER WILLIAMS said that he does not know the number of people released who are addicted to a substance, and acknowledged a drug problem in the prison system, as in most of the prisons in the nation.

COMMISSIONER WILLIAMS, in response to Representative Eastman, answered that the DOC does not currently test for addiction when people are released from the facility.

9:46:33 AM

REPRESENTATIVE EASTMAN asked the reason DOC does not currently test to determine how many addicted people are released from the state's prisons.

CHAIR CLAMAN interjected that his question has nothing to do with Amendment 31, and he would not allow that question.

REPRESENTATIVE EASTMAN moved to adopt a conceptual amendment ...

CHAIR CLAMAN interrupted and advised Representative Eastman that the committee is not taking conceptual amendments at this time

because the committee was still under consideration of Conceptual Amendment 1 to Amendment 31.

[CHAIR CLAMAN and Representative Eastman discussed the appropriate timing for his motion to adopt Conceptual Amendment 2 to Amendment 31.]

9:47:59 AM

REPRESENTATIVE MILLETT asked Commissioner Williams to walk through the current practice of releasing intoxicated people, and whether the practice is working. [Representative Millett then cited the various instances of released intoxicated people she had testified to previously.]

COMMISSIONER WILLIAMS explained that currently, people are released when the bail schedule says they should be released, or they are taken to court.

The problem in the Fairbanks case, he offered, someone was released that should have been released under the bail schedule because he was presumptively released on his own recognizance release (OR). In that circumstance, even though everything was legally correct, factually, and morally everything happened wrong, he expressed. The DOC releases people when the bail schedule says to release them, or when they are taken to court and the judge orders their release, "it is very black and white in most other cases," he explained.

REPRESENTATIVE MILLETT surmised that under the current system, the DOC is releasing intoxicated people from prison.

COMMISSIONER WILLIAMS related that in some cases, he would guess they were released intoxicated. As to the issue of whether or not people were being to a responsible adult, those are the important nuances in terms of making a safe release. The DOC staff wants to follow the rules and laws, and they want to clearly know when to release a person and when not to release a person. The staff goes through great pains to find a responsible person for the person, but at the end of the day and under the current law, "if the law says that you get out, you're legally able to go, they are legally able to go." Hopefully, they do not make a second bad decision that puts them or someone else in danger. He pointed out that at some particular time, the correctional system has to say, "you're free to go." He stressed that the cleaner the law and the cleaner the rules can be made for the correctional system, the better it is for his

staff being taught "in really difficult circumstances, making judgment calls about who someone should be released to." In response to Representative Millett's question as to whether the DOC is releasing intoxicated people, he answered that the DOC probably does, "but where they go and making a determination of that, what we focus on is whether or not it is legal for them to be released.

9:51:54 AM

REPRESENTATIVE MILLETT noted that Commissioner Williams had testified that the DOC is currently making the determination as to whether a person is responsible or a third-party is responsible. Therefore, would this amendment clarify that there is a statute and a process in place to protect those intoxicated individuals, and if they leave intoxicated, the DOC has a responsible path forward to get them home safely, she asked.

COMMISSIONER WILLIAMS expressed complete agreement with Representative Millett as to the nature and problem, except he would like the Alaska Criminal Justice Committee subcommittee to thoroughly vet the issue and look at other options, and other states. He noted that Mr. Skidmore had just advised him that the subcommittee is currently vetting another option, and Commissioner Williams said he would like those options available. He asked that the committee please not misunderstand that this is of great concern for him as well, and he does not want another Fairbanks case.

9:53:20 AM

CHAIR CLAMAN pointed out to Commissioner Williams that the committee is narrowly discussing a specific conceptual amendment about release to a responsible adult, and many of his comments have related to the entire Amendment 31 question. He asked Commissioner Williams to focus his comments on this specific conceptual amendment.

REPRESENTATIVE MILLETT asked whether the department was currently making determinations about the responsible people accepting the released individuals.

COMMISSIONER WILLIAMS responded that, in certain cases, the department was making those determinations, but as a whole, it does not.

9:54:39 AM

REPRESENTATIVE EASTMAN asked whether there was anything in the conceptual amendment that would limit the department's ability to craft regulations and determine the specifics under which it applies this type of situation.

COMMISSIONER WILLIAMS answered that using the language "responsible adult" does not prohibit the department from crafting regulations about what a responsible adult looks like to the department.

9:55:22 AM

REPRESENTATIVE FANSLER asked, in the eyes of the department, how will the department determine what is a responsible adult.

COMMISSIONER WILLIAMS noted that he does not like to impose these grey areas on the staff, and the department could adopt regulations as to a responsible adult. He explained that this amendment creates another level of interaction in a stressful process when someone is remanded to a facility. He remarked that he would like to avoid the amendment's process, but that does not mean he wants to avoid the larger issue. He is bristling, he explained, about the manner in which the legislature is attacking the problem and the process in which it is being decided.

REPRESENTATIVE FANSLER commented that he is also bristling as well. He then asked Commissioner Williams whether he could come up with a bright line definition of responsible adult, or whether this would a case where "when I'm making the determination," his responsible adult may be a little different than when Chairman Claman is making the decision as to a responsible adult.

COMMISSIONER WILLIAMS expressed that that is exactly the issue that causes him concern about approaching the problem in this manner. At the end of the day, he suggested, that if there is no other solution, this amendment might be the solution, except Alaska is not the first state to address this issue.

9:58:02 AM

REPRESENTATIVE EASTMAN asked that if the committee does nothing on this amendment, when might the subcommittee ...

CHAIR CLAMAN interrupted and advised that the questions must be directed to this conceptual amendment as to a responsible adult.

REPRESENTATIVE EASTMAN asked whether the subcommittee was tackling the question of responsible adult.

CHAIR CLAMAN re-stated the question and asked whether the question of responsible adult is before the subcommittee.

COMMISSIONER WILLIAMS responded that he was confused because he assumed that is what was being discussed here. The discussion is about whether the conceptual amendment is a good thing and noted that he had expressed his concerns as commissioner.

9:59:15 AM

REPRESENTATIVE EASTMAN asked whether the subcommittee is tackling the issue of responsible adult.

CHAIR CLAMAN advised that the subcommittee is addressing this question, and that he would not call the subcommittee in to testify. He pointed to testimony that the subcommittee is addressing this and advised that the House Judiciary Standing Committee would move forward.

9:59:38 AM

REPRESENTATIVE LEDOUX commented that she did not know where to go on this, because she understands where Representative Fansler is coming from, and that she would hope "responsible adult" could be interpreted in a common-sense manner. She offered that it makes sense to use the word "sober" rather than responsible, because responsible has room for problems. Although, she offered, suppose she had had a few drinks, her BAC was over .08 and she was walking and talking, but she was trying to have someone released to her care from jail. Clearly, she said, she would use commercial transportation. She asked whether there was any reason not to release the person to her care, so she see a problem using the word "sober."

Representative LeDoux stated that she wants to do something now because this issue has truly been identified as a problem and advised she would like to use the amendment as a placeholder and possibly a better description would be offered later. She reiterated that she was unsure "whether "to go" for "responsible adult" or "sober adult."

10:02:38 AM

REPRESENTATIVE FANSLER expressed that he would correct some of the statements made about his previous comments. He clarified that this is not a question of Alaska's judges because they are not making the determination, and it is certainly not a question about the state's correctional officers. His comments, he stressed, point out that one of the main reasons Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature] came into existence was due to the inherent discrimination within Alaska's justice system, "and we know that." The numbers bear that fact out, "and to say that there isn't is just not factual. And, to add in a word where we are determining something on a case-by-case basis of who is responsible and who's not, without a bright-line definition for it, bears out an opportunity for more discrimination, and bears out an opportunity to get away from exactly the things we are trying to fix." The legislature wants to protect the public and at the same time make sure the state has a criminal justice system that looks out for both the prosecutorial side and the defense side. That is most important to him, he stressed, and putting the word "responsible" in there without knowing what it means, and hearing the reticence of Commissioner Williams, he cannot support Conceptual Amendment 1 to Amendment 31.

10:04:10 AM

REPRESENTATIVE KREISS-TOMKINS advised that he also struggles with the process in which to solve this issue. He remarked that the lingering questions and the grey area that Commissioner Williams cited are troubling because litigation may ensue regarding responsible adults, and the people who are and are not released. Adding this language may be fast and loose, he described, and he probably will not support Conceptual Amendment 1 to Amendment 31. Representative Kreiss-Tomkins relayed his hope that the Alaska Criminal Justice Commission would forward a recommendation to the legislature after a thorough vetting.

10:06:00 AM

REPRESENTATIVE EASTMAN noted that Representative Fansler had requested a bright-red line and commented that the only bright-red line to find is simply to remove the conceptual amendment entirely, thereby removing that option of someone being turned over to a responsible adult. In that regard, he pointed out, when a minor is in this situation and their parents come

calling, there is not a legal option to turn the minor over to their parents and the minor remains in the care of the DOC. Although, if the option is available, it turns the responsibility over to someone other than the DOC. He supports the conceptual amendment because that option is good to leave on the table because "we as government, through law enforcement or EMS have intervened in a person's life" and when contact has been made with that person there is an assumed responsibility for that inebriated person's care. This amendment proposes the backend solution of making sure that at the time of release, the state is not undoing the potentially good process.

10:09:44 AM

CHAIR CLAMAN offered concern about the conceptual amendment and the manner in which it is applied, and he agreed with Representative LeDoux as to how confusing this is with all of the uncertainty. This issue is, how does a person decide the release, which is why there is a robust process in the Alaska Criminal Justice Commission to look at this question. For those reasons, he said, he will oppose Conceptual Amendment 1 to Amendment 31.

10:10:23 AM

REPRESENTATIVE KOPP interjected that he believes the committee is doing a good job in wrestling with this issue, and that Representative Fansler brought up a good point. He then suggested the language, "or released to -- or released with the consent of the defendant to a person who is willing and able to safely provide care to that person." Therefore, he remarked, the person is released with the consent of the defendant to a person who is able to safely provide care to the person being released.

REPRESENTATIVE MILLETT stated that this is not a political issue, it is a public safety issue, and the legislature makes these types of decisions in the best interests of the public. She said she understands that the commission is working on this issue, but a placeholder is needed because something must be done now. It is her belief that the commission will determine recommendations, and at that time, this language could be amended, and she would be the first person to sponsor the recommended language from the Alaska Criminal Justice Commission. Representative Millett withdrew Conceptual Amendment 1 to Amendment 31 in lieu of Representative Kopp's conceptual amendment going forward because Representative Kopp's

language is probably amenable to everyone on the committee, she said.

10:13:39 AM

REPRESENTATIVE EASTMAN moved to adopt Conceptual Amendment 2 to Amendment 31, page 1, lines 6-7, and advised that the language would read as follows:

> ... providing that a correctional facility shall, at the time of release, [insert] "conduct a test to determine whether a person is chemically dependent on an illicit substance, and" [continue with] conduct a chemical test of the breath of a person who has been arrested and who is intoxicated ...

10:14:15 AM

The committee took an at-ease from 10:14 a.m. to 10:24 a.m.

10:24:38 AM

CHAIR CLAMAN, in response to Representative Eastman, advised that the House Judiciary Standing Committee members are welcome to attend the House of Representative's technical floor session today. He advised that the committee was not taking a break, and if Representative Eastman was not in attendance in this committee, his Conceptual Amendment 2 to Amendment 31 would be withdrawn.

10:25:21 AM

REPRESENTATIVE FANSLER objected to Conceptual Amendment 2.

REPRESENTATIVE EASTMAN referred to the fear of sending people to prison because they may be released for the worse after being in jail and noted that Commission Williams testified that DOC does not know how many addicted individuals are being released, and it is unknown how many people go into prison not addicted and are released addicted. Subsequent to yesterday's testimony, he said he was contacted by an expert familiar with the accomplishments the State of Texas. This expert pointed out that more people were being released from prison addicted than there were going into prison, the steps the State of Texas took to correct that issue, and how it directly attributed to some of the outcomes it recently achieved, he said. In the event that information is not before the committee at this time, it should

zero in and tackle the problems of what happens to people in prison. Particularly, he noted, if their time in prison leaves them medically worse off than when they entered prison.

CHAIR CLAMAN noted a constitutional issue with Conceptual Amendment 2 to Amendment 31.

10:28:22 AM

MR. SKIDMORE explained that while he understands Representative Eastman's goal, its location is particularly troubling because this particular statute and Conceptual Amendment 2 to Amendment 31 discusses release as it relates to bail and this is not the time in which a person assesses what might be going on inside the DOC. He offered that the constitutional violation by inserting the language here, is potentially holding someone far longer than they could serve a sentence that is not related to their crime. He offered serious concerns about that issue because it discusses a person being chemically dependent, and it does not discuss whether someone was under the influence of that substance at the time. Therefore, the determination now is whether or not the person has an addiction problem and assessing that addiction problem takes a great amount of time. He explained that even striking "they were under the influence," that is not the same as a breath alcohol test that can be performed with a preliminary breath test (PBT) or a Datamaster breath alcohol test which is accomplished within a matter of one minute. He pointed out that this is talking about taking blood and having to test it, which takes far longer. He clarified that he is not saying the concept is necessarily misplaced, but it would be in this statute.

REPRESENTATIVE EASTMAN commented that he would like to know how the State of Texas solved this problem, and he wanted to assign someone the task of making that determination so, perhaps, Alaska can adopt the same rules. He said he would withdraw Conceptual Amendment 2 to Amendment 31 at this time.

10:31:36 AM

REPRESENTATIVE KOPP moved to adopt Conceptual Amendment 3 to Amendment 31, page 1, line 10, and advised that the language would read as follows:

> ... alcohol for each 210 liters of breath "or, with the consent of the defendant, released to a

person who is willing and able to safely provide care to the defendant."

REPRESENTATIVE FANSLER objected for discussion.

10:32:11 AM

REPRESENTATIVE KOPP opined that it resolves the issue of the use of terms that could raise concerns as to any sort of discriminatory basis, and it allows for the possibility of a minor receiving a ride home from a parent. He stressed that he intentionally did not use the word "custody" because the DOC is releasing to a person who is willing and able to safely provide care to the defendant. There will always be room for judgements in whatever the construction of the language may be used, he pointed out. This language gets to the intent of Representative Millett's efforts in providing an option for someone to be released from jail as quickly as reasonably possible by allowing for a range of persons safely able to provide care to the defendant, he said.

10:33:30 AM

REPRESENTATIVE FANSLER asked Representative Kopp to define the word "safely."

REPRESENTATIVE KOPP opined that someone could advise the DOC that they are "willing and able," such that the DOC officer knew it was minus-25-degrees outside and the person did not provide a warm vehicle. The DOC officer may advise that the defendant could be released to that person but to return with a car or ask another friend to provide transportation. In those situations, he advised, the correctional officer is trying to make a responsible decision that the transition concerns include safety concern considerations.

10:34:38 AM

CHAIR CLAMAN asked why "willing and able" does not raise some of the same concerns as "responsible" and "sober" because it still asks the corrections officer to make a determination.

REPRESENTATIVE KOPP related that in the larger picture this highlights the state's public safety people always exercise discretion in the course of their duties each day, they are trusted to perform that discretion, and that discretion must be allowed to occur. The phrase "willing and able" means that

someone is not coerced to be there. "Able" means that the person is willing when they say they are able with nothing in plain view that would make [the corrections officer] think that person was not able. He described this as a common-sense [remedy] because it gets rid of any possible pejorative use of terms, and it puts a standard of care into the law that the committee wants the state's public safety people to use in their daily discretion.

10:36:27 AM

REPRESENTATIVE KREISS-TOMKINS asked Commissioner Williams whether he had any thoughts as to Conceptual Amendment 3 to Amendment 31.

COMMISSIONER WILLIAMS responded that he prefers language such that the persons must state they are willing and able. He explained that in the correctional system, he still prefers that the language is "very clean, very clear, very black and white" as much as possible. He pointed out that the DOC is still in the same bucket even if the language inserted is "sober" or "responsible" or "willing and able."

REPRESENTATIVE KREISS-TOMKINS asked whether "willing and able" language sounded less grey than the "responsible adult" language.

COMMISSIONER WILLIAMS reiterated that the language is still grey, and the DOC still has to make the determination. In the event the person is walking and talking, they are "able," but if they look somewhat intoxicated, the DOC staff is still making the determination as to whether they are "able" to care for someone. He opined that he supposed he could write policy to reflect, "if they say they are able, if they claim they are able, we assume they are able." The policy could read, "as long as he says he is willing and able, we are hands off." However, he pointed out, that still exposes the corrections officer as to "whether or not I'm in good intentions, right intentions" to release someone into that circumstance. He reiterated that he would rather try to find another angle to handle the problem the committee wants to solve, because his staff would still have to make a judgment as to whether someone was able to care for another person.

10:39:35 AM

REPRESENTATIVE KREISS-TOMKINS asked Mr. Skidmore his thoughts regarding Conceptual Amendment 3 to Amendment 31.

MR. SKIDMORE answered that from a legal standpoint, this draft provides more detail than just the word "responsible," it is trying to more precisely define what "responsible" would be. He said that he appreciates there will be "some grey" found there as he was unsure whether any greyness could be avoided. At some point, some type of discretion must be utilized because otherwise "you are not left in a position that you can assess each circumstance on a case by case basis," there must be some discretion. Generally, he commented, things work best in that manner, but the committee wants to provide some guidance as to how to exercise that discretion. Whether or not this language strikes that right balance is a policy call for this committee, he said, and the Department of Law (DOL) is committed to work with the Department of Corrections (DOC) to assist in any manner possible based on the decisions of the legislature.

10:41:18 AM

REPRESENTATIVE FANSLER noted that he fully expects, even when this amendment is resolved, that the Alaska Criminal Justice Commission subcommittee will not put aside its work on this issue. He offered a hypothetical that the committee passes Conceptual Amendment 3, passes Amendment 31, puts the language in the bill, the bill passes, and it becomes law within in the next 30-days. Except, in two-months' time the legislature receives another recommendation from the subcommittee, Representative Millett carries that bill to succession, thereby, again changing the policy. Representative Fansler asked whether those frequent changes would put undue stress on the state's system with regard to this issue. He asked whether the frequent changes are a minor, major, or somewhere in between, stress on the system.

COMMISSIONER WILLIAMS reiterated that he wants to get this correct out of the gate due to the DOC will training 1,800 staff, and staff in the community jails. He commented that Alaska is one of four unified states with remand, and the remand issue is important because remand a hazardous time for the staff and the inmates, so he wants it right the first time out of the gate, which is what Representative Fansler was inferring. He remarked that in going back a second time and retraining the staff on the "now new law" involves money and extra training because he has to write new policy around the new law, and he expects his staff to follow policy.

10:44:45 AM

REPRESENTATIVE FANSLER asked Commissioner Williams to offer insight as to the training involved and whether there is regular trainings for all staff, much like an attorney's requirement for CLE training each year. He asked whether once a year everyone in the DOC receives training, and whether that training might be a memorandum describing policies that a commander would send down the line, or whether the training is such that staff might be flown out of Anchorage and Juneau to hold two-day seminars.

COMMISSIONER WILLIAMS explained that training is not a two-day seminar on this sort of issue, but whatever policy is set, he would expect it to be transmitted down through the facilities. In response to Representative Fansler early question, answered, "Oh I wish that there was the regular training that we're talking about" because part of the problems in the DOC is the lack of training, and he explained that the training and the lack of training situation is part of the deeper problem. Each time there is a change in policy, the department could put out a policy with instructions, and be certain the leadership staff understands the policy, and they would conduct small meetings with the staff. He remarked that it would not overwhelm the DOC to make a policy change on this, but not only is labor and time required, he just does not want to change the policy a second time because it throws staff into confusion.

10:47:18 AM

REPRESENTATIVE LEDOUX commented that she was bothered by the fact that Conceptual Amendment 3 appears to be fairly simple, and that the DOC staff must be capable of exercising some sort of discretion about situations. She asked what sort of training would be required to come up with a definition of, "willing and able to safely provide care for the defendant."

COMMISSIONER WILLIAMS explained that if the "able" language means the person is willing to state it, "I'm willing and able to take someone" does not require much training. He stated that he does not want a situation is, "willing and able means with the intent of the committee is about that." He remarked that his point is that making the policy calls in this [committee] process is fraught with difficulty if it is changed at a later date. In the event Conceptual Amendment 3 passes through the legislative process, he advised that he would do everything he could to carry it out as efficiently as possible.

CHAIR CLAMAN pointed out that if the committee adopts Conceptual Amendment 3, the odds are fairly high that the Alaska Criminal Justice Commission will determine that the legislature had made its decision. Unless this conceptual amendment became an issue for the courts, he opined that the commission would not address this issue. He stressed that he would not count on the commission taking this issue up again, or at all, if the House Judiciary Standing Committee takes action. Although, he acknowledged, he may be incorrect, but that is what he would generally say as a member of the commission observing the commission's processes, and the number of issues in front of the commission.

10:50:07 AM

REPRESENTATIVE MILLETT pointed out that Commissioner Williams makes many discretionary and judgment calls regarding prisoners such as, diet, recreation, segregation, medication, and related that she has to have some faith in the system. Representative Millett explained that the ultimate goal of Conceptual Amendment 3 is as a tool in the toolbox to keep public safety as the utmost priority, and an avenue to get folks out of the state's prison beds. Commissioner Williams has asked for adjustments several times as the commissioner, and it is important to get it right the first time and pointed out that Conceptual Amendment 3 to Amendment 31 is an avenue to not repeat the things that have happened in the past.

COMMISSIONER WILLIAMS said he agrees that this conceptual amendment is perhaps better than the current system, it is his preference, he reiterated, to not have to go back and fix the policy twice. In the event this is the avenue the legislature decides to take, he reiterated that he will do everything he can, to the best of his ability, "to make sure this goes right."

REPRESENTATIVE MILLETT said that she does not want to have to tell another family that the state released ...

CHAIR CLAMAN advised that the committee is trying to move Amendment 31 along, and that Representative Millett had made her position clear.

10:52:34 AM

REPRESENTATIVE LEDOUX commented that she does not know whether Conceptual Amendment 3 is perfect, but the choices are that

either everyone is released from jail, no matter how intoxicated they are, or to keep everyone in jail who does not have someone to pick them up, or "you come up with something which sounds sane." She then recited the old adage, "to not let the perfect be the enemy of the good," and commented that she supports Conceptual Amendment 3 to Amendment 31.

REPRESENTATIVE EASTMAN related that Conceptual Amendment 3 to Amendment 31 takes the state back to the purpose for a prison. There are certain situations where someone will wind up in jail to "sleep it off," or deal with a hangover, or deal with any number of other things that have little connection to the reason for confining someone in jail, he described. To the extent that people would be better served [released to] any place outside of jail and leaving jail for those individuals who actually need to be confined, he said he supports Conceptual Amendment 3 to Amendment 31.

REPRESENTATIVE MILLETT commented that this conceptual amendment gets to the heart of the issue and leaves enough interpretation for the Department of Corrections (DOC) to write a regulation that falls back to the previous practice of 1.5 years ago. She opined that she could not think of any lawsuits or issues around the previous practice, and she did not think training took place when the practice went away. Therefore, using this as a guideline is judicious and benefits the public, and she said she supports Conceptual Amendment 3 to Amendment 31 because it is a common-sense conceptual amendment.

CHAIR CLAMAN noted that while he appreciates the efforts of this committee in debating this issue, for the committee to consider the likelihood of a better remedy when letting the Alaska Criminal Justice Commission do its job, and also the likelihood that such a remedy would be before the legislature by January 2018. For those reasons, he said, he does not support Conceptual Amendment 3 to Amendment 31.

10:56:45 AM

REPRESENTATIVE KOPP noted that, in retrospect, he would not have inserted the word "safely." As Commissioner Williams had remarked, that is one more word that invokes an unnecessarily high level of discretion, such that "if a person is presenting, they are willing and able," and that it is not blindingly obvious to the corrections officers that they "are not willing and able to provide care to the defendant." Representative Kopp

reiterated that not inserting "safely" probably would have been cleaner.

CHAIR CLAMAN suggested a conceptual amendment to the conceptual amendment removing the word "safely."

10:58:00 AM

REPRESENTATIVE KOPP moved to adopt Conceptual Amendment 1 to Conceptual Amendment 3 to Amendment 31, page 1, line 10, to delete the word "safely."

10:58:02 AM

CHAIR CLAMAN asked whether there was an objection to adopting Conceptual Amendment 1 to Conceptual Amendment 3 to Amendment 31. There being no objection, Conceptual Amendment 1 to Conceptual Amendment 3 to Amendment 31 was adopted.

10:58:21 AM

CHAIR CLAMAN advised that Amended Conceptual Amendment 3 to Amendment 31, page 1, line 10, read as follows:

> ... alcohol for each 210 liters of breath or, with the consent of the defendant released to a person who is willing and able to provide care to the defendant.

10:58:43 AM

REPRESENTATIVE FANSLER withdrew his objection. There being no objection, Amended Conceptual Amendment 3 to Amendment 31 was adopted.

10:58:58 AM

CHAIR CLAMAN advised that Amendment 31, as amended, was before the committee.

REPRESENTATIVE LEDOUX asked whether there was a constitutional question here as to the possibility of someone being kept in jail longer than they legally could be kept for whatever crime they had allegedly committed.

MR. SKIDMORE responded that there should not be a constitutional issue so long as Amendment 31, as amended, focuses on someone

who had been arrested for a crime to which alcohol was related, and the amendment is written in that fashion. In terms of holding someone longer, he opined, it would not be an issue because it gets into the science of retrograde extrapolation, and how quickly alcohol dissipates from a person's system. For example, he said, a State of Indiana statute talks about someone not being held any longer than 12-hours "due to retrograde extrapolation, even if you were at a point four suggests that the alcohol would be out of the person's system at that time." The State of Alaska has no crimes for which someone could be arrested, for which the maximum sentence would be less than what this provision would allow, he explained.

11:01:45 AM

REPRESENTATIVE LEDOUX asked whether it was changed yesterday, through the adoption of her amendment, wherein disorderly conduct now has a possible jail sentence. In her view, she said, "this is not just for misdemeanors which involve alcohol, this is for misdemeanor offenses." She offered a scenario wherein the state was not allowed to put someone in jail for an underlying citation, but the person was taken to jail because they were extremely intoxicated, and yet the person must be released right away. Representative LeDoux asked how that scenario would be any different from "grabbing someone off the street" who had not engaged in any arrestable conduct and holding them until they sobered up. This is not a bad idea, she said, but pointed to her concern that the constitution may preclude it.

MR. SKIDMORE explained that her question is resolved by the fact that for anyone arrested and held, there would have to be some sort of probable cause determination. For instance, for most individuals in Anchorage, that probable cause determination happens throughout the night, and he did not believe there would be those sorts of concerns. He opined that it does not present those same sort of constitutional concerns Representative LeDoux suggested.

11:04:02 AM

REPRESENTATIVE LEDOUX asked for clarification that unless the amendment for disorderly conduct, previously adopted in this committee, passes in the House of Representatives and in the Senate, there is no jailtime.

MR. SKIDMORE explained that under current law, disorderly conduct is punishable by 24-hours in jail, and the change would be from 24-hours to five-days in the event the previous amendment was signed into law. He explained that Amendment 31, as amended, would not create problems under current law.

REPRESENTATIVE LEDOUX asked whether there is any misdemeanor in which no jailtime is allowed whatsoever under Senate Bill 91, or under the previous law.

MR. SKIDMORE responded that there are misdemeanor crimes which, under current law and if SB 54 were to pass, for which there would not be jail that was authorized as the ultimate sentence.

REPRESENTATIVE LEDOUX commented that if jail is not authorized as the ultimate sentence, she asked whether there is any constitutional problem with holding someone against their will because they are intoxicated.

MR. SKIDMORE answered that the only crime he could think of, under that category and a first offense, would be theft in the fourth degree, but for the multiple offenses that would not be the case. He remarked that he still does not think it creates a constitutional problem because when someone is arrested and initially held that action is not considered punishment under caselaw, because that is a response to the probable cause the officers have if they are given the authority to arrest someone. That scenario does not present significant constitutional violations because a pretrial hold is not considered punishment, he reiterated. He has not seen many cases addressing crime for which there was not the possibility of jail, and that may be "a new issue that we create," he offered.

11:07:21 AM

REPRESENTATIVE MILLETT asked for clarification that "we are establishing a condition of release," and the only time there is a condition of release is when a person is released after being charged with a crime. She asked Mr. Skidmore to name other types of conditions of release that are available, such as not drinking alcohol.

MR. SKIDMORE offered a sampling of the conditions of release that can be imposed, as follows: not to contact someone; not go to a particular location; stay in touch with probation; obey the law; not consume alcohol; and to not enter establishments where alcohol is sold.

REPRESENTATIVE MILLETT surmised that this amendment falls in line with a condition of release after someone was charged, and it is not about picking up an intoxicated person and "using this" to hold them. Law enforcement is not searching out intoxicated people to use this condition of release on them, as it cannot be used in that manner, noting that she wanted this information made clear to the public.

MR. SKIDMORE agreed with Representative Millett and explained that the concept of picking someone up simply due to their level of intoxication, having not committed any criminal conduct, is found under Title 47. There are statutes under Title 47 that differentiate between an intoxicated person and an incapacitated person, and the steps of what can be done to address those individuals. He pointed out that that is one of the issues the Alaska Criminal Justice Commission subcommittee is currently exploring, of which he is a member. That subcommittee, he advised, has already delineated the different categories of individuals as follows: those arrested for having criminal conduct versus those who are simply intoxicated. The subcommittee is considering what Alaska's law allows for the simply intoxicated group, he said.

11:09:47 AM

REPRESENTATIVE MILLETT asked for verification that this does not touch Title 47.

MR. SKIDMORE responded that this does not touch Title 47, this amendment is solely about individuals arrested for criminal conduct [while intoxicated].

11:10:00 AM

REPRESENTATIVE EASTMAN asked Commissioner Williams whether the DOC currently conducts any type of assessment to justify whether someone could be released. Once a person's time of incarceration had expired, and the DOC began the release process, he asked whether any type of assessment or test was performed. He suggested that it could be tests dealing with whether it was safe to release the person, whether it was appropriate, or whether it was reasonable to release someone at that exact moment.

COMMISSIONER WILLIAMS said that he assumed the discussion was still about Amendment 31, as amended, with regard to a remand

situation. He then asked whether Representative Eastman's question was about the phase of custody after a person had been arrested and the DOC now makes a determination as to whether the person could be released while awaiting their trial.

CHAIR CLAMAN asked that Commissioner Williams limit his comments to that phase because that is what this amendment deals with, and anything regarding a sentenced prisoner is not the subject.

COMMISSIONER WILLIAMS answered that the department does not perform drug assessments when releasing someone out of jail. Although, he related, there may be other processes in the course of being release from jail, such that the court may determine the person needs an assessment before the next hearing. The department does not perform extensive assessments on someone on the remand side when the person is just charged with a crime, he said.

11:12:10 AM

CHAIR CLAMAN asked Commissioner Williams whether Amendment 31, as amended, has a fiscal impact on the department, and if so, whether that fiscal impact had been determined.

COMMISSIONER WILLIAMS replied that he could see some small fiscal impact, but he was not going to make this difficult for the department if the amendment becomes law ...

CHAIR CLAMAN interjected that he was asking whether a fiscal note would be attached.

COMMISSIONER WILLIAMS answered that there may be a small fiscal note for something, but he did not believe it would be a sizable fiscal note.

11:15:50 AM

REPRESENTATIVE EASTMAN said he is inclined to support Amendment 31, as amended, because he does not want to see a repeat of the events that took place in Fairbanks.

He said he would prefer to not go down the route of changing the statute and to leave some discretion to the correctional officers who decide whether to release someone. It appears a statute is needed so correctional officers have that empowerment, and he remarked that he does not want to wait until next spring when a statutory change could go into effect, so he

would like Amendment 31, as amended, put forward and included in SB 54.

REPRESENTATIVE KOPP described Amendment 31, as amended, as a common-sense, public safety first, introduction of a standard of care and due diligence as to the State of Alaska's duty when someone is in its custody. This amendment will have minimal impact to the DOC, and it will, hopefully, prevent further tragedies, he remarked.

CHAIR CLAMAN stated that his concerns with Amendment 31, as amended, continue. He pointed out that by adopting this amendment, the committee loses the insight it would have received as a result of the recommendations of the Alaska Criminal Justice Commission process. People living in the rural areas of Alaska could potentially spend long periods of time incarcerated due to their arrest and inebriation because a chemical test was unavailable at the facility, or the person did not have friends in the community to care for them in their inebriated state, he stressed. For those reasons, he pointed out, there are still problems with this amendment and he will be a no-vote on Amended Amendment 31.

11:18:39 AM

REPRESENTATIVE MILLETT related that she is hopeful the Alaska Criminal Justice Commission does not stop working on this issue simply because the committee adopted a placeholder. She opined that this amendment will be to the betterment of the public and she does not want another death because the committee was looking for perfect. She said she would appreciate the committee's support.

REPRESENTATIVE FANSLER maintained his objection.

11:19:55 AM

A roll call vote was taken. Representatives Eastman, Kopp, Kreiss-Tomkins, LeDoux, Millett, and Fansler voted in favor of Amendment 31, as amended. Representative Claman voted against it. Therefore, Amendment 31, as amended, was adopted by a vote of 6-1.

11:21:30 AM

The committee took an at-ease from 11:21 a.m. to 11:28 a.m.

11:28:08 AM

REPRESENTATIVE EASTMAN moved to adopt Amendment 32, Version 30-LS0461\N.64, Martin, 10/24/17, which read as follows:

> Page 5, line 9, following "AS 11.46.530(b)(3)":
> Insert "**shall impose a sentence including restitution as required under AS 12.55.045 and**"

REPRESENTATIVE FANSLER objected.

11:28:19 AM

REPRESENTATIVE EASTMAN explained that Amendment 32 puts the focus on restitution and ensures that restitution will be included when a sentence is imposed. He related that, under Senate Bill 91, because certain crimes were reduced to no jailtime, prosecutors are encouraged to focus their resources on pursuing crimes that will return a possible jail sentence. Under those circumstances, he said, some victims will not see any restitution for their losses because there was no actual sentence that included restitution.

11:30:58 AM

REPRESENTATIVE REINBOLD opined that Amendment 32 reflects the intention of the Constitution of the State of Alaska as to paying restitution to victims. She said she supports Amendment 32.

CHAIR CLAMAN explained the committee amendment process to Representative Reinbold.

11:31:55 AM

REPRESENTATIVE KOPP offered his understanding that any property crimes under sentencing of misdemeanors currently requires restitution at sentencing. He commented that he was unsure whether this language was duplicative because restitution is currently mandatory under the law.

MR. SKIDMORE referred to AS 12.55.015(a)(5), which read as follows:

> (a) ... the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(5) order the defendant to make restitution under AS 12.55.045;

MR. SKIDMORE referred to 12.55.045(a) which read as follows:

(a) The court shall, when presented with credible evidence, unless the victim or other person expressly declines restitution, order a defendant convicted of an offense to make restitution as provided in this section, ...

MR. SKIDMORE advised that this statute lays out restitution.

11:33:53 AM

REPRESENTATIVE KOPP asked whether Amendment 32 is duplicative of current statute as it relates to pursuing restitution.

MR. SKIDMORE stated that Amendment 32 is both duplicative of those statutes by inserting it into a particular statute, and it has the potential to raise questions as to why the language was not put into all of the other property statutes as well, and this amendment only looks at theft in the fourth degree. Right now, he said, without that, those two statutes require restitution be looked at for all of the offenses.

CHAIR CLAMAN surmised that Amendment 32 would potentially create statutory problems with the whole criminal code.

MR. SKIDMORE suggested constructing the Alaska Criminal Code tightly in order to avoid inconsistencies throughout the code. He pointed out that the Department of Law takes painstaking efforts to ensure that the code is consistent, and Amendment 32 creates an inconsistency.

11:35:32 AM

MR. SKIDMORE, in response to Representative Reinbold, explained that theft in the fourth degree is any theft under $250.

REPRESENTATIVE REINBOLD noted that with the unprecedented number of reports of thefts under $250, it would be appropriate to pay the victims restitution.

MR. SKIDMORE reiterated that Amendment 32 does not add anything to the toolbelt that law enforcement or prosecutors currently use because this tool is already available in the toolbelt.

11:37:03 AM

REPRESENTATIVE LEDOUX referred to SB 54, [Sec. 10. AS 12.55.135*(l)*], page 5, lines 8-9, which read as follows:

> *(l)* ... or criminal simulation under AS 11.46.530(b)(3) may not impose

REPRESENTATIVE LEDOUX asked for verification that everything covered by subsection *(l)*, that restitution is already required in Alaska Statutes, except restitution is located in another place in the statutes.

MR. SKIDMORE answered in the affirmative.

11:38:36 AM

REPRESENTATIVE REINBOLD commented that reinforcement for theft in the fourth degree is a good idea by reinforcing and highlighting the importance of keeping these establishments safe. Theft in the fourth degree is rampant across Alaska and she said she is a yes-vote on Amendment 32.

REPRESENTATIVE KREISS-TOMKINS offered appreciation for Mr. Skidmore's comments as to the importance of maintaining consistent and parallel statutes, and he would probably oppose the amendment.

REPRESENTATIVE EASTMAN pointed out that rather than listing off a large number of things that may not be imposed at sentencing, Amendment 32 inserts into that long list an important reminder that restitution shall be imposed. Whether or not Alaska's statute book is "made more beautiful or not," is overshadowed by the fact that Alaska has victims who are not receiving restitution, he said.

REPRESENTATIVE FANSLER maintained his objection.

11:40:57 AM

A roll call vote was taken. Representatives Eastman and Reinbold voted in favor of the adoption of Amendment 32. Representatives Fansler, Kopp, Kreiss-Tomkins, LeDoux, and

Claman voted against it. Therefore, Amendment 32 failed to be adopted by a vote of 2-5.

11:42:02 AM

REPRESENTATIVE EASTMAN moved to adopt Amendment 33, Version 30-LS0461\N.16, Bruce/Martin, 10/19/17, which read as follows:

Page 1, line 14:
Delete "**class B**"
Insert "**class A**"

REPRESENTATIVE FANSLER objected.

11:41:54 AM

REPRESENTATIVE EASTMAN explained that Amendment 33 returns conditions of release to a misdemeanor because, at that point, the people of Alaska were receiving a better effect.

11:43:08 AM

REPRESENTATIVE KOPP pointed out that the bill, in front of the committee, does raise this from a violation back to a criminal misdemeanor offense.

REPRESENTATIVE FANSLER offered opposition for Amendment 33 because there is currently a mechanism in SB 54 to rectify this situation. He pointed out that this should not be promoted to a class A misdemeanor, when this is precisely the reason for a class B misdemeanor.

REPRESENTATIVE LEDOUX asked whether this amendment takes the law back to the law pre-Senate Bill 91 law, or whether it changes provisions from the pre-Senate Bill 91 law.

MR. SKIDMORE responded that this amendment does not return the law to where it was prior to Senate Bill 91. He explained that prior to Senate Bill 91, violations of conditions of release were broken into two categories: class B misdemeanor if the underlying offense was a misdemeanor; and class A misdemeanor if the underlying offense was a felony, and Amendment 33 would make all violations of conditions of release a class A misdemeanor. Theoretically, he advised, a person could be charged and released on a class B misdemeanor, and then the person could violate conditions of release, and now be charged with a class A misdemeanor.

REPRESENTATIVE LEDOUX asked Mr. Skidmore to repeat the law prior to Senate Bill 91.

MR. SKIDMORE answered that the law prior to Senate Bill 91 is similar to Amendment 35 and it separates it into both a class A misdemeanor and a class B misdemeanor. He explained the following: violations of conditions of release is a Class B misdemeanor if the original offense for which the person was released was a misdemeanor; it was a Class A misdemeanor if the original offense for which person was released was a felony.

REPRESENTATIVE LEDOUX surmised that Amendment 35 ...

MR. SKIDMORE interjected that he did not have Amendment 35 available, but that he recalled that there is another amendment that has that framework set out.

11:46:23 AM

REPRESENTATIVE REINBOLD asked for a description of the penalties for class A and class B misdemeanors prior to Senate Bill 91, what were the penalties were reduced to under Senate Bill 91, and to offer examples.

MR. SKIDMORE responded that a class A misdemeanor prior to any criminal justice reform was punishable by zero-days up to 365-days. Subsequent to criminal justice reform, class A misdemeanors were split into multiple categories: some were still able to be sentenced zero-days up to 365-days; for others there was an intermediate step of zero-days to 30-days for a first and second offense; and a third offense would go from zero-days to 365-days. He explained that the sentence for class B misdemeanors, prior to any criminal justice reform, was zero-days to 90-days, and after criminal justice reform it is zero-days to 10-days.

REPRESENTATIVE REINBOLD opined that when a defendant is released on conditions of release they need to honor that judge, respect Alaska's courts, and follow those rules. She said that murders have been committed by people released on bail because they violated conditions of release, and she supports Amendment 33 because it increases respect for the courts and reduces risk to victims.

REPRESENTATIVE EASTMAN said that prior to Senate Bill 91, these crimes were treated as one type of misdemeanor over another, but

under Senate Bill 91, the actual penalty was reduced. It is important the law returns back, close to the same penalty that existed prior to Senate Bill 91, he opined.

REPRESENTATIVE FANSLER maintained his objection.

11:49:55 AM

A roll call vote was taken. Representatives LeDoux, Eastman, and Reinbold voted in favor of the adoption of Amendment 33. Representatives Fansler, Kopp, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 33 failed to be adopted by a vote of 3-4.

11:50:30 AM

REPRESENTATIVE KOPP asked whether, at any point, he could speak to why the policy was changed as it was and speak to the policies to increase public safety. He related that he felt, for the benefit of the public, that it was good for people to understand why this change occurred.

CHAIR CLAMAN answered that Amendment 35 revisits this topic in a slightly different manner, and during that discussion would be an opportunity for Representative Kopp to offer his comments.

11:51:23 AM

REPRESENTATIVE EASTMAN moved to adopt Amendment 34, Version 30-LS0461\N.18, Martin, 10/17/17, which read as follows:

Page 2, following line 29:
Insert a new bill section to read:
"*** Sec. 6.** AS 12.55.090(c) is amended to read:
(c) The period of probation, together with any extension, may not exceed
(1) 15 years for a felony sex offense;
(2) 10 years for an unclassified felony under AS 11 not listed in (1) of this subsection;
(3) five years for a felony offense not listed in (1) or (2) of this subsection; **or**
(4) three years for a misdemeanor offense
[(A) UNDER AS 11.41;
(B) THAT IS A CRIME INVOLVING DOMESTIC VIOLENCE; OR
(C) THAT IS A SEX OFFENSE, AS THAT TERM IS DEFINED IN AS 12.63.100;

(5) TWO YEARS FOR A MISDEMEANOR OFFENSE UNDER AS 28.35.030 OR 28.35.032, IF THE PERSON HAS PREVIOUSLY BEEN CONVICTED OF AN OFFENSE UNDER AS 28.35.030 OR 28.35.032, OR A SIMILAR LAW OR ORDINANCE OF THIS OR ANOTHER JURISDICTION; OR

(6) ONE YEAR FOR AN OFFENSE NOT LISTED IN (1) - (5) OF THIS SUBSECTION]."

Renumber the following bill sections accordingly.

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

Page 15, following line 18:
Insert a new subsection to read:
"(b) AS 12.55.090(c), as amended by sec. 6 of this Act, applies to probation ordered on or after the effective date of sec. 6 of this Act for offenses committed on or after the effective date of sec. 6 of this Act."

Reletter the following subsections 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.

11:51:33 AM

REPRESENTATIVE EASTMAN explained that Amendment 34 addresses unsupervised probation for misdemeanors, it reverts to law prior to Senate Bill 91, and deals with how the state addressed unsupervised probation for misdemeanor offenses.

REPRESENTATIVE LEDOUX asked whether Amendment 34 simply reverts back to the law prior to Senate Bill 91.

MR. SKIDMORE answered that it does not revert back to the law prior to Senate Bill 91. Amendment 34 gives a court discretion, for any misdemeanor offense, to impose up to three-years of probation. Prior to criminal justice reform, the ability to have probation was 10-years, and Amendment 34 does not go back to that level.

REPRESENTATIVE LEDOUX asked, under Senate Bill 91, how long is the amount of time offered for discretion of probation.

MR. SKIDMORE referred to Amendment 34, page 1, lines 10-15, and noted that it talks about sentencing three-years for a misdemeanor offense, and it offers (A), (B), and (C) categories, such as: crimes against a person under AS 11.41 - assault; and

crimes of domestic violence under AS 18.66.990. Those are particular crimes that are set out, he explained, as well as the relationship of the offender and the victim. It would include crimes such as criminal mischief, and a list of others; and misdemeanor sex offenses. He reminded Representative LeDoux that he had specifically cited misdemeanor offenses and not felonies.

MR. SKIDMORE turned to page 1, lines 16-19, paragraph (5), and explained that it lists two-years for DUI refusal, and paragraph (6), lines 20-21, refers to one-year for all misdemeanor offenses not listed above, such as theft and misdemeanor criminal mischiefs. Those are the categories under Senate Bill 91, and Amendment 34 would, instead of creating all of those categories for misdemeanors, it would treat all misdemeanors the same with a maximum of three-years for probation.

MR. SKIDMORE, in response to Representative LeDoux, advised that prior to Senate Bill 91, the maximum probation for a misdemeanor was 10-years.

REPRESENTATIVE LEDOUX surmised that Amendment 34 does not actually go back to pre-Senate Bill 91 law.

MR. SKIDMORE answered in the affirmative.

11:56:34 AM

REPRESENTATIVE REINBOLD offered her understanding that the intention behind unsupervised probation for a misdemeanor with all misdemeanors up to three-years' probation, and prior to Senate Bill 91 it was up to 10-years' probation. Representative Reinbold advise that "unless you bring some clarification to the table, I will not be voting for this amendment."

REPRESENTATIVE EASTMAN explained that he would prefer reverting back to pre-Senate Bill 91 law. Except here, and in other parts of Senate Bill 91, the legislature has removed more discretion from judges than in any state in the country. He commented that he would like support [from the committee] to let Alaska's judges be judges because this state is moving dangerously close to enacting laws that do not require judges because the legislature has removed judgement from the situation.

REPRESENTATIVE FANSLER maintained his objection.

11:58:16 AM

A roll call vote was taken. Representatives LeDoux, Reinbold, and Eastman voted in favor of the adoption of Amendment 34. Representatives Kreiss-Tomkins, Fansler, Kopp, and Claman voted against it. Therefore, Amendment 34 failed to be adopted by a vote of 3-4.

11:59:05 AM

CHAIR CLAMAN recessed the meeting until 10/25/17, at 1:30 p.m.

1:32:13 PM

CHAIR CLAMAN called the House Judiciary Standing Committee meeting back to order at 1:32 p.m. Representatives Claman, Fansler, Eastman and Reinbold were present at the call to order. Representatives Kopp, Kreiss-Tomkins, and LeDoux arrived as the meeting was in progress.

1:32:37 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 35, Version 30-LS0461\N.19, Bruce/Martin, 10/19/17, which read as follows:

Page 1, line 14, through page 2, line 1:
Delete all material and insert:
"(b) Violation of condition of release is a
(1) class A misdemeanor if the person is released from a charge or conviction of a felony;
(2) class B misdemeanor if the person is released from a charge or conviction of a misdemeanor
[VIOLATION PUNISHABLE BY A FINE OF UP TO $1,000]."

REPRESENTATIVE FANSLER objected.

1:32:49 PM

REPRESENTATIVE EASTMAN explained that Amendment 36 deals with class A misdemeanors and class B misdemeanors, and it reverts the conditions of release back to the law prior to Senate Bill 91. This is important, he said, because a person in the custody of the state was given their freedom with conditions of their release, and if they violate those conditions, they lose their freedom, he said. Since the passage of Senate Bill 91, a person can maintain their freedom whether or not they maintain those conditions. Recently, he spoke with a family awarded restitution because all of their Christmas presents were stolen

on Christmas Eve, a condition of release was restitution, except the defendant did not pay the restitution after being released and they did not receive a further penalty. Under Senate Bill 91, there have been situations where a defendant was released, did not abide by their release conditions, and relatively no penalty was imposed, he said. The state should be sending the message that "crime does not pay," and yet that message is muddled because "crime is paying for criminals, and it is the victims who are paying that price," he opined.

1:35:21 PM

REPRESENTATIVE FANSLER asked whether it was Mr. Skidmore's understanding that Amendment 35 is in line with the Alaska Criminal Justice Commission's report as to what should be done with violations of conditions of release.

MR. SKIDMORE answered that Amendment 35 is not in line with the Alaska Criminal Justice Commission's recommendation. The commission discussed how to handle violations of conditions of release, and how much time should be imposed to resolve the issues seen in the system. The current version of SB 54 returns violations of conditions of release to a criminal status as opposed to only being a violation.

The five-days found in SB 54 accomplishes the goal of a class B misdemeanor, that tool was requested by the prosecution and law enforcement and it was recommended by the commission. Amendment 35 adjusts violations of conditions of release back to a class A misdemeanors and class B misdemeanors. Unfortunately, he pointed out, this amendment does not address later in the bill, where it is also limited to five-days. Therefore, he pointed out, this amendment would create further confusion because in SB 54, page 5, is another section that limits jailtime to five-days, and it would be five-days regardless of whether it was a class A misdemeanor or a class B misdemeanor. In that regard, he remarked, this amendment would be fairly meaningless in terms of application of how it would impact the sentences that could be imposed.

1:38:30 PM

CHAIR CLAMAN asked whether the Department of Law (DOL) supports the policies articulated by the Alaska Criminal Justice Commission and the policies approved in the justice reform process. He further asked how SB 54, providing a five-day

sanction for violations of conditions of release, differ in reducing crime and protect the public.

MR. SKIDMORE responded that, without question DOL supports the recommendations of the Alaska Criminal Justice Commission, and that Attorney General Jahna Lindemuth sits on the commission and voted in support of its recommendations. SB 54 returns tools to the prosecution and law enforcement who voiced concerns about violations of conditions of release. He explained that when criminal justice reform initially passed, the concept was that violations of conditions of release did not need to be a new crime with additional time in jail. In the event someone violated their conditions of release, the commission wanted that person to go back before the court at a bail hearing and address bail in the original underlying case, and everyone agreed that was the right thing to have happen. He explained that any criminal case has two parties, the state, and the defense and, ethically, the court is not supposed to have contact with one party without the other party present. In the event the defendant is represented by counsel, the court cannot communicate with that defendant without their counsel present.

MR. SKIMORE offered a scenario of a person charged with a DUI, is released on conditions of release, and they then consume alcohol. The person is arrested for that violation and they appear in court for their bail hearing, except the court is unwilling to take action on the case without the defendant's counsel present. In that situation, the court does not hold the defendant because that would be altering the conditions of release, and it cannot do anything other than set another bail hearing, which is not what the commission had envisioned. The intention of the commission was to hold a person and the court able to make decisions quickly. When this issue came back to the commission, he explained, the solution was to re-criminalize violations of conditions of release wherein it became a new matter for which there was no ex parte communication or ethical violation when the court determined the defendant would be held on whatever conditions the judge wanted to set at that moment. And then, he said, the court could set a bail hearing in the original case with the defendant's counsel present, and the court could decide whether conditions of release should be further altered in that case. That, he explained, was the analysis the commission adopted when it created its recommendations contained in SB 54. The commission chose five-days because five-days was considered a reasonable period of time from when a person is arrested until the point in which that bail hearing could be set, he offered.

1:43:40 PM

CHAIR CLAMAN noted that part of the criminal justice reform process was for swift consequences, and to not hold someone in jail for long periods of time and thereby, undermining some potential for not reoffending. He asked whether that was part of the five-day recommendation, and whether that was the reason the recommendation was incorporated as a policy matter.

MR. SKIDMORE explained the five-days was to bridge the span of time to the point where the bail hearing could be held. For example, he offered, if a person was released on a DUI and committed a theft, the state did not need violations of conditions of release as a new crime to hold that person with a different bail because a new crime was associated with it. He offered that the analysis was that in the event a violation of conditions of release did not amount to a new crime, it also did not need to have punishment greater than five-days. The rationale being that for most of those types of violations, the offender did not pose the type of risk to the public that required more than five-days, and he further explained that the types of risk requiring more than five-days are a whole new crime in and of itself, which have its own associated penalties.

1:45:15 PM

REPRESENTATIVE REINBOLD asked whether the goals of the Alaska Criminal Justice Commission include decreasing the prison populations and releasing sex offenders at 55 years of age.

CHAIR CLAMAN advised that the committee is not discussing a sex offender charge, this discussion is about misdemeanors.

MR. SKIDMORE advised that the commission was charged with finding ways to decrease the state's reliance on incarceration, so it focused on trying to reduce recidivism, and parts of the commission's charge is public safety. He acknowledged there has been a great deal of debate over what is, and is not, the primary role of the commission. Attorney General Lindemuth's standpoint is that public safety is absolutely of paramount importance, he stressed, which has been her approach for everything she has done with the commission, together with the commission sharing that same goal. There certainly were letters to the commission asking it to reduce the prison population, and Mr. Skidmore opined that the idea was to reduce prison population safely.

1:46:45 PM

REPRESENTATIVE REINBOLD argued that it is not fair to say everyone in the DOL "wholeheartedly supports the commission" because commissions are just an advisory group and described that they have "pretty heinous" suggestions because public safety was not its core goal, and it had the "looney goal" of reducing prison populations regardless of the risk to the public. She asked whether there was a recommendation about sex offenders released at 55-years of age, and whether public safety was at the core of all of the recommendations.

REPRESENTATIVE REINBOLD, in response to Mr. Skidmore, advised that she was asking about any recommendation by the commission.

MR. SKIDMORE commented that he could not remember every single recommendation off the top of his head, but the overarching concern of the folks on the commission is trying to make the criminal justice system more effective and better. There is debate and dispute amongst folks in the public and within this body about the focus of the commissioners on the commission. He opined that no member of the commission was trying to reduce public safety, and without question, Attorney General Lindemuth did not ever attempt to reduce public safety in her votes on the recommendations. He stressed that when he talks about the department's position, "I really mean the department position. I understand the attorney general leads the department, but she has reached those decisions in consultations with other in the department, including myself." There may be some folks working within the Department of Law (DOL) that do not like every aspect of criminal justice reform, he noted, but it is the department's position that the Alaska Criminal Justice Commission's recommendations are appropriate recommendations, particularly when looking at SB 54.

1:49:47 PM

[CHAIR CLAMAN and Representative Reinbold discussed the subject of Amendment 35.]

1:50:10 PM

REPRESENTATIVE EASTMAN commented that a lot of deference has been given to the commission and asked whether that deference comes from its successes in the past that have had a positive

outcome for Alaskans. He questioned whether the state can look to the past and ...

CHAIR CLAMAN interrupted Representative Eastman and reminded him that Amendment 35 is his amendment, and it involves conditions of release. He related that in previous committee hearing, the members have had many opportunities to have discussions with the Alaska Criminal Justice Commission, and this is not the forum to have large policy questions about what the Alaska Criminal Justice Commission has accomplished over time. Chair Claman described that Representative Eastman, as a legislator, has had much opportunity to learn about the Alaska Criminal Justice Commission, and that he needs to focus his questions on this particular amendment.

REPRESENTATIVE EASTMAN noted that Representative Fansler had asked whether this is something the commission recommended. In keeping with that, he asked, if deference is given to the commission, why is the commission given that deference, and whether it was based on studies projected into the future or based on actual things that have happened that have been shown to have good impacts for Alaskans.

MR. SKIDMORE responded that the reason some deference is provided to commission's recommendations relating to conditions of release, is that the commission is made up of stakeholders across the criminal justice system. The commission investigated this problem and decided that this specific remedy made sense, of which was brought to the commission's attention by the prosecution and law enforcement. He stressed that the prosecution and law enforcement members sitting on the commission decided this was the correct manner in which to remedy the problem. At this point, he said, the intention is to get those tools into the hands of law enforcement, prosecutors, and the courts, which is why the administration supports SB 54, and why the governor put it on the Fourth Special Session Proclamation to consider and possibly make this tool available as quickly as possible.

1:53:20 PM

REPRESENTATIVE EASTMAN asked whether his response was somewhat circular because the question was, why deference is given to the Alaska Criminal Justice Commission, and the answer was that the commission recommended it.

CHAIR CLAMAN interrupted and advised Representative Eastman that that was not the answer Mr. Skidmore had stated. Mr. Skidmore expressly said that the DOL was an active participant in the commission, and it fully endorsed the recommendations. Therefore, he pointed out, Representative Eastman was not accurately describing Mr. Skidmore's response.

REPRESENTATIVE EASTMAN responded to Chair Claman that his original question was not answered, as to whether the commission has accomplished anything that would inspire the committee to have confidence in it, other than who sits on the commission.

MR. SKIDMORE replied that the Alaska Criminal Justice Commission was created through Senate Bill 64 [passed in the Twenty-Eighth Alaska State Legislature], two-years ago the commission made its recommendations based on criminal justice reform efforts, and Senate Bill 91 was signed into law for criminal justice reform. He offered his opinion that not enough time has passed in order to assess that bill overall and decide whether it had been a success or not, and he said that [fact] has been made clear. He explained that law enforcement, prosecutors, and the public found that there were some responses to crime that "we thought" were not able to utilize all of the tools that should be utilized. Therefore, a change was requested, even though Senate Bill 91 is still being assessed as to the successes of that bill, and while he could not say there had been some successes, he could not say there had been any sort of failure because it is too early to make those determinations. He stressed that credence should be put into this, not because this is what the commission recommended, but rather because the people who brought these issues up to begin with are part of the group that said, "this is the right response, this is the way to solve the problem."

1:56:17 PM

REPRESENTATIVE REINBOLD asked what involvement the Alaska Criminal Justice Commission had with "the PEW Foundation, or any money, or anything that's been sponsored in any way. If so, can you please describe that."

MR. SKIDMORE advised that the PEW Foundation participated with the commission during its original criminal justice reform efforts, he has not seen any involvement in the SB 54 recommendations by the PEW Foundation, and he is unaware as to whether the PEW Foundation is advising any members of the commission at this moment. The PEW Foundation certainly has not

been advising Attorney General Lindemuth because that advice has come from himself and others in the criminal division, he stressed.

[CHAIR CLAMAN and Representative Reinbold discussed her line of questioning.]

1:57:36 PM

The committee took an at-ease from 1:57 p.m. to 1:58 p.m.

1:58:29 PM

REPRESENTATIVE REINBOLD asked whether Attorney General Lindemuth serves at the pleasure of the governor in carrying this "pro-Senate Bill 91 policy," or whether she is doing this on her own because she believes in the legislation.

MR. SKIDMORE advised that the Attorney General Lindmuth serves at the pleasure of the governor. In terms of the recommendations made by the commission, Attorney General Lindemuth voted on those recommendations based upon her own beliefs as to what is appropriate, and also based upon the advice she received from others in the Department of Law (DOL), including himself, he reiterated.

1:59:42 PM

REPRESENTATIVE KOPP noted that SB 54 does bring this back into "criminal sanction, arrestable, holdable ..." and class B misdemeanors are sanctionable with prison time as a new offense, and it resolves the crime of an arrestable violation. He pointed out that he has

arrested hundreds of offenders for violations of conditions of release, and one of the challenges under the previous system, was that a new misdemeanor crime brought in all of the due processes of law. These due processes include scheduling hearings, and evidentiary motion work back and forth between the prosecution and the defense, which can sometimes mean it would be three-months, four-months, or six-months down the road before a violation of conditions of release was even properly sanctioned. He offered a scenario that a condition of release was no contact with felons, and this person had performed well on parole and probation for six-months. They were then in their yard visiting with friends and one person happened to be a convicted felon, that is a new violation, he described. Other

than that contact with a felon, the person had committed no new crime, yet the person went right back to jail and it would take months to work through the system. He pointed out that [under current law] when a person violates a condition of release, they are immediately brought before a judge and sanctioned, thereby offering swift and certain accountability with a chance the person did not have to lose their employment. The whole idea was that "we weren't getting" swift and certain accountability in allowing a judge to determine the severity of the violation, issue a fine, and get people's lives back into play. He remarked that with the jailtime, [audio difficulties] making it a criminal offense addresses the concerns of public safety, law enforcement, and the courts. Representative Kopp stressed that this legislation is the correct solution, and he offered his appreciation to the sponsor of the amendment in bringing it back in line with the recommendation of the Alaska Criminal Justice Commission.

2:02:09 PM

REPRESENTATIVE REINBOLD said she is aware of murders, domestic violence, and sexual assault that has taken place due to violations of conditions of release. She commented that these people are released right after being charged with a crime and they had not had the rehabilitation or the help they needed, which makes the victims more vulnerable. Everything possible must be done to protect the public, she stressed, and making it a "class A misdemeanor with their "get out of jail free" is not much to ask." She said that she is a yes-vote on Amendment 35.

2:03:23 PM

REPRESENTATIVE EASTMAN advised that Amendment 35 does not change the penalty for misdemeanors, but it does classify violations of conditions as written in the law prior to Senate Bill 91. He noted that the focus has been on who is on the commission, what the commission recommended, and that Attorney General Lindemuth recommended this or that, thereby, focusing more on egos rather than on those individuals impacted by this issue on the ground. He related that the people on the ground are saying this does not work, which is why it needs to be addressed, and Amendment 35 is about the impact to people, not about who recommended it, he noted.

REPRESENTATIVE FANSLER maintained his objection.

2:04:35 PM

A roll call vote was taken. Representatives Reinbold, LeDoux, and Eastman voted in favor of the adoption of Amendment 35. Representatives Kopp, Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, Amendment 35 failed to be adopted by a vote of 3-4.

2:05:09 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 36, Version 30-LS0461\N.20, Bruce/Martin, 10/20/17, which read as follows: [The text of Amendment 36 is listed at the end of the 10/25/17 minutes of SB 54.]

REPRESENTATIVE FANSLER objected.

2:05:15 PM

REPRESENTATIVE EASTMAN explained that Amendment 36 rolls back the clock on driving under the influence (DUI), and refusal to submit to a chemical test, and returns to the law prior to Senate Bill 91. He stressed the importance of this amendment because the reduction of penalties under Senate Bill 91 have not had a good effect, and the legislation has been in effect long enough to experience that result, he opined. There is no need to wait any longer for other portions of Senate Bill 91 to kick in to realize that some of its provisions need to go back to something that at least worked, even if it was not perfect, he said.

2:06:30 PM

REPRESENTATIVE REINBOLD commented that this state has serious alcohol problems and many people are killed by DUI drivers. She said she is a yes-vote on Amendment 36 for public safety.

REPRESENTATIVE EASTMAN offered that the state needs to go back to what worked in the past, and DUI drivers are not an area where the state should subject its citizens to trial and error tests.

2:07:31 PM

The committee took an at-ease from 2:07 p.m. to 2:10 p.m.

2:10:54 PM

REPRESENTATIVE KOPP noted that there appears to be sections in Amendment 36 that actually repeal the additional hoops required for the restoration of a driver's license. Under Senate Bill 91, the law added required periods of successful driving, successfully completing court ordered treatment, and several other requirements on the path to the restoration of a license. Previously, a person could "flat time out" their revocation, serve their 90-days, and they were then eligible to have their driving license restored. Under Senate Bill 91, the legislature decided the person must perform additional requirements for the restoration of their license. He asked Mr. Skidmore whether Amendment 36 inadvertently removes those hoops.

MR. SKIDMORE answered that the first thing that jumped out at him was, page 1, line 6, AS 28.35.030(k), the DUI statute regarding punishment for DUI drivers. Under Senate Bill 91, a change was made as to how the penalty for how driving under the influence would be carried out, such that, the imprisonment required under subsection (b)(1)(A) of this section shall be served and it inserts the language "at a community residential center." That language was in the law prior to criminal justice reform efforts, and Amendment 36 basically goes through what occurred under Senate Bill 91 and reverses the language as it relates to punishment for driving under the influence (DUI). In layman's terms, he explained, previously for a DUI a person could serve at a community residential center (CRC) or on electronic monitoring (EM). Under the criminal justice reform efforts, it read that service would be on EM, or if EM was not available, the location would be at the discretion of the commissioner of the Department of Corrections (DOC).

2:14:15 PM

MR. SKIMORE then turned to Amendment 36, Sec. 18, page 2, lines 27-31 and page 3, lines 1-25, which discusses licenses, and advised that the DUI statute, AS 28.35.030(o) discusses licenses. Amendment 36 appears to alter the ability of a person to have their license restored, and he said that he did not believe it was placed in the law under the efforts of criminal justice reform, but he was unsure. He related that he could only say that Amendment 36 would make it more difficult for a person to have their license restored after receiving a conviction for a DUI. Although, he commented, he had not had a chance to compare this language to other statutes to determine whether there are other potential implications, but he recalled discussions about trying to make it easier for a person convicted of a DUI to have their license restored due to the

importance of that license and their livelihood, and such. Amendment 36, as written, appears to take some of that ability away, but he could not speak to the sponsor's intent and he was unsure whether that was something Representative Eastman had requested.

2:16:37 PM

REPRESENTATIVE KOPP asked whether old law was being removed here because the section being removed required: a person to have driven successful for three-years under a limited driver's license privilege; complete a court ordered treatment program or rehabilitative program as identified in statute; and no violations of refusal of a chemical test, DUI, or similar law convictions, since their license was revoked. These are the practical steps that include a three-year period that a person who has served their time in jail would go through, but part of the issue, he related, is that Amendment 36 would remove those steps, and say, "Regardless, there is no path back."

MR. SKIDMORE then corrected a previous statement he had made, and referred to Senate Bill 91, Sec. 109, pages 66-67, where it did add this language that is being removed. Therefore, he explained, Amendment 36 does just roll back what happened under Senate Bill 91. Although, he added, it does not change the analysis he gave regarding what the restoration of the license does, and it does not in any manner contradict Representative Kopp's comments about the restoration of the license.

2:18:51 PM

CHAIR CLAMAN referred to the language being removed in Amendment 36, page 3, and asked Mr. Skidmore to explain its reasoning in terms of the process one would go through to have their license restored, how it would improve public safety, and how it would improve rehabilitation for those convicted of a DUI.

MR. SKIDMORE, in response, offered an antidote that previously, he had hired a gentleman to paint his house who performed "fabulous work" and that he enjoyed his work without question. This person was convicted of a DUI and he was not able to have a license himself, despite the fact he had been sober for a number of years, he still could not drive. Mr. Skidmore advised that he lives "a ways out of town," and anytime he asked the painter to work on his house, the gentleman had to get someone else to drive him out, which was inconvenient. Therefore, he had difficulties always making it to Mr. Skidmore's house and to all

of his other jobs, so despite starting a business himself, that business ultimately failed, and the gentleman fell back into the addiction and suffered as the result of not being able to get his license restored. Although, he acknowledged, he could not say whether that gentleman would not have fallen back into addiction if he had had his license, that is an example in his personal life of someone prosecuted, convicted for DUI, and had appropriate sanction placed upon him. Unfortunately, he related, when it came to trying to get his license back, the process was so onerous that it had a negative impact on that gentleman, his business failed, his job was lost, and the people he employed lost their jobs. The language under Senate Bill 91 was designed to try and let a person get back on their feet faster and, he expressed, the language is written in a manner that still maintains public safety.

2:21:18 PM

REPRESENTATIVE REINBOLD asked whether the Juneau Police Department (JPD) is a member of the Alaska Criminal Justice Commission.

MR. SKIDMORE advised that the JPD representative retired and that seat was replaced by a representative from the Anchorage Police Department (APD).

2:21:38 PM

REPRESENTATIVE REINBOLD asked the reason a representative from the JPD was not currently a member of the Alaska Criminal Justice Commission.

CHAIR CLAMAN interjected and reminded Representative Reinbold that she knows perfectly well that the governor appoints the members on the Alaska Criminal Justice Commission because she voted for or against the statute which read there would be one member from public safety and the commissioner of the Department of Public Safety is on the commission.

REPRESENTATIVE REINBOLD advised that she had asked to be on the Alaska Criminal Justice Commission as the legislative representative.

2:22:56 PM

REPRESENTATIVE LEDOUX asked, under Senate Bill 91, whether someone's license could be restored if they were involved in a

drunk driving incident and killed or seriously injured another individual.

CHAIR CLAMAN, for clarification purposes, asked whether Representative LeDoux was asking about alcohol related vehicular homicides or any vehicular homicides.

REPRESENTATIVE LEDOUX advised that she was asking about alcohol related vehicular homicides and any vehicular homicides.

MR. SKIDMORE responded that the language under Senate Bill 91 would not return a license under those circumstances because it is "not an automatic." He explained that a statute under Title 28.15 discusses a court's authority to revoke a driver's license when an individual had committed a crime other than simply a DUI, and the crime involved the use of a vehicle. He referred to Representative LeDoux's example of a person being killed as a result of a motor vehicle collision and advised that the charge would not necessarily be a DUI, it that may be an additional charge in that case. There would be a charge for manslaughter, criminally negligent homicide, or murder in the second degree, or any one of those other crimes. As the result of the conviction of one of those other crimes, the court is authorized to revoke a person's driver's license. The above-mentioned statute sets out the length of time that could occur, but that would not be impacted by this particular provision. Amendment 36 is solely regarding DUIs because it is specifically contained within the DUI statute and it discusses the return of a driver's license when convicted of a DUI. This amendment would have no impact on the ability for someone to have their driver's license restored if it was revoked by the court as a result of a different charge for which the person was convicted, he explained.

2:25:45 PM

REPRESENTATIVE LEDOUX referred to the provision under Senate Bill 91 that allows for the restoration of licenses and asked whether it only involves those third DUIs where someone has lost their license for a horrendous amount of time due to their last DUI.

MR. SKIDMORE referred to Amendment 36, Sec. 18, AS 28.35.030(o), page 2, lines 27-31, and page 3, lines 1-25, and paraphrased as follows:

AS 28.35.030(o) is amended to read:

(o) Upon request, the department shall review a driver's license revocation imposed under (n)(3) [which, he explained is the section that is a felony DUI] of this section and

[(1)] may restore the driver's license if

(1)[(A)] the license has been revoked for a period of at least 10 years;

(2)[B] the person has not been convicted of a criminal offense since the license was revoked [he explained that that is the way the law currently reads ... or, excuse me] of a driving related offense since the license was revoked; and

(3)[C] the person provides proof of financial responsibility;

MR. SKIDMORE advised that the provision goes on to read "shall restore" and it lists out conditions. The discussion is about a felony DUI and how a person could have their license restored. He noted that under his previous personal example, the painter had been convicted of a felony DUI and, under this law, would have been eligible to have his license restored.

2:27:28 PM

REPRESENTATIVE LEDOUX referred to AS 28.35.030(o) under Amendment 36, and asked, "does this eliminate this amendment ... the discretion of the judge to reinstate the driver's license under any circumstance."

MR. SKIDMORE explained that subsection (o) does not refer to when the judge is restoring the license, this section and all of this discussion is about when the Division of Motor Vehicles would restore the license. He further explained that a driver's license revocation can be longer than ten years, and subsection (o) allowed a license to be restored after a period of at least 10 years in which it was revoked.

MR. SKIMORE then referred to Amendment 36, page 3, lines 4-25, and paraphrased as follows:

(2) shall restore the license if

(A) the person has been granted limited license privileges ... and it quotes another statute AS 28.15.201(g), and has successfully driven under that limited license for three-years without having limited license privileges revoked;

... it goes on to (B) to give another option.

(B) the person has successfully completed a court order treatment program ...

... it goes on to (C)

(C) the person has not been convicted of a similar violation ...

... it goes on to (D)

(D) the person is otherwise eligible ...

MR. SKIDMORE explained that the provision is trying to provide greater flexibility of things that can occur when the Division of Motor Vehicles, not a judge, would return the license.

2:29:20 PM

REPRESENTATIVE LEDOUX referred to the language "shall restore the driver's license," and asked why Mr. Skidmore's painter did not go to the Division of Motor Vehicles and ask that his driver's license be restored. The gentleman could have had a limited license allowing him to drive to his various job sites, rather than starting to drink again, she commented.

MR. SKIDMORE related that he could not speak to all of the circumstances involved for the painter, his point was that the Alaska Criminal Justice Commission was trying to make it easier for someone to have their license restored.

REPRESENTATIVE LEDOUX surmised that the commission was not trying to provide the Division of Motor Vehicles with greater flexibility, but rather to tie the hands of the Division of Motor Vehicles by using the words "shall restore" as opposed to subparagraph (o), which offers a lot of flexibility.

MR. SKIDMORE related that the Division of Motor Vehicles (indisc.) to make it easier for a person to have their license restored. He commented that that may be viewed as reducing the discretion of the Division of Motor Vehicles, but he was not comfortable answering that it gave the division less discretion. His understanding, he noted, was that it was meant to be easier

for a person to have their license restored after certain conditions were met.

2:31:48 PM

CHAIR CLAMAN asked whether Mr. Skidmore was familiar with circumstances, prior to the criminal justice reform process, in which people with 10-year license revocations were able to have their licenses restored within those 10-years, or whether they typically had to wait until the 10-year revocation period had ended.

MR. SKIDMORE said he could not answer that question.

2:32:40 PM

CHAIR CLAMAN opined that the goal of the existing statute, under Senate Bill 91, was to make it more reliable. He pointed out that having a fairly articulated method for the restoration of a driver's license is a positive step in trying to keep people working in their communities, and he would be no-vote.

REPRESENTATIVE EASTMAN noted the difficulty in attempting to provide a livelihood outside of prison without a driver's license. He opined that the problem arises when someone who would otherwise be in prison is put on the street, "and then, you then argue that because they are on the street, that the penalties that they would have encountered in jail" now is an argument for why the legislature should make it easier on criminals. He further opined that the focus should not be on making it easier on criminals when convicted of a DUI because they forfeit some of their rights in that regard, and this amendment does not do anything more than go back to what was previously working.

REPRESENTATIVE FANSLER maintained his objection.

2:34:21 PM

A roll call vote was taken. Representatives LeDoux, Eastman, and Reinbold voted in favor of the adoption of Amendment 36. Representatives Kreiss-Tomkins, Fansler, Kopp, and Claman voted against it. Therefore, Amendment 36 failed to be adopted by a vote of 3-4.

2:34:57 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 37, Version 30-LS0461\N.21, Glover/Martin, 10/19/17, which read as follows:

Page 14, lines 23 - 28:
Delete all material and insert:
"(21) develop and implement, or designate, in cooperation with other state or local agencies, an alcohol safety action program that provides **alcohol and substance abuse screening, referral, and monitoring** services to persons who have been referred by a court **in connection with a charge or conviction of a misdemeanor involving the use of a motor vehicle, aircraft, or watercraft and alcohol or a controlled substance, referred by a court** under [AS 04.16.049, 04.16.050,] AS 28.35.028 [, 28.35.030, OR 28.35.032,] or referred by an agency of the state with the responsibility for administering motor vehicle laws in connection with a driver's license action involving the use of alcohol or a controlled substance;"

Page 15, line 7:
Delete "and"

Page 15, line 8, following "12.55.125(e)(4)(D)":
Insert "; and AS 47.37.130(h)(3)"

REPRESENTATIVE FANSLER objected.

2:35:00 PM

REPRESENTATIVE EASTMAN explained that Amendment 37 deals with the Alaska Statewide Alcohol Safety Action Program (ASAP), and noted that he had heard that there were many good things in the ASAP prior to Senate Bill 91. This amendment reverts back to pre-Senate Bill 91 "language in statute dealing with limiting impositions of ASAP removed for the ASAP program."

2:36:31 PM

REPRESENTATIVE KOPP referred to SB 54, page 12, line 2, AS 47.37.040, and surmised that it refers to the Department of Health and Social Services and ASAP.

CHAIR CLAMAN referred to SB 54, AS 47.37.040(21), page 14, lines 23-28, and asked what was wrong with the language that Amendment [37] fixes.

REPRESENTATIVE EASTMAN answered that the program was not broken and it did not need to be fixed, so "rather than pursue this effort," it is time to go back to what was working well.

2:38:32 PM

REPRESENTATIVE FANSLER pointed out that Amendment 37 reforms who goes into the ASAP program, and if that is the case, the program remains the same, here it is just entering in folks that need to go into ASAP. Representative Fansler asked Representative Eastman if he could speak to his comment.

REPRESENTATIVE EASTMAN replied, "Not really, we're talking about" when ASAP is imposed upon a particular person and being removed from that program. He said he was not aware whether that part of the program had changed much since ASAP was created, it goes back to how the program was created.

REPRESENTATIVE REINBOLD said that she brought this issue to the table in June, due to complaints that ASAP was underutilized. Amendment 37 was drafted to address these complaints by "beefing up ASAP" and increasing its coordination with different departments so more people are served under the program.

2:40:46 PM

REPRESENTATIVE KREISS-TOMKINS said he would like to hear Mr. Skidmore's perspective as to the thinking behind the original change that this amendment would repeal, and whether there would be a cause for concern about the implementation of that change to ASAP under Senate Bill 91.

CHAIR CLAMAN clarified that Representative Kreiss-Tomkins question was partly directed to the language in SB 54 regarding AS 11.71.050 because when just looking at Senate Bill 91, there is not the amendment that is located in SB 54.

REPRESENTATIVE KREISS-TOMKINS noted his appreciation for Chair Claman's clarification.

MR. SKIDMORE responded that Amendment 37 looks at ASAP, and SB 54, page 14, line 25, inserts language that a person may be referred to ASAP under AS 11.71.050(a)(4), the statute that makes it a crime to possess drugs. He explained that that change is in SB 54 currently, and he was unsure how this amendment alters that "because it has eliminated the referral for that reason." He confirmed that this simply changes the

language back to the way things were prior to Senate Bill 91. He advised that Amendment 37 reverses the change made under Senate Bill 91, page 109, and reverts to the original language. The reason for the change made in Senate Bill 91, was a concern that the alcohol safety action program (ASAP) was stretched too thin and the ASAP should focus on its core mission of looking at driving under the influence cases as opposed to being used in every assault case, and every other type of case involving alcohol or substance abuse. He advised that the program had a wide perspective and the language in Senate Bill 91 put the focus on DUIs, and a Senate amendment in SB 54 changed the language slightly in that people convicted of a misdemeanor possession of drugs need to have an assessment. Amendment 37 reverts it back to that wide perspective group and rather than just focusing on DUIs and people in possession of drugs, this amendment returns it to anyone the court convicts and decides to send to the ASAP. In terms of what impacts it may cause, he said he could only answer as to the legal aspect of the legislation.

2:45:20 PM

REPRESENTATIVE FANSLER said that he does not know why the amendment would read "Delete all material and insert" and then it has deletion marks for AS 04.16.040, 04.16.050, and 28.35.030.

CHAIR CLAMAN opined that it was an effort to show how the language was changed from what is in SB 54.

REPRESENTATIVE FANSLER argued that his point is that it is not in SB 54 in that manner.

CHAIR CLAMAN noted that as he read the amendment, it first says, "can be referred for alcohol and substance abuse screening and monitoring," but it then limits it to "in connection with a charge or conviction of a misdemeanor involving the use of a motor vehicle ..." Then, he explained, the amendment deletes the AS 04.16. references, and AS 28.35 references, thereby, only the DUI statute AS 28.35.028 reference remains. He explained that he read Representative Eastman's amendment to mean that, even though there is reference to substance abuse referrals, someone convicted of misdemeanor misconduct involving a controlled substance in the fourth-degree could not be referred to the ASAP for treatment evaluation of that misdemeanor conviction.

REPRESENTATIVE EASTMAN pointed out that the conjunction "or" is used several times throughout the amendment, and the amendment itself does not touch the final "or," which is after the reference to "AS 28.35.028. So, you have 'by a court' under that statute or referred by an agency of the state with responsibility,' and so forth." He related that a person could be sent to the ASAP in another manner other than that specific statute.

2:48:36 PM

REPRESENTATIVE REINBOLD advised that this amendment was offered earlier on the floor of the House of Representatives. Mr. Skidmore stated that it did broaden the scope with the intention that more people could be referred, and one of the concepts under Senate Bill 91 was for people to receive treatment. She reiterated that the intention was to broaden the scope, and she was unsure whether the drafting was correct.

2:49:51 PM

REPRESENTATIVE LEDOUX referred to Amendment 37, page 1, lines 6-8, which read as follows:

> (21) ... in connection with a charge or conviction of a misdemeanor involving the use of a motor vehicle, aircraft, or watercraft and alcohol or a controlled substance, referred by a court ...

2:50:15 PM

REPRESENTATIVE LEDOUX asked whether the language "and alcohol or a controlled substance" would mean every case in which they were referred, or just if they are prosecuted in connection with a misdemeanor involving the use of a motor vehicle, aircraft, or water craft. She offered a scenario of someone charged with a misdemeanor involving a motor vehicle, aircraft, or water craft, not involving alcohol or drugs, and that she could not tell by this amendment whether they would be referred to the ASAP.

MR. SKIDMORE noted that due to the drafting questions, it makes sense to review enacted Senate Bill 91, page 109, lines 22-31, and he advised that the amendment exactly reverses the change under Senate Bill 91. The underlined and bold language is exactly what is found in Senate Bill 91 and; therefore, nothing new has been added in any manner. From his standpoint, he said, prior to the passage of Senate Bill 91, the ASAP was utilized

for misdemeanor crimes for which someone had been under the influence of alcohol at the time of the crime. Under Senate Bill 91, the language directed that the ASAP would only be utilized for DUIs; and the language in SB 54 directs that the ASAP would be utilized for DUIs and possession of drugs. Criminal justice reform made possession of drug crimes misdemeanors, and the concern was that no one was monitoring these various individuals, so that language was added into SB 54. He reiterated that Amendment 37 takes it back and makes the language as broad as possible for any crime in which alcohol or a controlled substance could receive the ASAP referral.

2:53:20 PM

REPRESENTATIVE LEDOUX surmised that if one of the intentions of Senate Bill 91 was to spend money on treatment rather than incarceration, she asked why the ASAP language should not be opened to include anyone who committed a crime involving alcohol or drugs.

MR. SKIDMORE explained that his testimony solely reflects the legal analysis of Amendment 37, and he reiterated his understanding that the Alaska Criminal Justice Commission's recommendation was based on trying to narrow the focus of the ASAP due to a concern that it was stretched too thin, and that it actually covered everything it needed to cover. As to the underpinnings of Representative LeDoux's question, he said he is not the best person to answer.

2:55:20 PM

RANDALL BURNS, Director, Division of Behavioral Health, Department of Health and Social Services, responded that Mr. Skidmore is correct, this amendment language returns the functions of the ASAP to the language prior to the passage of Senate Bill 91. There was much discussion in the Alaska Criminal Justice Commission about the adequacy of resources for ASAP given that various judges were referring individuals guilty of a crime beyond just those with a DUI, thereby spreading the ASAP too thin. He acknowledged that he could not offer any numbers off the top of his head, and that the administrator of that program, Tony Piper, was in Denver, Colorado. The ASAP program certainly had not received any increases in its budget for some time, he offered.

2:58:05 PM

REPRESENTATIVE KREISS-TOMKINS noted that Amendment 37 is all about the operational issues of the ASAP, which makes it difficult to cast an informed vote or consider the amendment without the necessary information. He asked that the committee hear from someone who could speak to the effectiveness of ASAP because perhaps, prior to criminal justice reform and despite good intentions, the program was set so thin that it was not effective.

MR. BURNS apologized for not having that information and remarked that the ASAP program has been considered an effective program and is considered highly beneficial to the individuals participating in the program. Unfortunately, he related, he did not have data at his fingertips as to the numbers regarding a person's particular charge, such as being charged with a motor vehicle, aircraft, or water craft, crime.

2:59:58 PM

REPRESENTATIVE FANSLER related that he was still confused about several aspects of the amendment wherein it is great to say that the ASAP is an amazingly effective and efficient program, but then multiply by ten the number of people who would partake in this program and pointed out that if there was not a proper subsequent growth in the size of the program, that effectiveness and efficiency would suffer greatly. A fiscal note is not attached, he noted, and presumed that the committee would want the percentage of folks administering the program, and the percentage of folks actively guiding the program. He asked Mr. Skidmore to explain the differences between proposed SB 54 and the amendment, as to who is eligible for the program.

3:02:39 PM

REPRESENTATIVE KOPP pointed out that "this is narrowly talking about referrals for vehicle related substance offenses," and not all substance offenses. He referred to Amendment 37, page 1, lines 6-7, and paraphrased as follows: "... in connection with the charge or conviction of a misdemeanor involving the use of a motor vehicle, aircraft, or watercraft and alcohol or a controlled substance." Therefore, he remarked, there must be a charge or a conviction of a misdemeanor offense involving alcohol, or a controlled substance, with the use of those vehicles, and noted by deleting motor vehicle, aircraft, or watercraft, that it would apply to all offenses.

CHAIR CLAMAN remarked that there is comfort on the committee that this amendment only involves those people convicted of offenses involving motor vehicles, aircrafts, or watercrafts. The amendment does not involve someone charged with just possession of drugs as a misdemeanor, which is the statute referenced in SB 54.

3:04:17 PM

REPRESENTATIVE FANSLER noted that Mr. Skidmore had broken down what Senate Bill 91 did, what SB 54 proposed, and what Amendment 37 proposed, and he offered that he was conflicted about Mr. Skidmore's descriptions. In his view, he remarked, this amendment appears to be more limiting than the current version of SB 54 because the amendment has connection with the charge or conviction of a misdemeanor involving the use of a motor craft, aircraft, or motor craft. He offered his belief that that limiting factor now eliminates the situation wherein someone could be walking down the street and be charged with possession of a schedule 1A narcotic, as listed in AS 11.81. He asked whether his thinking was correct in that the amendment is actually less than SB 54 is currently proposing.

MR. SKIDMORE said that he understands precisely what Representative Fansler described. He explained that his testimony related to practice, such that, referrals were being made to the ASAP for an assault in the fourth degree, or some other crime, when the statute did not authorize that referral, and he could only say that that was what was happening in practice. Thereby, coming to the same legal standpoint as Representative Fansler because he does not see anything authorizing a person convicted of those crimes in this amendment, the way the statute was previously written. The language in SB 54 sets the appropriate balance of where things should be, it specifically authorizes the ASAP for DUIs and possession of drugs that are now a misdemeanor, which was not in law prior to Senate Bill 91. Senate Bill 54 recognizes the changes in Senate Bill 91, and the language prior does not recognize those changes. He said that he agrees with Representative Fansler in that when he reads this statute, the authority cannot be seen for that broader set of referrals that were occurring in practice. He remarked that he could not say now whether there is another statute that does that as he would have to look through the statutes.

3:06:57 PM

REPRESENTATIVE FANSLER asked whether the committee could confirm that if it does pass SB 54 as currently written, the committee would get the broader range without taking the risk of throwing this back into the traditional practice.

MR. SKIDMORE clarified that if SB 54 passes, it would allow referrals for DUIs, refusal of a breathalyzer test, and misdemeanor possession of drugs, and the legislation would not authorize that wider practice of referring any other misdemeanor crime to the ASAP. For example, he does not see anything authorizing the referral of a person to the ASAP who was convicted of assault in the fourth degree while under the influence of alcohol. He advised that he does not see that authorization in SB 54, he did not see that authorization under Senate Bill 91, and he was unsure whether he saw that authorization prior to Senate Bill 91. Although, he pointed out, that practice was occurring prior to Senate Bill 91.

3:08:42 PM

MR. BURNS advised that Tony Piper, ASAP section lead, was online and he would have more information around the operation of the ASAP and its fiscal issues.

MR. BURNS, in response to Representative Kopp, advised that the Department of Health and Social Services has had an opportunity to review Amendment 37, and the amendment had been discussed but a fiscal note had not yet been developed.

REPRESENTATIVE REINBOLD asked Tony Piper whether he would support Amendment 37, explaining that its intention was to broaden its scope to get more people into the program, and asked whether the amendment would take the committee back to the law prior to Senate Bill 91.

3:10:39 PM

TONY PIPER, Coordinator, Alcohol Safety Action Program, Division of Behavioral Health, Department of Health and Social Services, answered that this bill expands the ASAP to allow drug possession, but all of the other offenses are still related to driving offenses.

CHAIR CLAMAN explained that Representative Reinbold was asking about Amendment 37, which does not include the drug offenses listed in SB 54. He asked that Mr. Piper direct his response to Representative Reinbold's question on Amendment 37.

MR. PIPER responded that this would not change the current practice, it would only expand it slightly and it would not bring it back to the prior practice.

3:11:59 PM

REPRESENTATIVE REINBOLD explained that the intention of Amendment 37 was to broaden [the scope] and take it back to pre-Senate Bill 91, where the practice was broader with more referrals.

CHAIR CLAMAN clarified that the intention of the amendment is to return to the language prior to Senate Bill 91 and expand the number of people [to be assessed]. Mr. Piper's testimony indicates that the practice was not following the statute, which was more expansive than what the statute allowed.

CHAIR CLAMAN surmised that the intention of the amendment is to expand the number of people referred to the ASAP, and there was the practice of not following the statute because the practice was more expansive than what the statute allowed. This amendment does not bring the committee back to past practice as a matter of statute, and the question then becomes "which of these two, page 14, paragraph 21 versus Amendment 37 paragraph 21," at least as a matter of the plain language of the statute, will provide more referrals to the ASAP, the language of Amendment 37, or the language of SB 54, page 14.

MR. SKIDMORE responded that, from a purely legal technical reading, what is in SB 54, page 14, lines 23-28 provides greater use of the ASAP authorized by statute. He said he does not believe that going back to where the state was before with the language, gets the state back to the same practice because the practice overtook the statute, wherein the court made referrals for things not authorized by statute. Therefore, he opined, as to the problem of trying to get broader, he does not believe going back to the original language accomplishes that goal, although he does understand its intent.

3:14:27 PM

REPRESENTATIVE REINBOLD commented that she knows Governor Bill Walker does not want a single amendment to this bill, "I want a second opinion because I'm not sure that -- I'd just like to ask the drafting, ok."

REPRESENTATIVE REINBOLD, in response to Chair Claman's question as to whether she wanted to get Legislative Legal and Research Services to provide, she answered "absolutely."

CHAIR CLAMAN said he would try to get Legislative Legal and Research Services on the telephone.

3:15:13 PM

REPRESENTATIVE LEDOUX commented that if the committee wanted to go back to past practices as opposed to past statute, she suggested simply taking out the phrase on Amendment 37, page 1, line 7, "a motor vehicle, aircraft, or water craft and" and leave "connection with a charge or conviction of a misdemeanor involving alcohol or a controlled substance, referred by a court ...." She asked Mr. Skidmore whether that would get the committee back to past practices even though it would not be past statute.

MR. SKIDMORE answered in the affirmative.

REPRESENTATIVE EASTMAN commented that he would accept that suggestion as a conceptual amendment.

CHAIR CLAMAN asked that someone make a motion to table Amendment 37 and put it at the back of the stack and try to figure it out during one of the breaks.

3:16:49 PM

REPRESENTATIVE LEDOUX asked Representative Reinbold, after hearing her suggestion and Mr. Skidmore's response, whether this solves the problem and would no longer like to speak with Legislative Legal and Research Services.

REPRESENTATIVE REINBOLD commented that it would be helpful for the committee to have a clear mind, and the reason for the language regarding alcohol with boats is because a lot of people use those vehicles to get to work. Also, she said, when a person is under the influence, a vehicle involved in an accident can hurt someone, which is a reason for the variety of vehicles.

3:17:51 PM

REPRESENTATIVE FANSLER move to table Amendment 37 and put it at the end of the stack of amendments. There being no objection, the amendment was tabled.

3:18:12 PM

The committee took an at-ease from 3:18 p.m. to 3:36 p.m.

3:36:16 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 38, Version 30-LS0461\N.22, Glover/Martin, 10/17/17, which read as follows:

Page 10, following line 27:
Insert new bill sections to read:
"*** Sec. 16.** AS 28.15.291(a) is repealed and reenacted to read:

(a) A person is guilty of a class A misdemeanor if the person

(1) drives a motor vehicle on a highway or vehicular way or area at a time when that person's driver's license, privilege to drive, or privilege to obtain a license has been canceled, suspended, or revoked in this or another jurisdiction; or

(2) drives in violation of a limitation placed on that person's license or privilege to drive in this or another jurisdiction.

*** Sec. 17.** AS 28.15.291(b) is repealed and reenacted to read:

(b) Upon conviction under (a) of this section, the court

(1) shall impose a minimum sentence of imprisonment

(A) if the person has not been previously convicted, of not less than 10 days with 10 days suspended, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(B) if the person has been previously convicted, of not less than 10 days;

(C) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(1), if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, or if the person was driving in violation of an ignition interlock device requirement following that revocation, of not less than 20 days with 10 days suspended, and a fine of not less than $500, including

a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(D) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(2), (3), or (4), if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, or if the person was driving in violation of an ignition interlock device requirement following that revocation, of not less than 30 days and a fine of not less than $1,000;

(2) may impose additional conditions of probation;

(3) may not

(A) suspend execution of sentence or grant probation except on condition that the person serve a minimum term of imprisonment and perform required community work service as provided in (1) of this subsection;

(B) suspend imposition of sentence;

(4) shall revoke the person's license, privilege to drive, or privilege to obtain a license, and the person may not be issued a new license or a limited license nor may the privilege to drive or obtain a license be restored for an additional period of not less than 90 days after the date that the person would have been entitled to restoration of driving privileges; and

(5) may order that the motor vehicle that was used in commission of the offense be forfeited under AS 28.35.036."

Renumber the following bill sections accordingly.

Page 15, line 17:
Delete "and"

Page 15, line 18, following "Act":
Insert ";

(7) AS 28.15.291(a), as repealed and reenacted by sec. 16 of this Act; and

(8) AS 28.15.291(b), as repealed and reenacted by sec. 17 of this Act"

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"

REPRESENTATIVE FANSLER objected.

3:36:46 PM

REPRESENTATIVE EASTMAN pointed out that Amendment 38 reverts back to pre-Senate Bill 91 law and deals with a first-time offense of driving with suspended license by reinstating the 10-day active jailtime, and a second conviction would have a $500 fine with 80-hours of community work service. The amendment is limited to dealing with first time driving with a suspended license, and the appropriate penalties for the number of times the person is convicted.

3:38:30 PM

CHAIR CLAMAN asked what the reasoning was behind Sec. 16 in proposed SB 54, what changes are made in Amendment 38 compared to SB 54, and how the amendment changes the policies reflected in SB 54.

MR. SKIDMORE answered that Amendment 38 is not in any way shape or form part of SB 54 because there were no changes proposed in SB 54 that address driving with a suspended license. Amendment 38 adds a new section that would reverse what happened in the criminal justice reform efforts previously, to driving with a suspended license. The legal analysis was the question of whether driving with a suspended license was a crime for which the commission thought folks needed to go to jail, and it was determined that most driving with a suspended license is not based on a criminal conduct, but rather based on the points people receive on their licenses. The commission recommended that only those sections related to DUIs should remain a crime,

and the others would be turned into violations, he said. Senate Bill 54 does not alter any of that framework in any way shape or form, he reiterated, but Amendment 38 takes the language back to the law as it existed prior to any criminal justice reform for criminalizing all of that conduct, including establishing the mandatory minimums for the various types of conduct.

3:41:00 PM

CHAIR CLAMAN surmised that under Senate Bill 91, if a person was convicted of driving while intoxicated and then drove a car while on that suspension of their license, they would face a mandatory 10-day jail sentence for driving with a suspended license under current law. Chair Claman offered a scenario, under current law, wherein he had a prior DUI and his license was suspended due to that DUI, and while driving sober to paint Mr. Skidmore's house, he was stopped by law enforcement. He asked whether that would be a 10-day mandatory jail sentence under current law.

MR. SKIDMORE answered, "No."

CHAIR CLAMAN asked Mr. Skidmore to describe the penalty under current law.

MR. SKIDMORE answered that under current law, it is not less than 10-days with 10-days suspended if the person had not previously been convicted of a similar offense. In the event a person was previously convicted of a similar offense, it would be 10-days.

3:42:55 PM

CHAIR CLAMAN surmised that Amendment 38 would go back to the place in which a person with points on their license not related to a DUI related suspension, would face jailtime for being arrested on a points suspension as opposed to having a DUI suspension.

MR. SKIDMORE answered that previous law read that if a person's license was suspended for points as opposed to a DUI, and it was a first-offense driving with license suspended (DWLS), the mandatory minimum was 10-days with 10-days suspended and 80-hours of community work service. In the event the person had previously been convicted of DWLS, it was 10-days. Mr. Skimore referred to Amendment 38, page 1, lines 13-16, and paraphrased as follows:

(A) is the 10-days with 10-days suspended and 80-hours of community work service - that's points and not a DUI for a first.

(B) line 17-18 is the person has previously been convicted, then it is 10-days in jail is the mandatory minimum,

(C) lines 19-23 and on ... (C) is where you now are talking about if the person has had their driver's license suspended as the result of a DUI, you'll find the penalty is on page 2, line 1, that indicates it's 20-days with 10-days suspended, 10-days to serve, it also talks about a $500 fine, and it also talks about community work service.

(D) And then, if you have a previous conviction for DUI, DWLS, now it goes up to 30-days, and I'm at lines 9 and 10, of page 2, of Amendment 38.

MR. SKIDMORE suggested thinking of DWLS as points. A DUI-related suspended license is "suspended time 10 with 10, 80 hours of community work service, it goes up to 10-days unless you are dealing with a DUI, in which case it is 20-days with 10-days, the fine, and the community work service, or a previous DUI, now it goes up to 30-days."

REPRESENTATIVE REINBOLD asked Commissioner Dean Williams whether he had just returned from Norway.

3:46:00 PM

COMMISSIONER DEAN WILLIAMS, Department of Corrections, answered, "Yes."

REPRESENTATIVE REINBOLD asked what he learned about DUIs and how the people of Norway handle DUIs.

COMMISSIONER WILLIAMS advised that he could not because he was not looking into the legal descriptions of all of Norway's laws, he was looking at its conditions of confinement and focusing on what happens behind the walls.

REPRESENTATIVE REINBOLD recommended that Commissioner Williams look into Norwegian laws regarding DUIs because it has some of

the toughest penalties for DUIs. She asked the purpose for Commissioner Williams to look at the conditions inside the Norwegian jail.

[CHAIR CLAMAN and Representative Reinbold discussed the purpose of Amendment 38.]

3:48:02 PM

CHAIR CLAMAN asked what problems were present with the existing laws regarding driving with license suspended (DWLS), what was the purpose in terms of public safety and improving the whole process by the changes in Senate Bill 91.

3:48:38 PM

BARBARA DUNHAM, Project Attorney, Alaska Criminal Justice Commission, Alaska Judicial Council, Alaska Court System, answered that the purpose behind the changes in Senate Bill 91 for driving with suspended license (DWSL) was part of the broader effort of focusing state resources on violent offenders and the more dangerous offenders. She explained that the commission recommended separating out the driving with suspended license (DWSL) based on a DUI or a refusal of a breathalyzer test, and licenses suspended for other reasons. The reason being that the commission believed the DUI based revocations were more serious, and the license suspensions for those other types of infractions were not as serious and should not be categorized as a crime but rather a violation similar to a speeding ticket.

3:49:51 PM

CHAIR CLAMAN asked whether that determination was research-based data analysis for that recommendation.

MS. DUNHAM responded that it was based on the Alaska Criminal Judicial Commission's findings that, generally, people with such low-level charges tend to be low-risk. Putting those people in jail could actually have a criminogenic effect, meaning that it could make them more likely to recidivate once they were released from jail.

3:50:34 PM

REPRESENTATIVE REINBOLD noted that Mothers Against Drunk Drivers would think that someone who killed their teen-ager while

driving under the influence was violent. She asked Ms. Dunham, as attorney for the commission, whether she would take responsibility for the failure of public safety that the people on the street are reporting.

CHAIR CLAMAN advised Ms. Dunham that she could answer the question with respect to driving with license suspended.

MS. DUNHAM replied that she should have been more specific because this particular recommendation has to do with licenses suspended or revoked, not with a DUI itself. The commission recognizes that a DUI itself is a serious crime, she advised.

3:51:58 PM

REPRESENTATIVE LEDOUX commented that she thought Mr. Skidmore advised that this did not apply when licenses were suspended due to DUIs. She asked whether she misunderstood Mr. Skidmore.

MR. SKIDMORE asked whether Representative LeDoux was asking about the amendment, or about the previous law and how it affected DWLS.

REPRESENTATIVE LEDOUX answered both.

MR. SKIDMORE advised that, under current law, a person who has their license suspended as the result of a DUI is a crime, and the mandatory minimums for that crime are lower than what they had been previously. Amendment 38 increases the mandatory minimums, but under either scenario, it is still a crime. In the event a person's license is suspended due to points on their license, rather than a DUI, under current law that is no longer a crime or something that results in a person going to jail. Instead, he advised, a fine is assessed, similar to a speeding offense. Under Amendment 38 and previous law, it turns DWLS assessed due to points on a license back into a crime and it imposes mandatory minimums as well, he explained.

MS. DUNHAM said that she agreed with Mr. Skidmore's explanation.

3:54:22 PM

REPRESENTATIVE EASTMAN asked Mr. Skidmore to explain points versus a DUI and offered a scenario of driving 120 mph in downtown Anchorage, and whether that would fall into the points category or into the crime category.

MR. SKIDMORE responded that if a person drives over the speed limit, it results in a speeding ticket and points are associated. He said that Representative Eastman's scenario of driving 120 mph in downtown Anchorage where the speed limit is most likely 25-35 mph, would likely result in a charge of reckless driving, reckless endangerment, potentially an assault if someone had been placed in danger, and a number of other crimes. He explained that in the event a person was driving on the Glenn Highway with a speed limit 65 mph, and they drove 75-80 mph, that would be a speeding ticket with points associated. A number of other driving infractions can result in points, but he was not familiar with the process because he prosecutes crimes. In the event the points reach a certain amount, that can cause a license to be suspended, he said.

3:57:01 PM

REPRESENTATIVE LEDOUX asked whether there was a way to determine how many points and violations "this is likely to be" because it probably is not a person running a red light.

REPRESENTATIVE LEDOUX, in response to Mr. Skidmore's request for clarification of her question, asked how many times a person can commit various infractions and accumulate points before the person loses their license.

MR. SKIDMORE recommended that a law enforcement officer or someone from the Division of Motor Vehicles answer her question because he does not know if there is a single infraction that would result in a sufficient number of points.

REPRESENTATIVE LEDOUX offered a scenario of a person approaching the number of points required to have their license suspended in 2017, and then possibly five-years pass with good driving. She asked whether there was ever a time those accumulated points were deleted, and the person then started from the beginning.

MR. SKIDMORE said that he does not know the timing on the accumulation of points.

4:00:12 PM

REPRESENTATIVE KOPP explained that if a person accumulates more than 12 points in one-year, they are in a suspended license status. He offered that when young people get in trouble, generally they have received one racing ticket by accelerating from zero mph to 60 mph with another vehicle in a 35-mph zone,

for example, that is racing, and it is 10 points. That person's next speeding ticket, even if it is in a 4-point range of 10-mph or less under the limit, that would put the person in a suspended status. He described that where youth get into trouble is the vicious cycle of having their first suspension because it is tough to ever get out of that cycle while trying to get themselves to school or to their job. He advised that a person does accrue two to three points a year in order to delete those points from their record. He remarked that people can go into suspended license status such that they may have a traumatic event in their life and miss a payment to their insurance company and someone runs into their car. It is then discovered they are in a non-insured status and are officially suspended and if they are caught driving, that is a misdemeanor. He commented that many people would look at that circumstance and ask whether jail was appropriate versus jail being appropriate for DUI offenders driving after that type of criminal offense. That is the public policy call being discussed here, what is appropriate for the various ways a person can be in a suspended license status, he pointed out.

4:03:11 PM

REPRESENTATIVE LEDOUX asked whether Representative Kopp's example of racing would be considered reckless driving.

REPRESENTATIVE KOPP answered that reckless driving is considered an extreme indifference to a standard of safety to themselves or others, and racing could take place just between two vehicles on a dark and stormy night with no other people present except the police officer who saw it take place. That is considered competitive driving against another vehicle, and reckless driving is a class A misdemeanor with 10-points on the person's license, a DUI is 10-points on a person's license.

4:04:30 PM

REPRESENTATIVE LEDOUX asked whether Amendment 38 deals with license revocation and driving on a suspended license for people who have been convicted of a DUI, and whether it also deals with people who are driving on a suspended license because they accumulated too many points.

MR. SKIDMORE answered that this amendment deals with both categories.

4:05:14 PM

REPRESENTATIVE LEDOUX asked whether there was a way to bifurcate this amendment and separate section 16 from section 17.

REPRESENTATIVE LEDOUX, in response to Mr. Skidmore, explained that she would like to impact the license revocation in connection with the DUI.

CHAIR CLAMAN clarified that existing law addresses driving with license suspended for a DUI, it is a crime today and a crime under the criminal justice reform provisions. The question this amendment raises is, should the non-DUI suspensions be criminalized again, which they were prior to criminal justice reform. He pointed out that there are different penalties here for the DUI suspension than the penalties that are law today.

REPRESENTATIVE LEDOUX stated that that is what she would like to address. She said she supports the portion of Amendment 38 dealing with the penalties for driving while license suspended (DWLS) due to a DUI. She remarked that she does not want to change the law with respect to the DWLS when the penalty is just points.

4:07:49 PM

CHAIR CLAMAN noted that the committee is at an interesting place and asked whether the members want to make this committee a committee of drafters in which it tries to draft and re-draft and rewrite every amendment or take Amendment 38 as it was offered. In the event Amendment 38 is not exactly what the committee wants, it can vote Amendment 38 down and ask Legislative Legal and Research Services to draft another amendment and submit it to the House Finance Committee or on the floor of the House of Representatives. At some point, he asked, whether the committee needs to start crafting language on every amendment which appears to be the habit of the committee.

REPRESENTATIVE LEDOUX responded that the members in this committee may be crafting language due to the limitation on the time period for amendments. She pointed out that she believes in vetting amendments in committee as opposed to on the floor of the House of Representatives. She explained that she was "just trying to figure out" whether there was an easy way to reach her intended goal, although she was unsure whether Amendment 38 had the votes necessary to be adopted, and it may be a moot point.

4:09:23 PM

REPRESENTATIVE EASTMAN commented that Representative LeDoux's intention is an improvement to Amendment 38, and he supports that improvement.

CHAIR CLAMAN said he would entertain a conceptual amendment that essentially removed any language criminalizing a non-DUI suspension of a driver's license. Amendment 38 would be conceptually amended to read that it had the penalties for DUI suspensions reflected in the amendment, but none of the penalties for non-DUI suspensions. He remarked he was not offering the conceptual amendment and Legislative Legal and Research Services would draft the actual language in the bill.

4:11:00 PM

REPRESENTATIVE LEDOUX moved to adopt Conceptual Amendment 1 to Amendment 38, of which increases the penalties for driving while license revoked (DWLS) for a DUI-related crime, and it does not increase the penalties for DWLS when solely related to points.

REPRESENTATIVE KREISS-TOMKINS objected.

4:12:00 PM

REPRESENTATIVE KREISS-TOMKINS said that he somewhat echoes Chair Claman's thoughts, and he was unsure the reason the committee was in this position was quite what Representative LeDoux had presented. He explained that if the committee was serious about these amendments, the amendments could have been circulated far earlier than the deadline rather than waiting up until the deadline and "grabbing different parts" of the amendments out via one, two, or three conceptual amendments. As far as the amendment process, he remarked that he is inclined to consider each amendment as presented unless there was a clear-cut issue to consider, and on those process-based grounds, he opposes the adoption of Conceptual Amendment 1 to Amendment 38.

4:13:14 PM

REPRESENTATIVE REINBOLD stressed that DUIs and DWSL are important with huge impacts on people and possibly costing the life of a child. Representative Reinbold then discussed the amendment process. She asked whether DUI crimes had increased since the implementation of Senate Bill 91, and whether data was available as to the risk of people driving under the influence of marijuana, or any substance.

CHAIR CLAMAN pointed out that the committee was under discussion and the committee is debating the conceptual amendment. He advised that she has three-minutes under discussion, and not the one-minute under questions.

REPRESENTATIVE REINBOLD commented that Chair Claman is on the Alaska Criminal Judicial Commission and he should know what DUI, wrecks, increased risk, and casualty data was available.

[CHAIR CLAMAN and Representative Eastman discussed the process of Amendment 38.]

CHAIR CLAMAN, in response to Representative Reinbold's questions as to DUIs, explained that Amendment 38 deals with DWLS and not driving while intoxicated. He commented that he has seen elderly individuals have their licenses suspended because they did not sit for their driving test, and referred to a well-known, elderly woman living in Juneau who, back in the day, had her license suspended and had to spend 10-days in jail. It is vital, he stressed, that when the suspension is not related to a DUI suspension, that those suspensions not be categorized as criminal violations that can alter a person's life. In terms of the DUI components, in his view, the existing law adequately addresses strong penalties, although, he noted, interest had been voiced in possibly increasing those penalties. Amendment 38 is not the avenue to increase the penalties, and he urged a no-vote on Conceptual Amendment 1 to Amendment 38.

4:19:41 PM

REPRESENTATIVE LEDOUX remarked that the fact that Conceptual Amendment 1 to Amendment 38 is taking place now, is not the fault of anyone. This committee is performing as the House Judiciary Standing Committee is supposed to perform, by discussing the amendment. Initially, she remarked, she would probably would have supported the entire amendment, but after listening to Representative Kopp's explanation about the points system, she realized that she did not want to support the entire amendment. This discussion is about bifurcating the amendment, she said.

REPRESENTATIVE KREISS-TOMKINS maintained his objection.

4:21:02 PM

A roll call vote was taken. Representatives Kopp, LeDoux, Eastman, and Reinbold voted in favor of the adoption of Conceptual Amendment 1 to Amendment 38. Representatives Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, the adoption of Conceptual Amendment 1 to Amendment 38 passed by a vote of 4-3.

4:21:53 PM

REPRESENTATIVE KOPP stated that he is not prepared to support Amendment 38, as amended, until the Department of Law (DOL) explains the DUI suspensions and penalties under current law.

MR. SKIDMORE explained that under AS 28.15.291, a person charged with first offense driving with license suspended, cancelled, or revoked as a result of a DUI is 10-days with 10-days suspended; a subsequent offense would be 10-days without 10-days suspended, so 10-days to serve.

REPRESENTATIVE KOPP surmised that, under current law, it is a class A misdemeanor on the first offense, it is arrestable, and the person must go before a judge. Except, he offered, the first offense is not a mandatory jail sentence. He asked Mr. Skidmore whether he had said 10-days suspended.

MR. SKIDMORE responded that a first offense is a minimum of 10-days with 10-days suspended, meaning probation, but a court could impose a different penalty for the class A misdemeanor.

REPRESENTATIVE KOPP asked whether it was possible to receive jailtime on a first offense.

MR. SKIDMORE answered, "Yes."

REPRESENTATIVE KOPP referred to Representative Reinbold's earlier question and asked whether, under current law, the DOL is aware of any increase in drivers driving on revoked licenses due to DUI-related revocations versus the law prior to Senate Bill 91.

MR. SKIDMORE stated that he is unaware of any problems in that regard, but they may be out there someplace. He said that he has no statistics, he has not heard from law enforcement or prosecutors that there has been an increase of drivers driving on revoked licenses as a result of DUI-related revocations.

4:24:56 PM

REPRESENTATIVE LEDOUX surmised that, under current law, the penalty is 10-days with 10-days suspended and asked what the penalty would be under Amendment 38, as amended.

MR. SKIDMORE answered that 10-days with 10-days suspended is the minimum under current law; under Amended Amendment 38, the mandatory minimum would be 20-days with 10-days suspended, 10-days to serve, $500 fine, and 80-hours of community work service. Although, he reiterated, a court could impose a higher penalty.

CHAIR CLAMAN surmised that, under current law, a second offense for a DUI suspension would have a mandatory minimum of at least 10-days and the judge could impose a higher penalty.

MR. SKIDMORE answered in the affirmative.

CHAIR CLAMAN further surmised that, under current law, a judge could impose the exact sentence required under the "old law," such that the judge has the discretion to order someone on their first offense to serve 10-days, $500 fine, and 80-hours of community work service. Nothing under current law removes the judge's discretion to impose a higher penalty, he asked.

MR. SKIDMORE answered that Chair Claman was correct, nothing limits a judge's discretion, this is solely about mandatory minimums and nothing more.

4:26:57 PM

REPRESENTATIVE REINBOLD asked Mr. Skidmore how many times people drive DUI until they are caught, and how many times people are caught before they are convicted.

MR. SKIDMORE responded that he has no way of knowing how many times someone may drive under the influence before they are caught. The statistics reveal that for most people charged with a DUI, 95-percent are convicted of a DUI. Although, he offered, infrequently a case could be resolved as a reckless driving or a different offense, adding that another consideration would be the number of times people are tried for a DUI and the jury returned a "not guilty" verdict.

4:28:26 PM

REPRESENTATIVE LEDOUX asked how often judges impose the minimum penalty.

MR. SKIDMORE answered that in his experience in dealing with DWLS and DUIs, 95-98 percent of the cases have the mandatory minimums imposed.

4:29:06 PM

REPRESENTATIVE REINBOLD offered surprise that Mr. Skidmore did not have any data as to the risk because DUIs are serious, and that adding the extra element of drugs, alcohol, or marijuana is another risk. She referred to the DUI 10-day minimum, and asked whether earned credit, discretionary parole, and one-third time for good behavior, is considered.

CHAIR CLAMAN clarified that this relates to DWLS and not to DUIs or any alcohol-related offenses.

MR. SKIDMORE expressed that he has no clue as to where he would start to research the question of how many times a person may commit a crime before they are caught.

CHAIR CLAMAN said that Representative Reinbold's second question related to whether there was any probation or parole good time credit related to a 10-day sentence.

MR. SKIMORE answered that he did not know off the top of his head how time accounting evaluates those sentences. A provision in law says that if the person serves more than three-days, they are eligible for good time, but he did not know how that provision of law is impacted by a mandatory minimum, and he said it would take him about 20-30 minutes to review the statutes.

REPRESENTATIVE REINBOLD specifically requested that information.

4:32:20 PM

CHAIR CLAMAN noted that for the same reasons he mentioned earlier, for the first-time offender having a suspended sentence without jailtime is reasonable. In the event a person had acted egregiously, the judge has the discretion to impose a longer sentence, and existing statute effectively addresses those concerns. He stated that he does not support Amendment 38, as amended.

4:32:47 PM

REPRESENTATIVE EASTMAN noted the importance of recognizing that the statutory language of 20-days in jail with 10-days suspended, actually means a week in jail due to the three-day credit for good time. He opined that the previous penalty was appropriate, and by reducing that penalty, the legislature is not adequately communicating with the public.

REPRESENTATIVE FANSLER maintained his objection.

4:34:10 PM

REPRESENTATIVE REINBOLD asked that the committee receive the information she had requested from Mr. Skidmore prior to voting.

CHAIR CLAMAN advised that the committee is voting.

REPRESENTATIVE REINBOLD said that she would be a yes-vote on Amendment 38, as amended, and asked for the information she had previously requested.

4:34:28 PM

A roll call vote was taken. Representatives Reinbold, LeDoux, and Eastman voted in favor of the adoption of Amendment 38, as amended. Representatives Kopp, Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, the adoption of Amendment 38, as amended, failed to be adopted by a vote of 3-4.

4:35:07 PM

The committee took an at-ease from 4:35 p.m. to 4:42 p.m.

4:42:20 PM

REPRESENTATIVE REINBOLD related that Mr. Skidmore advised that good time credit does apply [to a 10-day sentence].

4:42:45 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 39, Version 30-LS0461\N.23, Glover/Martin, 10/19/17, which read as follows: [The text of Amendment 39 is listed at the end of the 10/25/17 minutes of SB 54.]

REPRESENTATIVE FANSLER objected.

4:42:52 PM

REPRESENTATIVE EASTMAN explained that Amendment 39 focuses on the proper manner in which to deal with inflation as it relates to theft. This amendment changes the language under Senate Bill 91 and returns it to the language prior to Senate Bill 91, he advised.

REPRESENTATIVE KOPP asked whether this amendment reclassifies the crime of theft in any manner.

REPRESENTATIVE EASTMAN responded that the drafter would have to answer Representative Kopp's question because he could not recall discussing that issue with the drafter or seeing that in the amendment. He explained that that was not his intent for Amendment 39, and he does not need to reclassify the crime of theft to accomplish his goal.

4:45:24 PM

REPRESENTATIVE FANSLER referred to Amendment 39, page 2, lines 13-16, and page 3, lines 11-15, and noted that new rules are placed in the amendment rather than simply rolling back to the "adjusted for inflation" language.

4:46:19 PM

REPRESENTATIVE EASTMAN explained that it goes back to the language that existed previous to Senate Bill 91, which is a portion of theft in the third degree, and on page 3, it is simply a class A misdemeanor. He opined that the drafter took two of his requests and put them into the same amendment.

REPRESENTATIVE KOPP pointed out that there has been legal advice that inflation proofing could be an issue and the bill appears to do more than that. He said he tends to agree that inflation proofing, as far as the value one day and then five-years later changing that value after it has been reassessed, can be problematic. He asked Representative Eastman whether he has a separate [amendment], or whether this was an all or nothing amendment.

REPRESENTATIVE EASTMAN replied that this amendment is what the drafter was able to provide in a short period of time, and he did not anticipate that issue being included in this particular amendment. He said that he does not object to simply removing that language to make it a straight-forward issue, which is

"simply reverting to the inflation proofing language and removing that so that it reflects pre-Senate Bill 91 language." At another time the committee could deal with the $250 amount going back to pre-Senate Bill 91, he offered.

CHAIR CLAMAN asked whether Representative Eastman would like a conceptual amendment deleting everything in Amendment 39 except the language that specifically removes the inflation adjustment provisions in current law.

4:49:24 PM

REPRESENTATIVE EASTMAN replied that he does not need to be the person to offer that conceptual amendment now.

4:49:32 PM

The committee took an at-ease from 4:49 p.m. to 4:50 p.m.

4:50:54 PM

REPRESENTATIVE LEDOUX asked whether she could make a conceptual amendment motion to bifurcate the two portions of this amendment. In that manner, the committee could vote on the value of the property and past offenses, and then the committee could vote on the inflation proofing issue, thereby, voting on the two separate issues.

REPRESENTATIVE EASTMAN said he would support that conceptual amendment because that was his goal when speaking with the drafter and trying to separate out the two issues.

4:51:40 PM

The committee took an at-ease from 4:51 p.m. to 4:54 p.m.

4:54:47 PM

REPRESENTATIVE LEDOUX moved to adopt Conceptual Amendment 1 to Amendment 39 which would remove all of the language regarding inflation proofing.

CHAIR CLAMAN surmised that Conceptual Amendment 1 would remove all of the language "adjusted for inflation as provided in AS 11.46.982." In the event Conceptual Amendment 1 to Amendment 39 was adopted, Amendment 39 would have zero impact on the existing law that inflation proofs this level of offenses, and instead

Amendment 39 would just be looking at the penalty provisions, and what class of criminal conduct was involved or "violations of those."

4:55:55 PM

REPRESENTATIVE FANSLER noted that possibly the word "remove" is the wrong word because Amendment 39 currently removes the words on page 1, lines 6-7, and throughout Amendment 39. He explained that it removes "[, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,]," and Representative LeDoux's conceptual amendment adds that language back in - take away the removal, and it now read: "the value of the property or services adjusted for inflation as provided in AS 11.46.982 is $1,000, or more, but less than $25,000."

4:56:42 PM

CHAIR CLAMAN commented that Representative Fansler was not being inconsistent with Representative LeDoux's intent, it was just the manner in which Amendment 39 was written. He read: "This statute is amended to read:" and explained that it then gave the full language of the statute. Thereby, he pointed out, technically, Representative Fansler is correct because the "adjusted for inflation as provided in AS 11.46.982" should remain in the amendment rather than be removed. It is the same effect of Representative LeDoux's goal of having inflation proofing ...

REPRESENTATIVE LEDOUX interjected that her goal is to delete every reference, so the committee was not voting on inflation proofing.

CHAIR CLAMAN surmised that Representative LeDoux did not want to change the inflation proofing ...

REPRESENTATIVE LEDOUX clarified that she does not want to change current law as it relates to inflation proofing, and hopefully Legislative Legal and Research Services would understand what she was trying to accomplish.

CHAIR CLAMAN opined that Legislative Legal and Research Services will understand her goal, but that he also believes Representative Fansler is correct. Due to the manner in which this amendment was written, it would actually include inflation proofing language rather than remove it. The point of Conceptual Amendment 1 to Amendment 39 is that inflation

proofing would still be the law if Conceptual Amendment 1 to Amendment 39 was adopted.

4:58:13 PM

REPRESENTATIVE FANSLER objected to Conceptual Amendment 1 to Amendment 39.

4:58:51 PM

REPRESENTATIVE REINBOLD asked whether keeping the language in the amendment was correct, or whether removing the language was correct.

MR. SKIDMORE advised that he is not a drafter with Legislative Legal and Research Services, but both members are trying to say the exact same thing. Ultimately, he explained, all of the statutes discussing inflation proofing are removed from the amendment. The only text in the amendment would be Section 2, without the inflation proofing, he explained that it is just adding in the bold and underlined language, and in Section 4, adding the bold and underlined language. He opined that that is how the amendment would look.

5:00:12 PM

REPRESENTATIVE LEDOUX replied, "That's what I want to do."

CHAIR CLAMAN noted his understanding that Representative LeDoux likes inflation proofing, and for inflation proofing to be part of this statute, if amended, to change the penalties.

MR. SKIDMORE confirmed that it is currently part of the statute. Therefore, he said, Representative LeDoux does not want it as part of the amendment because she is not trying to change the statute.

CHAIR CLAMAN argued that the problem is the way this amendment read, and he paraphrased as follows: "Section is amended to read:" and it is "not picking language in and out." In the event the desire is to have inflation proofing part of the statute, it needs to be in the proposed amended version.

MR. SKIDMORE said that he agrees with Chair Claman and explained: which is why there is nothing in Section 1, Section 1, as a section, does not need to exist; Section 2, as a section, does need to exist; Section 3, as a section, does not

need to exist; Section 4, as a section, does need to exist; Section 5, as a section, does not need to exist; "going through the others, those don't need to exist." He said that in getting to Chair Claman's point, "Then, you have to adjust Section 2, and Section 4, to add back in the language of: 'adjusted for inflation proofing ...' which is what Representative Fansler was talking about, and what Representative LeDoux wants to keep." All of those other sections disappear, and herein lays the semantics the committee was lost in, he remarked.

CHAIR CLAMAN said he would not argue the point because it is clear that Conceptual Amendment 1 to Amendment 39 still makes inflation proofing the law. There should be no confusion and the committee does not need to determine the proper way to draft the conceptual amendment because its intent is as clear as day.

5:02:22 PM

REPRESENTATIVE KREISS-TOMKINS asked for clarification that if a member wanted inflation proofing in the statute, they would vote yes on the conceptual amendment.

CHAIR CLAMAN answered that Representative Kreiss-Tomkins was correct.

REPRESENTATIVE FANSLER maintained his objection to Conceptual Amendment 1 to Amendment 39.

5:02:06 PM

A roll call vote was taken. Representatives Kreiss-Tomkins, LeDoux, Fansler, Eastman, Kopp, and Claman voted in favor of the adoption of Conceptual Amendment 1 to Amendment 39. Representative Reinbold voted against it. Therefore, Conceptual Amendment 1 to Amendment 39 was adopted by a vote of 6-1.

5:04:01 PM

REPRESENTATIVE REINBOLD commented that Legislative Legal and Research Services made a mistake by including inflation proofing and the $250 theft in the amendment and proposed putting the two issues into two separate amendments. She asked whether Amendment 39, as amended, deals solely with theft in the fourth degree of $250.

MR. SKIDMORE explained the two provisions currently in front of the committee, AS 11.46.140(a) and AS 11.46.220(c), are actually

recidivist provisions. Those two provisions mean that if a person had been convicted twice within the last five-years, and they were facing a third charge, that third charge could be charged at the higher level of theft in third degree, a class A misdemeanor rather than a class B misdemeanor, under Sec. 2, AS 11.46.140(a). He advised that AS 11.46.220(c) deals with concealment of merchandise, and he referred the committee to Amendment 39, as amended, page 3, lines 11-15, wherein if a person is convicted twice of that same crime in the preceding five-years, and was now facing a third charge, the provision allows it to be prosecuted as a class A misdemeanor rather than a class B misdemeanor.

5:06:55 PM

CHAIR CLAMAN asked Ms. Dunham how this amendment differs from the language in SB 54, and its amendments, involving repeated theft.

MS. DUNHAM noted her understanding that Chair Claman's question was the difference between Amendment 39, as amended, and the language in SB 54 currently.

CHAIR CLAMAN answered that she was correct because petty theft provisions are in SB 54.

MS. DUNHAM explained that the provisions in SB 54 do not change the theft in the fourth-degree statute, but there are provisions that do raise the penalties for repeated theft in fourth-degree crimes. She opined that it was five-days suspended for the first offense; five-days [to serve] for the second offense; and 10-days [to serve] for the third offense after the person had previously been convicted for the first and second offenses. The difference with this provision is that it would add another way to be convicted of theft in the third degree, such that the person charged with theft in the fourth degree would actually get bumped up to theft in the third degree if it was their third charge, she offered.

CHAIR CLAMAN asked the reasons the Alaska Criminal Judicial Commission recommended moving away from escalating into class A misdemeanors and class C felonies for repeat offenses of class B misdemeanors, to take the approach reflected in SB 54.

MS. DUNHAM responded that this amendment was discussed in some form at the Alaska Criminal Judicial Commission and in keeping with its previous findings and research, the commission decided

that people stealing at this level of property theft tended to be less of threat, they are non-violent offenders, and ideally, they are people who should be able to rehabilitate without jailtime. She offered that the commission also heard testimony from members of the public, the Department of Law (DOL), and the Department of Public Safety (DPS), that there should be some sort of escalating penalty provision for those offenders of theft in the fourth-degree, but possibly not something that rises to the level of a class A misdemeanor as opposed to the class B misdemeanor.

5:11:36 PM

MS. DiPETRO, in response to Chair Claman, advised that she had nothing to add to Ms. Dunham's informative response.

5:11:43 PM

REPRESENTATIVE LEDOUX requested a description of concealment of merchandise as opposed to theft.

MS. DUNHAM offered an example of a person in Walmart who put a small item in their coat and were caught with that item before leaving the store, technically that is not theft, it is concealment of merchandise.

REPRESENTATIVE LEDOUX referred to Amendment 39, as amended, and asked why concealment is a felony, and when the property is stolen that it is a misdemeanor theft.

MR. SKIDMORE explained that both actions are class A misdemeanors. The distinction between theft and concealment of merchandise is if the person actually takes the property and leaves the store versus merely concealing the property while in the store. Theft in the fourth degree is a class A misdemeanor, and the concealment of merchandise statute begins by talking about a class C felony, and then it lists a value. He then pointed to Amendment 39, as amended, page 3, line 6, and read as follows: "a class A misdemeanor if" so, it would be a class A misdemeanor under those circumstances.

5:14:26 PM

[Chair Claman and Representative Reinbold discussed time limits.]

REPRESENTATIVE REINBOLD asked Ms. Dunham "Where does the buck stop," whether it stops with the commission or with the legislators because retailers are frustrated due to the provision of $250 for theft. She further asked why the commission recommended no jailtime and left it as a violation with little suspended time.

[CHAIR CLAMAN advised Representative Reinbold that the committee prefers to use more civil terms and less inflammatory language.

MS. DUNHAM commented she could only speak to the intention behind a limited jail sentence for low-level crimes, such as theft in the fourth degree. The intention, she explained, is that for many of these low-level offenders, by putting them in jail it would more likely cause them to commit more crimes upon their release. The intention was to avoid that increase in recidivism and avoid creating more victims in the future. That being said, she stressed that these provisions were never intended to have no consequences as there is nothing in the commission's recommendations, or in Senate Bill 91, or in SB 54 that would in any manner limit the investigation of theft crimes or the prosecution of theft crimes.

5:17:54 PM

REPRESENTATIVE REINBOLD described that currently it is basically a catch and release system, and many people that steal have major drug issues, which can end in violence. She argued that theft can turn violent and putting these people in jail offers retailers a reprieve, it offers law enforcement the feeling of success, and it increases safety in the department stores. She re-asked where the buck stops, and whether the governor stands behind the commission's initial recommendations.

[CHAIR CLAMAN and Representative Reinbold discussed Ms. Dunham answer as to where the buck stops.]

CHAIR CLAMAN asked Ms. Dunham whether her answer would change to the question Representative Reinbold asked, and from the answer Ms. Dunham previously offered.

MS. DUNHAM responded that her answer would not change and pointed out that she is the project attorney for the commission and she could not speak for its members.

5:20:35 PM

REPRESENTATIVE KOPP commented that the Amendment 39, as amended, re-introduces a recidivist provision into the law which is basically a look-back of five-years, and explained that SB 54 includes the same for class A misdemeanors. The discussion is with regard to the value of the property being less than $250, and a person being convicted for two or more misdemeanors within five-years. Under current law, class B misdemeanants can serve up to 10-days, and under SB 54, the same person can serve up to 10-days. In other words, he explained, in order to qualify for the class A misdemeanor of "theft here, under theft third," a person must have been convicted twice to earn their right to a class A misdemeanor where they then could be sentenced up to 90-days for this type of offense. The look-back provision is a value tool, he described, because a person has to work to earn that class A misdemeanor in that they reoffended two or more times within five-years. The language of SB 54 is similar because it has a recidivist provision, and class B misdemeanors do have a range of zero to 10-days; therefore, there is not a lot of difference in how the law would be applied in its working practice. Except, he reiterated, the amendment ensures that a person with this behavior would ultimately receive a class A misdemeanor if convicted of this offense two or more times within five-years, but the application of the law is similar to SB 54, he said.

5:23:33 PM

REPRESENTATIVE REINBOLD asked whether this goes back to pre-Senate Bill 91.

REPRESENTATIVE KOPP opined that he recalls the law having a look-back provision, but he was unsure.

5:24:14 PM

REPRESENTATIVE EASTMAN commented that he had heard from the public and law enforcement that it is good to have rungs on a ladder and slowly walk up to stiffer and stiffer penalties. Although, he said, the offender will never climb the ladder even though they are still engaged in criminal behavior if there are no resources, no incentive, and no priority to sentence on the first rung on the ladder, something less than $250. Amendment 39, as amended, is part of a larger effort to ensure that when there is repeat criminal behavior, it results in a sentence. Thereby, explained, giving the offender an opportunity to at least be on that progressive ladder.

REPRESENTATIVE FANSLER maintained his objection.

5:25:33 PM

A roll call vote was taken. Representatives Eastman, Reinbold, Kopp, and LeDoux voted in favor of the adoption of Amendment 39, as amended. Representatives Fansler, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 39, as amended, was adopted by a vote of 4-3.

5:26:17 PM

CHAIR CLAMAN recessed the House Judiciary Standing Committee until 7:15 p.m.

7:37:53 PM

CHAIR CLAMAN called the House Judiciary Standing Committee meeting back to order at 7:37 p.m. Representatives Claman, Fansler, Kopp, Kreiss-Tomkins, LeDoux, Reinbold, and Eastman were present at the call to order.

CHAIR CLAMAN turned the committee to Amendment 40.

7:38:43 PM

REPRESENTATIVE EASTMAN advised that because Amendment 40 is similar to a previously discussed amendment, he would withdraw Amendment 40.

7:39:20 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 41, Version 30-LS0461\N.25, Glover/Martin, 10/19/17 which read as follows: [The text of Amendment 41 is listed at the end of the 10/25/17 minutes of SB 54.]

REPRESENTATIVE FANSLER objected.

7:39:30 PM

REPRESENTATIVE EASTMAN explained that Amendment 41 removes certain post-Senate Bill 91 provisions for discretionary parole and reverts back to the law prior to the passage of Senate Bill 91.

CHAIR CLAMAN noted that, for purposes of this particular amendment, the committee previously adopted an amendment that essentially did away with administrative parole. He offered his presumption that if this amendment were to be adopted, references to administrative parole would be removed as a matter of drafting, and it would not require a conceptual amendment.

7:40:36 PM

REPRESENTATIVE REINBOLD asked Mr. Skidmore to describe the pre-Senate Bill 91 statutes and the post-Senate Bill 91 statutes regarding discretionary parole.

MR. SKIDMORE deferred to Jeff Edwards, Director of the Parole Board.

7:41:05 PM

JEFF EDWARDS, Director, Alaska Board of Parole, Department of Corrections, responded that Amendment 41 removes the geriatric parole provisions and removes parole eligibility for a certain class of offenders enacted under Senate Bill 91. Prior to the enactment of Senate Bill 91, most sex offenders were not eligible for discretionary parole and the amendment falls in line with that theory. He referred to Amendment 41, AS 33.16.210(a), Sec. 23, page 4, lines 27-31 and page 5, line 1, early termination for parole supervision, and advised that Senate Bill 91 mandated that offenders on parole for one-year were eligible for early termination, and Amendment 41 changes that to two-years. Senate Bill 91 generally mandated that most everyone sentenced to 181-days, or longer, would be eligible to apply for discretionary parole, and the amendment somewhat limits that provision, he offered.

7:43:04 PM

REPRESENTATIVE REINBOLD described discretionary parole as a new type of parole added to Senate Bill 91, and asked Mr. Edwards to explain discretionary parole.

CHAIR CLAMAN explained to Representative Reinbold that discretionary parole was not a new concept in Senate Bill 91.

MR. EDWARDS answered that discretionary parole has been around for quite some time. Once inmates become eligible, discretionary parole is an avenue for inmates to present their case before the Alaska Board of Parole for early release. There

are some legal and technical provisions that make folks eligible or not eligible, he explained, in order to give inmates an opportunity to seek early release from incarceration via a transitional program or via electronic monitoring/crisis recovery centers (CRC). He explained that it is an interview-based process for an inmate to ask for early release.

7:44:19 PM

REPRESENTATIVE REINBOLD requested a description of discretionary parole for sex offenders under Senate Bill 91.

CHAIR CLAMAN rephrased the question and asked Mr. Edwards to explain whether there was a change to the provisions for discretionary parole for sex offenders prior to, and after the enactment of Senate Bill 91.

MR. EDWARDS responded that it did change through Senate Bill 91 by expanding eligibility for a certain class of sex offenses. Currently, he advised, unclassified sex offenses and class A felony sex offenses are not eligible for early release on discretionary parole. He further advised that current law expanded eligibility for class C felonies and class B felonies for sex offenses by becoming "eligible by one-half," wherein inmates would have to serve one-half of their sentence before becoming eligible for parole.

7:45:35 PM

REPRESENTATIVE REINBOLD surmised that Senate Bill 91 expanded the eligibility for sex offenders for early release. She asked Mr. Edwards to describe geriatric parole prior to current law, and whether the actions of Amendment 41 take the law back to the exact law prior to Senate Bill 91.

MR. EDWARDS advised that Sec. 18 through Sec. 21 of Amendment 41 were non-existent prior to Senate Bill 91 because there were no provisions for geriatric parole. Geriatric parole was created under Senate Bill 91, and it essentially allows for, and targeted, elderly inmates who were aging out of the system and becoming increasing expensive to house in a hard bed due to their age and the medical conditions that go along with aging. He referred to Amendment 41, Sec. 18, AS 33.16.090(a)(2), page 1, lines 18-21, which read as follows:

(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].

MR. EDWARDS pointed out that the provision read that the inmate must have actually served 10 years of their sentence, and the provision eliminated unclassified felonies or a sexual felony on sex offences. The parole board attempted to locate this category of inmate within the institutions of the Department of Corrections (DOC) and it did not find many inmates, although, it is believed that some inmates may qualify under this provision in the future.

7:47:36 PM

REPRESENTATIVE REINBOLD referred to Amendment 41, page 2, regarding one-fourth time, and requested a description of discretionary parole under that provision.

[MR. EDWARDS was suddenly disconnected from the telephonic connection.]

7:48:08 PM

The committee took an at-ease from 7:48 p.m. to 7:55 p.m.

7:55:18 PM

CHAIR CLAMAN referred to Amendment 41, AS 33.16.090(b)(4), page 2, lines 23-25, and asked that Mr. Edwards explain how this provision applies if Amendment 41 is adopted, and how a similar situation is treated under current law.

MR. EDWARDS explained that under current law, all class A felonies, class B felonies, and class C felonies are eligible for discretionary parole at one-fourth; the inmate must serve one-fourth of their sentence whether it is their first, second, or third time felony. He explained that inmates must serve one-fourth of their sentence before they can apply for discretionary parole, or that early release provision he previously discussed, which is expansive of pre-Senate Bill 91 eligibility. Prior to Senate Bill 91, eligibility for discretionary parole was narrow in scope, and for the most part, it only afforded first-time and potentially second-time felons eligibility. Under current law, the provision was expanded to include class A [felonies], and whether it is a third-time and fourth-time felony does not

matter, they would be eligible to apply at one-fourth of their sentence.

7:57:21 PM

REPRESENTATIVE REINBOLD asked Mr. Edwards to repeat how this expands to class A felony, class B felony, and class C felony, no matter how many convictions an inmate served.

MR. EDWARDS explained that her repeated information is accurate because people sentenced under class A felonies, class B felonies, class C felonies, are eligible for discretionary parole at one-fourth of their sentence. Mr. Edwards used the example that the presumptive sentencing range for a second-time class A felony is eight to twelve years, and say a person received an eight-year sentence, that inmate would be eligible to apply for early release after two-years. He pointed out that that provision does not, in any manner, obligate the parole board to release the inmate after two-years, it solely obligates the parole board to conduct a hearing for early release.

7:58:32 PM

REPRESENTATIVE REINBOLD requested a few example of class A felonies and class B felonies.

CHAIR CLAMAN reminded Representative Reinbold that his office distributed a five-page DOL handout depicting class C felonies, which was much discussed in this committee. He asked Mr. Skidmore to described three class A felonies and three class B felonies.

MR. SKIDMORE explained that class A felonies include: assault in the first degree, manslaughter, arson in the first degree; and class B felonies include: assault in the second degree, theft in the first degree, and burglary.

8:00:46 PM

REPRESENTATIVE REINBOLD commented that as to a class A felony, class B felony, and class C felony, people can offend multiple times, serve only one-fourth of their sentence, and be eligible for discretionary parole. She asked whether that was at the discretion of the three members of the parole board.

MR. EDWARDS clarified that the parole board is made up of five members representing various geographical regions around the

state, and its members are appointed by the governor. These five members are tasked with reviewing each of the cases, reading all of the documentation and materials, conducting "as best we can" a face-to-face interview which oftentimes includes the victims and their families, and the inmate, and the decision is made.

8:01:51 PM

REPRESENTATIVE REINBOLD described that a class C felony was horrible with no prior convictions and no jailtime, and now with the discretionary parole and the five-member board, that answers why crime is out of control. This provision is damaging to public safety, demoralizing to law enforcement, and a slap in the face to judges when a parole board can overrule a judge. She then continued her description of Senate Bill 91.

[CHAIR CLAMAN admonished Representative Reinbold to choose more respectful words in her questions and statements.]

8:03:13 PM

REPRESENTATIVE LEDOUX asked Mr. Skidmore whether sexual predators are eligible for discretionary parole under Senate Bill 91.

CHAIR CLAMAN asked that Mr. Skidmore answer that question as to Senate Bill 91 as amended by proposed SB 54, because issues regarding sex offenders were added to SB 54. He asked that Mr. Skidmore combine those two because the debate is whether to amend SB 54, which does change some of the issues regarding sex offenders and eligibility for parole.

REPRESENTATIVE LEDOUX asked that Mr. Skidmore answer her question as to Senate Bill 91 as it now stands, and under SB 54 assuming it is passed.

MR. SKIDMORE responded that Senate Bill 91 expanded eligibility for parole to only class C felony level sex offenses; not to the class A felonies or unclassified felonies. Senate Bill 54 addresses the frequency of parole hearings and it does not change the crimes under which an inmate is eligible for parole. Amendment 41 changes the law back to where it was prior to Senate Bill 91 because the statutes found in the amendment are an exact reversal of those statutes under Senate Bill 91.

8:05:39 PM

REPRESENTATIVE LEDOUX asked exactly what type of conduct arises to a class B felony or class C felony sex crime.

MR. SKIDMORE responded that he will focus on sexual assault and sexual abuse of a minor because they are in degrees: sexual assault in the second degree is a class B felony, and there are multiple subsections: engaging in sexual contact without consent as opposed to penetration is sexual assault in the second degree versus the first degree; and there a number of different provisions that talk about different relationships with folks, but that is the primary example for a class B felony. Sexual assault in the third degree is classified as a class C felony, it is sexual contact when the offender knows the victim is mentally incapable, incapacitated, or unaware the sex act is being committed. Also, he said, the types of offenses classified as a class C felony for sexual assault are as follows: when the offender is employed at a state correctional facility and engages in penetration with someone in the custody of the Department of Corrections (DOC); subsection (3) talks about engaging in sexual penetration with someone 18 or 19 years of age in the custody of the Department of Health and Social Services (DHSS); and a legal guardian dealing with juveniles.

8:08:26 PM

REPRESENTATIVE LEDOUX commented that she was beginning to get the picture of the sorts of things classified under Senate Bill 91 as class B and class C felonies, in which people are eligible for discretionary parole. She asked whether, under Amendment 41, those people would no longer be eligible for discretionary parole.

MR. SKIMORE deferred to Mr. Edwards.

MR. EDWARDS referred to Amendment 41, Sec. 19, page 3, lines 21-27, and advised that it removes that provision for eligible sex offenders.

8:10:37 PM

REPRESENTATIVE LEDOUX related that she is attempting to determine whether currently, under geriatric parole, it is just about anything except an unclassified felony or a sexual felony as defined under AS 12.55.180(5). She asked whether that includes all sexual crimes or just certain sexual felonies.

MR. EDWARDS opined that he believes it does apply to all sex offenders.

CHAIR CLAMAN referenced AS 12.55.185(16), and paraphrased as follows:

> (16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, sex trafficking in the first degree, sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, online enticement of a minor, and felony attempt, conspiracy, or solicitation to commit those crimes.

8:12:23 PM

REPRESENTATIVE LEDOUX, after noting that information, asked Mr. Skidmore what other sexual crimes are out there.

MR. SKIDMORE responded that sexual abuse of a minor in the third degree is not included in this definition of a sexual felony, and it is a class C felony.

REPRESENTATIVE LEDOUX asked what conduct is considered sexual abuse of a minor.

CHAIR CLAMAN noted that, according to the chart disbursed amongst the members, it is sexual touching.

MR. SKIDMORE referred to AS 11.41.423 and advised that it deals with an individual who is 17 years of age, or older, and they engage in sexual contact with a person 13, 14, or 15 years of age when there is at least a four-year age difference between the two individuals.

8:14:34 PM

REPRESENTATIVE KOPP referred to the practice of parole prior to Senate Bill 91 and asked when an offender for a class C felony sexual abuse of a minor, who met the elements of Mr. Skidmore's description, would become eligible to be heard before the parole board.

MR. EDWARDS replied that in most instances, the parole board would not have heard that case, and he would have to perform a comparable analysis on those pre-Senate Bill 91 sentencing structures. He reiterated that many of those inmates were not eligible due to their class of felony and stressed that to comment on that would be in error because the parole board did not hear those sex offense cases.

8:16:02 PM

REPRESENTATIVE KOPP surmised that, broadly speaking, the inmate was not eligible for parole if it was a felony sex offense.

MR. EDWARDS answered in the affirmative.

REPRESENTATIVE KOPP noted that under Senate Bill 91, there is a new provision allowing a parole board to conduct a hearing on such a case. He asked whether there had been any examples of a sex offender reoffending on the public as a result of the parole board's action in releasing an inmate under this new law.

MR. EDWARDS advised that he could not recite a specific case, and to keep in mind that these changes began on January 1, 2017. Many of these class B felonies will receive sentence ranges in excess of years and years, and the parole board has not yet seen or interviewed this class of felony. He clarified his previous statement and explained that the parole board has convened sex offense cases, but not on the specific sex offense.

He explained that if an inmate had multiple cases for which they were serving incarceration time, the board may be interviewing a sex offender, but the inmate was not interviewed by the parole board on the sex offense case. He further explained that if there was a sex abuse of a minor case plus a robbery case, those become consecutive cases and the inmate would have to serve out their first sentence on the sex offense, and then the parole board would see them on the robbery case. Therefore, there are cases where the parole board would see sex offenders, but they were not eligible on the sex offense cases. It gets confusing, but this becomes a time accounting calculation where certain groups become eligible. Under Senate Bill 91, the parole board expects to see more specific stand-alone sex felonies, particularly class B felonies and class C felonies, when inmates become eligible after serving one-half of their sentence, he said.

8:18:27 PM

REPRESENTATIVE KOPP surmised that inmates have to serve one-half of their sentence, and he thought inmates had to serve one-fourth of their sentence.

MR. EDWARDS explained that class B and class C sex offense specific felonies are eligible at one-half of their sentence, and the eligibility for one-fourth of an inmate's sentence are for non-sex felony cases.

8:18:48 PM

REPRESENTATIVE KOPP thanked Mr. Edwards for the clarification and noted that this law has been in effect just short of 10 months. He surmised that Mr. Edwards could not point to an instance where someone who had served one-half of their sentence, was granted parole, and then re-offended on the public.

MR. EDWARDS verified that he could not recall any specific case meeting those requirements.

REPRESENTATIVE KOPP pointed out that the committee just learned that an inmate must serve one-half of their sentence before they are eligible for a parole hearing under discretionary parole. He asked Mr. Skidmore whether the Department of Law (DOL) is aware of any case wherein the parole board granted this parole and it resulted in a re-offense on a member of the public as a result of the enactment of this law.

MR. SKIMORE responded that he is not aware of any case meeting Representative Kopp's criteria.

8:20:37 PM

REPRESENTATIVE KOPP asked whether Mr. Skidmore was familiar with a case approximately four years ago wherein a 19-year old man returned from Afghanistan and had sexual relations with his girlfriend who, unbeknownst to him, was 15-years old. She became pregnant at 16 years of age, and his defense was that he thought she was 17 years of age. He went to prison "under this" and he is now a registered sex offender. In the event this young man came up for parole, under current law, how many years would he have to serve after his conviction of having sex with a 15-year old girl when 19 years of age. He asked Mr. Skimore what the range of the sentence would be, and the length of the sentence he would have to serve under those circumstances.

MR. SKIMORE answered that he was not familiar with this Fairbanks case and that answering the hypothetical requires looking at a number of different factors. Plus, he related that he did not know the presumptive range off the top of his head, which is where he would have to start. In the event the discussion is about someone convicted of a class B felony or class C felony sex offense, under current law, they would have to serve at least one-half of their sentence before they could even be considered for parole. He stressed that being eligible for consideration of parole is not the same as being released on parole, and just because an inmate is eligible for the hearing does not mean the parole board would determine that the inmate could be released at that time. The DOL prosecutors are almost never involved in parole hearings, he advised.

REPRESENTATIVE KOPP advised that he was reviewing the law and trying to think of a case that would apply in that situation to determine how long someone would be incarcerated before they were eligible for even their first hearing.

8:23:58 PM

REPRESENTATIVE EASTMAN asked Mr. Edwards how comprehensive the information was that the parole board would receive when someone had gone through the parole board process, was granted parole, and then charged with another offense. He asked whether Mr. Edwards was confident he would receive that information, and how quickly he would receive that information.

MR. EDWARDS answered that in the event an individual violates their discretionary parole under Representative Eastman's example, the parole board would be notified and tasked with handling a violation hearing. In that violation hearing, the parole board would go through the process and determine whether guilt or innocence was involved, and in the event, there was a finding of guilty, it would impose a sanction. He stated that the [violations hearing] happens quickly, and the parole board would be notified almost immediately via the violation process.

8:25:41 PM

REPRESENTATIVE KREISS-TOMKINS asked Mr. Skidmore to speak to the discretion that exists at sentencing (indisc.) discretionary parole under current law.

MR. SKIDMORE noted that Representative Kreiss-Tomkins referenced a judge's discretion to limit discretionary parole when the court imposes a sentence and answered that judges do have the ability to limit discretionary parole, but there are certain findings judges must make to limit discretionary parole.

CHAIR CLAMAN advised that the statute is AS 12.55.115.

8:27:54 PM

REPRESENTATIVE FANSLER opined that the idea of discretionary parole after one-fourth of a sentence had been served was not revolutionary because it was already being applied in some cases, and Senate Bill 91 expanded discretionary parole to repeat offenders.

MR. EDWARDS advised that Representative Fansler was correct, the percentages may have changed slightly, but the concept is the same.

8:28:57 PM

REPRESENTATIVE FANSLER referred to Amendment 41, and asked Commissioner Williams whether rolling back discretionary parole would potentially have massive fiscal consequences, and whether any numbers were available on that issue.

COMMISSIONER WILLIAMS responded that certain assumptions were made on the DOC's budget, money has already been taken out, and there are fiscal impacts. He related that it is difficult to know exactly what that looks like, because not much time has passed in order to determine what the new change to the law has accomplished. As Mr. Edwards pointed out, some of these cases have not come up yet so it is hard to gage, but it is safe to say without a doubt, he stressed, that there will be a fiscal impact on the department if any of these provisions are rolled back.

8:30:04 PM

CHAIR CLAMAN noted that Amendment 41 would do away with the geriatric parole and asked what the potential savings is with geriatric parole moving forward.

COMMISSIONER WILLIAMS related that he was unaware whether there had been any cases yet with regard to geriatric parole, but the thought around those elderly people who committed a crime early

in their life, represent little risk toward the end of their senior years. Certain inmates have high costs associated with them, and the hope was for the discretion to move some of these folks out of the prison system. Those elderly inmates will not necessarily be released from prison, he stressed, it simply allows the parole board the discretion to consider them because some of these inmates cost the state a great deal of money toward the end of their years. The legislature wants to use the state's dollars wisely and if someone represents little risk, of which the parole board analyzes, that is the goal of the new law.

8:31:26 PM

CHAIR CLAMAN asked about the costs associated with people on dialysis, and how much money the DOC would save by finding a different place to hold those people.

COMMISSIONER WILLIAMS offered the example of a person who the DOC just moved out-of-state, who is serving a long sentence and is a dialysis patient. The DOC is currently saving $35,000 per month on one patient, and there are several patients, he advised. The $35,000 amount is real money and it goes into being almost $500,000 for one patient. He offered that the State of Colorado took one patient and the Bureau of Land Management (BLM) took another patient, and some of those folks can be traded out to other states due to the high health care costs in this state.

8:32:44 PM

REPRESENTATIVE KREISS-TOMKINS asked whether geriatric parole had been implemented in other states, and if so, what was their record of accomplishment, and whether any re-offenses had occurred by someone released under geriatric parole.

8:33:36 PM

SUSANNE DiPETRO, Executive Director, Alaska Judicial Council, Alaska Court System, responded that she could not cite off the top of her head which other states have geriatric parole, but there certainly are other states. As to the underlying idea of geriatric parole, statistics have shown that people age out of criminal behavior, and few people beyond the age of 50 or 55 continue to engage in criminal behavior because almost everyone desists at that point. Therefore, as these prisoners age their medical costs, paid by the state, typically increase, and these

inmates are typically low-risk to the public due to their advanced age, she noted. She explained that geriatric parole is the mechanism by which these inmates can be considered, and the parole board can determine whether the public would be safe with their release. She then deferred to Mr. Edwards.

MR. EDWARDS added that numerous states certainly have this mechanism for release targeting the aging population and that many states describe the release as compassionate release.

8:35:25 PM

REPRESENTATIVE EASTMAN referred to the fiscal impact when dealing with whether to reverse the expanded discretionary parole under Senate Bill 91 and asked the sort of fiscal impact there would be in the instances where an inmate is not released.

REPRESENTATIVE EASTMAN, in response to Commissioner Williams, re-asked whether there is a fiscal impact "if we are reducing the number of parole hearings that are being conducted for that population of inmates that is not released at that particular hearing, but maybe in the future they would be, but for that hearing, they are not.?"

COMMISSIONER WILLIAMS opined that if his question is that the DOC is saving money by not having as many parole hearings, he supposed there would potentially be a little bit of savings if that was the basis of Representative Eastman's question.

8:37:28 PM

COMMISSIONER WILLIAMS, in response to Representative LeDoux, answered that he is almost 60 years of age, and he does not consider himself "very elderly."

REPRESENTATIVE LEDOUX pointed out that Commissioner Williams had said geriatric parole was used for "very elderly prisoners" aging out of the system and said she does not consider the cutoff point of 60 years of age as "very elderly."

REPRESENTATIVE LEDOUX pointed out that people say "60 is the new 40" so the idea of geriatric parole is supposed to be for those people who have one foot in the grave and another foot on a banana peel. Some people may consider 60 years of age to be old, but it is not for a great number of people, and she asked whether she was correct.

COMMISSIONER WILLIAMS offered that he understands Representative LeDoux's point, but some 60-year-old people are far more elderly than their stated age due to health issues. The idea is discretion, and he would like the parole board to have the discretion to consider the facts because he sees the cost drivers of these individuals who represent little risk to the public, he said.

8:40:42 PM

REPRESENTATIVE LEDOUX pointed out that the language in Senate Bill 91 does not talk about people with significant health issues, but rather, anyone over the age of 60 years can be considered. She referred to the savings of an inmate on dialysis being released from prison and argued that if they are released from prison they will probably be on welfare and Medicaid. She commented that while it may be a savings to the Department of Corrections, it is not necessarily a savings to the state.

COMMISSIONER WILLIAMS noted that there could be some debate about whether a person believes Medicaid is a savings to the state and how much of a savings, but certainly if that person is in prison versus being out of prison, it is a direct cost to the state and the DOC is picking up every dime. As to someone being on Medicaid, he commented that everyone pays taxes and the reality is that if they are Medicaid eligible it is absolutely saving money in the state's budgets. He agreed that it is costing someone somewhere, but in terms of saving the state actual dollars, having people on Medicaid outside of the institutions, even in half-way houses, saves the state money.

8:42:30 PM

REPRESENTATIVE LEDOUX commented that she was under the impression that when Medicaid was expanded, it would pick up some of the costs of the inmates in prison.

COMMISSIONER WILLIAMS explained that the state does receive some Medicaid benefit when someone is in the hospital beyond 24 hours. Prior to the Medicaid expansion, the department paid for all hospital stays, and now the department saves a great deal of money when those individuals are admitted for longer than 24-hours, he explained.

8:43:36 PM

REPRESENTATIVE REINBOLD asked whether the DOC had implemented regulations for Senate Bill 91.

COMMISSIONER WILLIAMS advised that he knows the department is issuing regulations on probation conditions, and he was unsure where the regulations were exactly, but the department issues regulations on a regular basis.

REPRESENTATIVE REINBOLD referred to the "Regulatory Impact Transparency Act passed in 2014" and advised that regulations are supposed "to do the impact of the private sector," and advised she will be looking carefully at those impacts to the private sector. Medical costs are involved for victims and the victims' families and those impacts need to be put into the regulations written for Senate Bill 91. She related that the committee is making uninformed decisions today, and "we have one parole board person on there that is not recalling something ... he can't recall anybody that's been released." She added that the committee must make decisions relying on one political appointment by the governor, "who loves this Senate Bill 91 for the most part."

8:46:52 PM

REPRESENTATIVE EASTMAN asked who would be held accountable.

COMMISSIONER WILLIAMS advised that the parole board is an infinite parole board and he does not control its discretion, its members are appointed by the governor, and the parole board is tasked with an assignment based upon the law.

8:47:18 PM

REPRESENTATIVE KOPP opined that his former boss, Chief of Police Dan Morris, recently rotated off of the parole board and he described Chief Morris as the epitome of a "tough on crime guy." He asked whether Commissioner Williams could recall an incident that the parole board came under fire for an action it made, and whether the Alaska Board of Parole is dropping the ball. Representative Kopp commented that usually the governor comes under fire for a parole board's action when releasing an inmate. He reiterated his questions as to whether the parole board had dropped the ball and criminals were running loose and creating mayhem due to the parole board's bad decisions, and whether Commissioner Williams was aware of any incidents.

COMMISSIONER WILLIAMS responded, "No, I'm not." He then stressed that the parole board is probably the most risk adverse group of individuals he has ever met. Wherein, he has seen inmates at their end of life phase that were not allowed out of jail on parole. To be frank, the parole board is so risk adverse that he has tried to remind it to review how the statutes are interpreted to determine whether there could be any way the inmates in the last two to three months of their life could be released from prison versus the department assuming all hospice care. He reiterated that the parole board is an adverse risk group, it is professional, it provides full reports, and Mr. Edwards is an excellent director. The parole board manages a high work load and that is probably why he could not recall one incident that had occurred, certainly not during his tenure, he remarked.

REPRESENTATIVE KOPP pointed out that Commissioner Williams addressed the heart of this committee's questions.

8:50:10 PM

CHAIR CLAMAN asked Ms. DiPetro to compare Amendment 41 and the criminal justice reform discretionary parole package that is part of the criminal justice reform bills. He asked her to explain the real issues Amendment 41 presents in terms of costs to the Department of Corrections (DOC), being smart on spending, and continuing to be tough on crime.

MS. DiPETRO explained that she is trying to follow the amendments remotely and noted that she had previously spoken to the provision regarding geriatric parole. The idea around geriatric parole or compassionate release is that, statistically, once a person reaches the age of 50 or 55 years of age, they tend to desist with their criminal behavior and age out of their criminal behavior no matter their health issues. Sometimes, she offered, people get excited about the word "geriatric" and she does not look at geriatric parole as people being old, but actually aging out of their criminal activity.

8:53:10 PM

REPRESENTATIVE REINBOLD asked Commissioner Williams whether he was familiar with Jerry Active killing two people and raping a baby on the same day he was released.

COMMISSIONER WILLIAMS answered that he was loosely familiar with the case, but he did not have the facts.

REPRESENTATIVE REINBOLD reiterated cases she previously described wherein the offender had a previous history. She advised that this state spends the highest amount of money per capita and possibly some of the money is not properly prioritized. This parole" is deceptive because an inmate will only serve one-third of their sentence, and discretionary parole and geriatric parole broadens parole to sex offenders. She asked how the public is protected when sex offenders, with multiple offenses, can get out on discretionary parole.

COMMISSIONER WILLIAMS responded that he did not know where to begin because Representative Reinbold had made certain suppositions to which he did not agree. As to "this reference to this parole board," he offered his belief that the parole board having discretion is a good thing, and he is, of course, concerned about safety. Unfortunately, no one can do anything about the terrible victimization that has occurred in the past, but as commissioner, he related that he is trying to dedicate the DOC to do something about the recidivism re-offense rate, "which is terrible in this state, and which has become a priority of mine." Commissioner Williams stressed that he is very concerned about public safety as the commissioner, especially when the recidivism rate is 65-70 percent every year. Putting the right people in jail and getting the right people jobs with a place to live is certainly a safety issue because a good portion of crimes are committed by the people who are released from prison.

COMMISSIONER WILLIAMS said that he disagrees with Representative Reinbold's supposition that discretionary parole is not a public safety minded issue. Of course it is, he expressed, because many types of conditions are put the parolee and they are not free to do whatever they like when granted parole. First of all, he explained, an inmate is not granted parole simply because they are granted a hearing, and secondly, there are tremendous conditions placed upon people to be certain they are getting a job and finding a place to live. Unless the state intends to build more and more prisons, he remarked, having some of these tools is absolutely critical for public safety.

8:57:24 PM

REPRESENTATIVE REINBOLD argued that for many criminals, their job is thievery and the DOC is releasing them to create havoc multiple times a day on Alaska's businesses. This bill deals with discretionary parole and victims, and businesses want to

know who to hold accountable for bad judgment. She described recidivism as criminals who commit a crime 100,000 times, and as long as they stay under $250, they can continue stealing, that's recidivism.

CHAIR CLAMAN opined that Representative Reinbold's question was "who can the public hold accountable?"

COMMISSIONER WILLIAMS answered that he supposed any number of people could be held accountable in these departments, the governor appoints the parole board and hold the parole board accountable. Except, he reiterated, this parole board is a professional organization with a history of good decisions and he has not seen "an obvious clunker come from them." Although, he said, it is possible it may make a mistake, the reality is that it is a studied good process and a necessary process. In the event parole was unavailable, serious consequences would evolve into building another prison to house those inmates not released on parole. These stated issues are directly related to public safety because once a person is released with absolutely no controls over them, public safety would not be provided, he argued.

8:59:40 PM

REPRESENTATIVE FANSLER pointed out that during this meeting, in some cases, the same questions have been asked multiple times, and he asked that those answers be skipped because the committee had spent 1.5 hours on one amendment. The accountability questions have now been answered at least three or four times, so he is good on that answer. He then turned to Mr. Edwards noting that there are more parole hearings under Senate Bill 91 and offered concern about the rates. He asked whether there is a greater tendency by the parole board to suddenly be more lenient and whether the rates were moving up, or whether, statistically, the rates are remaining the same for the granting of parole.

MR. EDWARDS responded that the parole board's rates are fairly steady and advised that the hearings have increased 147 percent with the parole board's granting of parole percentages remaining steady. Mr. Edwards stated, for the record, that as to the parole board's recidivism rates, once the board decides to release someone on discretionary parole, its rates are in the southern end of 5 percent.

CHAIR CLAMAN asked Mr. Edward to repeat his last statement.

MR. EDWARDS reiterated that for discretionary release, the parole board's recidivism rate is, ballpark number, at the southern end of 5 percent. The process is selective, and he stressed that simply because an inmate is eligibly heard by the parole board, that does not mean the inmate is released. The parole board is aware that certain inmates belong in prison, and its members take their decisions seriously through an exhaustive review from the inmate's birth until the time of the hearing. Recently, he advised, a legislative audit determined the parole board to be "very positive" as to the extensive tasks it performs which is all inclusive with the victims, public safety, prosecutors, and judges in its process. The parole board is not concerned with the rising number of hearings, and he reiterated that its recidivism rate remains steady while its release rate remains steady.

9:02:52 PM

REPRESENTATIVE KREISS-TOMKINS stated a point of order. He advised that he feels uncomfortable with aggressive questions directed toward the witnesses and testifiers that do not contain question marks, or even rhetorical question marks. Especially, he stressed, if the committee is spending this amount of time on a single amendment and, from his perspective, devolving into exchanges with testifiers and experts that are not respectful. He stated, "I feel compelled to call the question because it doesn't seem as though this committee is conducting itself with the decorum that I would have expected it." As to the process, he said that he does not want to call the question, but he will in the future if it appears as though that "is all we have left to ask." Representative Kreiss-Tomkins reiterated that he is not calling the question at this point, but that he wanted to share his thoughts with the committee.

CHAIR CLAMAN ruled that the point of order was well taken and agreed that the committee is debating the bill by asking questions of people available to provide information. In the event the committee cannot stay focused on the matters that require answers, it would be appropriate for someone to call the question, he advised.

9:04:55 PM

REPRESENTATIVE KOPP expressed that the case of geriatric parole had been highlighted as an example of the system running amuck. He stressed that State v. Jerry Active, [3DI-09-00031 CR, 2009]

was prior to the passage of Senate Bill 91, and it had nothing to do with the parole board.

MR. EDWARDS answered that he could not remember the specifics of the case.

REPRESENTATIVE KOPP stated, for the record, that he wanted to highlight that not a single case in recent memory could be identified wherein the Alaska Board of Parole had dropped the ball and put the public's safety at risk. He expressed that, "It is very wrong to insinuate otherwise, and it inflames public passion, and we want to talk about what is in the public safety interests, not about anything else."

9:06:20 PM

REPRESENTATIVE EASTMAN noted his expectation that if a person violated their conditions of release they would "probably end up right back in the slammer," but that is far from the case. A person is paroled under certain conditions, and he requested a description of the enforcement of those conditions.

MR. EDWARDS answered that there are statutorily mandated conditions that apply to everyone on supervision, there is also an opportunity for a single board member to review a case file on each case and impose "supplemental parole conditions" directly related to the case, the risk, and the needs associated with the folks released on parole. Statutorily, he advised, there is a requirement that some people be mandatorily released with certain imposed parole conditions, and the Division of Probation and Parole is tasked with enforcing the conditions imposed by the parole board. Senate Bill 91 introduced supervision standards and empowered the Division of Probation and Parole to informally or formally deal with violations quickly and swiftly via a specifically designed sanction matrix, and if the violation is serious enough, the person could be remanded back to jail, he explained. There are a number of different avenues for the enforcement of these conditions, and he stressed that enforcement is taken seriously. Mr. Edwards reiterated that the parole board does review each case file and it can impose supplemental conditions, for example, if someone was identified as a gang member, the parole board would impose a condition that the parolee was not to associate or have any contact with known felons, and specifically no associated gang members.

9:09:33 PM

REPRESENTATIVE LEDOUX asked whether sex offenders ever grow out of being a sex offender.

COMMISSIONER WILLIAMS stated that he was uncomfortable answering that question, wherein many people in his department perform a lot of work in this area. The University of Alaska, Results First, conducted a study of sex offenders for seven years out, and the study outcome was that, within the classes of criminals that recidivate, the [sex offender] recidivism rate was quite low. He related that there are mixed opinions as to whether sex offenders ever grow out of being a sex offender.

9:11:09 PM

REPRESENTATIVE REINBOLD reiterated her complaints against Senate Bill 91, her concerns about the victims' families, mistakes made by judges and parole boards. She said that the reports showed that Jerry Active was released due to a parole board, and that sexual assault is painful to go through. She said that discretionary parole "scares me to death" and "maybe you guys can just say that the parole board is just perfect because of one appointed member that has no recollection." She stressed that victims must watch the parole board over and over again and can never heal. The sex offender cannot completely get rid of their behavior, that is a huge risk to the public, and she urged a yes-vote on the amendment.

9:14:03 PM

REPRESENTATIVE KREISS-TOMKINS commented that geriatric parole appears to have a lot of logic because it is based on the evidence. Evidence and data has shown that older people are low-risk because they age out of criminality and it would be a mistake to take that tool of discretion away from the parole board, especially since there are no counter-factual or counter-examples to prompt the committee to remove this tool. The questions about how young or old a 60-year old person is, are immaterial because the point is that older people are less likely to be criminals. It does not make sense to him to reverse the provisions when the data and evidence is clear, and he said he is opposed to Amendment 41.

9:15:43 PM

REPRESENTATIVE KOPP stated, for the record, the Active case had to do with probation and it never had anything to do with the

parole board. He expressed the importance of the committee having the accurate facts, and the extreme importance that the committee members are not "fast and loose" with data when making important decisions. He stressed that, "The parole board was never at fault in that case, it had nothing to do with the parole board," and noted that Mr. Skidmore was nodding his head in the affirmative. Representative Kopp re-enforced the importance that "the committee must be very careful about inflammatory false statements that cause people to come to wrong conclusions."

9:16:29 PM

REPRESENTATIVE FANSLER apologized to the experts and witnesses who testified because the committee has had a considerable lack of decorum, and he "very much agrees" with the comments of Representative Kreiss-Tomkins during his point of order, and he also "agrees very much" with the comments of Representative Kopp. He expressed that the committee had devolved into a situation where it is now "playing for political theater," which is exactly the wrong thing to do, and it is embarrassing. The House Judiciary Standing Committee should be better than that, this is not a place or time to try to score political points or win re-elections. Representative Fansler stated, "If that's what we're going to do, then that's not what I want to be a part of. I didn't come here to make decisions that aren't based on facts, that aren't based on analysis. I came here to do what's best for the state, and what's best for my constituents." Clearly, he pointed out, the system was broken prior to Senate Bill 91 and the legislation has not been given a chance. Rolling back discretionary parole and geriatric parole is just an attempt to go back to that broken system. The state needs to get a better Alaska, and the evidence and data bears out that the way not to get to a better Alaska is to find criminals, put them in a cell, and throw away the key. If that were the case, he noted, the legislature might as well re-instate the death penalty, and "on your first strike, get rid of you." The is goal is for rehabilitation, a better society, breaking the cycle of violence, breaking the cycle of sexual assault, and breaking the cycle of childhood trauma that works its way through the generations. He acknowledged that he is loath to follow the State of Texas in any situation except this situation because it was able to accomplish criminal justice reform. When you get down to it, he pointed out, a majority of the complaints directed toward the legislature are based upon the confluence of several factors: an opioid crisis; public safety not being funded as it needs to be funded; treatment programs not being

funded as they need to be funded; not funding the prosecutor's office; and not funding the public defender's office. It is imperative that Amendment 41 fail, it is imperative that as the House Judiciary Standing Committee moves through the voluminous amount of amendments and the ensuing debate on SB 54 itself, that the committee act in a professional manner and show each other their deserved respect, he expressed.

9:19:53 PM

REPRESENTATIVE LEDOUX commented that she somewhat takes issue with the idea that anyone who comes to the opposite conclusion on some of these issues is engaged in political theater and is simply attempting to run for re-election in this committee. She related that she is willing to believe there are heartfelt feelings on both sides of this issue.

9:20:36 PM

CHAIR CLAMAN remarked that it is in the interests of this committee to try to exercise fair decorum, use the best words possible, and maintain a civilized debate on these issues while recognizing that in private quarters a person may choose more passionate words. Amendment 41 is more than what has been termed "geriatric parole," it is attempting to undo one of the core tenants of the "tough on crime, smart on sentencing, and saving costs for Alaska" concept. This committee could go down a path in which more and more prisons could be built, lengthen prison sentences, lock more and more people up, put more of Alaska's society in prison, and never let them out of prison. He stated, "that might make some people safer, it will break up families, it will break up our communities, it will do more to undermine our state moving forward as a place Alaskans can be proud of," than what criminal justice reform has done in terms of people being released on probation or parole after serving their sentence. Probation and parole, and specifically the key component of parole, is working, he then pointed to the undisputed report from the director of the parole board that the recidivism rate on people released on parole is 5 percent. That figure is unbelievable, he described, because the State of Wyoming has the second lowest recidivism rate nationwide at 25 percent. The parole board is doing an unbelievable job, and he suggested putting more people in front of the parole board, so it could make these tough decisions that will be, tough on crime, smart on spending, and keep Alaska from building more prisons. The committee can do better than adopting an amendment such as Amendment 41, by investing in the control and treatment

of people released from prison under the tight conditions of release and, thereby, less likely to be a danger to the public. For all of those reasons, he stated, he is opposing Amendment 41.

9:23:05 PM

REPRESENTATIVE EASTMAN related displeasure with having only 60 seconds to respond to any comments a committee member may offer. He said he does believe it is fair to call that a debate, and he does not think it serves the purpose of the committee because this entire discussion has been off on something that is not important. The discussion has been whether the parole board is making the right decisions and the financial impact to the department. Whereas, he related, the discussion should have been on the impact to the public, and especially victims, due to the expansion of a series of paroles. Mr. Edwards, himself, advised that the parole board's rates of parole have not changed, but the amount of hearings have tripled in size.

REPRESENTATIVE FANSLER maintained his objection.

9:24:17 PM

A roll call vote was taken. Representatives Reinbold, LeDoux, and Eastman voted in favor of the adoption of Amendment 41. Representatives Kopp, Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, Amendment 41 failed to be adopted by a vote of 3-4.

9:24:52 PM

The committee took an at-ease from 9:24 p.m. to 9:31 p.m.

9:31:32 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 42, Version 30-LS0461\N.26, Glover/Martin, 10/20/17, which read as follows:

Page 1, line 4, following "**program;**":
Insert "**relating to eligibility for temporary assistance;**"

Page 15, line 7:
Delete "and"

Page 15, line 8, following "12.55.125(e)(4)(D)":

Insert "; and AS 47.27.015(i)"

REPRESENTATIVE FANSLER objected.

9:32:01 PM

[CHAIR CLAMAN and Representative Eastman discussed the amendment process.]

9:33:01 PM

REPRESENTATIVE EASTMAN explained that Amendment 42 repeals the eligibility for a drug felon to obtain temporary assistance in the form of food stamps. This amendment reverts back to a time when drug felons were not eligible after receiving a drug conviction, he said.

9:33:45 PM

REPRESENTATIVE EASTMAN, in response to Representative Fansler, advised that he believes the amendment reverts back to pre-Senate Bill 91 language.

REPRESENTATIVE FANSLER noted to Ms. DiPetro that the denial of food stamps [for drug offenders] was eliminate in Senate Bill 91 under some type of consensus, and he asked her to describe how and why the commission came to this recommendation.

MS. DiPETRO responded that this recommendation was offered by the Alaska Criminal Justice Commission working committee, Brenda Stanfill is the chair of that working committee who works with victims in the Fairbanks community. This working committee looks at helping individuals with criminal records, who want to travel down the right path by removing barriers that may keep them from becoming productive members of society, she explained. The exact issue of a drug felon's ability to receive food stamps and/or public assistance, Temporary Assistance for Needy Families (TANF), was discussed and she advised that the working group's recommendation was that drug felons were eligible to receive public assistance benefits so long as they complied with their extensive probation conditions, worked on their rehabilitation, and worked on reforming their lives.

9:36:54 PM

REPRESENTATIVE FANSLER asked whether there were any statistics or data behind the idea of providing avenues for programs, such

as Temporary Assistance for Needy Families (TANF) to the folks in this situation under certain conditions.

MS. DiPETRO answered that the working group heard from members of the community who had advised that this was a problem for them, it is something that has been done in other states, and it has been beneficial. The information presented to the committee by various Alaskans was that it would be helpful, she advised.

9:39:15 PM

CHAIR CLAMAN asked whether Representative Eastman was seeking to remove AS 47.27.015, which specifically allows a person to apply for public assistance, and whether his intent is to not allow the person that opportunity.

CHAIR CLAMAN, in response to Representative Eastman's question, answered that he had cited AS 47.27.015(i), and the citation is found in Amendment 42, page 1, line 8. He asked whether Representative Eastman was seeking, through the amendment, to repeal that section of the statutes.

REPRESENTATIVE EASTMAN explained that the word "and" is being deleted and to insert the language, "this reference to the statute." He advised that the only language being deleted is the word "and."

CHAIR CLAMAN explained that by inserting the statute, what happens in SB 54, Sec. 22, page 15, lines 7-8, is that Representative Eastman is actually repealing the statutes that are listed. He asked whether that is what Representative Eastman was doing with this amendment.

REPRESENTATIVE EASTMAN explained that his intention with this amendment is to revert to previous status wherein once a person had been convicted of that type of felony, that person could not apply for food stamps.

9:41:13 PM

REPRESENTATIVE LEDOUX surmised that Amendment 42 goes back to pre-Senate Bill 91 law, wherein a person convicted of a drug offense could not apply for food stamps.

REPRESENTATIVE EASTMAN answered that Representative LeDoux was correct.

9:42:10 PM

REPRESENTATIVE LEDOUX commented that she would understand this amendment better if there was a law on the books that said, "no one who had ever committed a crime could apply for food stamps" because at least that would be consistent. Especially since, currently, a person convicted of rape, incest, murder, and all sorts of other crimes can apply for food stamps, she expressed. Quite frankly, she stressed, "somebody who has committed multiple murders is probably worse than somebody who's been convicted of a drug offense," and remarked that she just does not understand the rationale behind Amendment 42 at all.

REPRESENTATIVE EASTMAN commented that it is important to remember that post-Senate Bill 91, "the last time I checked, when you go to apply for food stamps, there is up to a 60-day wait. He related that he would like to "see ways of addressing that" and in the past it limited those who committed crimes, such as drug offenses, from being eligible for that program. While there is probably a more elegant way of putting the focus on drug crimes, he said that he would withdraw Amendment 42.

9:45:50 PM

REPRESENTATIVE REINBOLD related that the committee chairman or chairwoman sets the tone of the committee, and it appears there were undertones regarding political theater, et cetra, "and certain people were talking certain ways to certain presenters, and things like that. I also find it very appalling when I'm undermined by my colleagues, when I feel like I'm being unfairly scrutinized. We're not talking to the amendment, you're talking about individuals being disrespected, being -- claim that it's for political points. Sometimes people got caught up with their egos who was technically right or wrong, maybe they were trying to score political points with the parole board, or the governor, or somebody, when I was reading a specific article in a newspaper. And, sometimes the newspaper, by God, they got a tough job. Media is a tough job. They got confused between the parole board, the parole officer, et cetra, et cetra, et cetra. Well, I think it's also just absolutely critically important that just because we have a difference of opinion, we don't have to attack the message -- the person who is saying the message, and falsely accusing them of things when certain individuals ... I was with four murder victims last night, their parents, and I have made them commitments and promises. The bottom line with this Jerry Active case, he had a conviction in 2009, he was released from jail, within a few hours there was an older couple

babysitting a two-year old, the woman was raped, the baby was raped, and both the elderly couples were murdered in Alaska. The victims want to know who the heck in government let this person out. It's an answer we want to know and I'm so tired of the egos and the technicalities here. The bottom line is that Alaskans are not safe in many, many cases and we need to fix that."

9:47:56 PM

CHAIR CLAMAN clarified that, specifically with regard to the Jerry Active case, there was testimony from the parole board, as well as the commissioner of the Department of Corrections, that Jerry Active was not released on parole. It is undisputed that he was someone who had been released consistent with the length of his sentence, and he was on mandatory probation because he had finished serving his sentence. The parole board was not involved in the release of Jerry Active in any manner whatsoever. Representative Kopp made that statement, and it is accurate to say that "you said more than once, that the parole board was involved in his release. And so, in instances like that, I think it's important that we actually are appropriate in listening to the information we've learned and respond to that appropriately." Everyone in Alaska, he expressed, recognizes the tragedy of the Jerry Active case. Chair Claman advised that he heard from prosecutors, and people in the executive branch, that how he was sentenced to the length of time he was sentenced to, was frustrating to everyone but it had nothing to do with the parole board. That does not mean that people cannot ask questions and get answers to those questions, but it is appropriate that the committee members remember that part of their job is to actually find the facts, and when they learn the facts, to respond appropriately.

[SB 54 was held over.]

9:50:48 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was [adjourned] at 9:50 p.m.

AMENDMENTS

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

Amendment 36 30LS0461\N.20, Bruce/Martin, 10/20/17

Page 1, line 3, following "**license;**":
Insert "**relating to restoration of a driver's license;**"

Page 10, following line 27:
Insert new bill sections to read:
"*** Sec. 16.** AS 28.35.030(k) is amended to read:
(k) Imprisonment required under (b)(1)(A) of this section shall be served **at a community residential center or** by electronic monitoring at a private residence [UNDER AS 33.30.065]. If electronic monitoring is not available, imprisonment required under (b)(1)(A) of this section **may** [SHALL] be served at **another appropriate place determined by the commissioner of corrections** [A PRIVATE RESIDENCE BY OTHER MEANS DETERMINED BY THE COMMISSIONER OF CORRECTIONS. A PERSON WHO IS SERVING A SENTENCE OF IMPRISONMENT REQUIRED UNDER (b)(1)(A) OF THIS SECTION BY ELECTRONIC MONITORING AT A PRIVATE RESIDENCE MAY NOT BE SUBJECT TO A SEARCH OF THE PERSON'S DWELLING BY A PEACE OFFICER OR A PERSON REQUIRED TO ADMINISTER THE ELECTRONIC MONITORING UNDER AS 33.30.065(a), EXCEPT UPON PROBABLE CAUSE]. Imprisonment required under (b)(1)(B) - (F) of this section may be served at a community residential center or at a private residence if approved by the commissioner of corrections. Imprisonment served at a private residence must include electronic monitoring [UNDER AS 33.30.065 OR, IF ELECTRONIC MONITORING IS NOT AVAILABLE, BY OTHER MEANS AS DETERMINED BY THE COMMISSIONER OF CORRECTIONS]. The cost of imprisonment resulting from the sentence imposed under (b)(1) of this section shall be paid to the state by the person being sentenced **provided, however, that the** [. THE] cost of imprisonment required to be paid under this subsection may not exceed $2,000. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of

imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. **While at the community residential center or other appropriate place, a person sentenced under (b)(1)(A) of this section shall perform at least 24 hours of community service work.** A person sentenced under (b)(1)(B) of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction.

*** Sec. 17.** AS 28.35.030(*l*) is amended to read:

(*l*) The commissioner of corrections shall determine and prescribe by regulation a uniform average cost of imprisonment for the purpose of determining the cost of imprisonment required to be paid under (k) of this section by a convicted person. [THE REGULATIONS MUST INCLUDE THE COSTS ASSOCIATED WITH ELECTRONIC MONITORING UNDER AS 33.30.065.]

*** Sec. 18.** AS 28.35.030(o) is amended to read:

(o) Upon request, the department shall review a driver's license revocation imposed under (n)(3) of this section and

[(1)] may restore the driver's license if

(1) [(A)] the license has been revoked for a period of at least 10 years;

(2) [(B)] the person has not been convicted of a [DRIVING-RELATED] criminal offense since the license was revoked; and

(3) [(C)] the person provides proof of financial responsibility [;

(2) SHALL RESTORE THE DRIVER'S LICENSE IF

(A) THE PERSON HAS BEEN GRANTED LIMITED LICENSE PRIVILEGES UNDER AS 28.15.201(g) AND HAS SUCCESSFULLY DRIVEN UNDER THAT LIMITED LICENSE FOR

THREE YEARS WITHOUT HAVING THE LIMITED LICENSE PRIVILEGES REVOKED;

(B) THE PERSON HAS SUCCESSFULLY COMPLETED A COURT-ORDERED TREATMENT PROGRAM UNDER AS 28.35.028 OR A REHABILITATIVE TREATMENT PROGRAM UNDER AS 28.15.201(h);

(C) THE PERSON HAS NOT BEEN CONVICTED OF A VIOLATION OF AS 28.35.030 OR 28.35.032 OR A SIMILAR LAW OR ORDINANCE OF THIS OR ANOTHER JURISDICTION SINCE THE LICENSE WAS REVOKED;

(D) THE PERSON IS OTHERWISE ELIGIBLE TO HAVE THE PERSON'S DRIVING PRIVILEGES RESTORED AS PROVIDED IN AS 28.15.211; IN AN APPLICATION UNDER THIS SUBSECTION, A PERSON WHOSE LICENSE WAS REVOKED FOR A VIOLATION OF AS 28.35.030(n) OR 28.35.032(p) IS NOT REQUIRED TO SUBMIT COMPLIANCE AS REQUIRED UNDER AS 28.35.030(h) OR 28.35.032(*l*); AND

(E) THE PERSON PROVIDES PROOF OF FINANCIAL RESPONSIBILITY].

*** Sec. 19.** AS 28.35.032(o) is amended to read:

(o) Imprisonment required under (g)(1)(A) of this section shall be served at a **community residential center, or if a community residential center** [PRIVATE RESIDENCE BY ELECTRONIC MONITORING UNDER AS 33.30.065. IF ELECTRONIC MONITORING] is not available, **at another appropriate place as determined by the commissioner of corrections** [IMPRISONMENT UNDER (g)(1)(A) OF THIS SECTION SHALL BE SERVED AT A PRIVATE RESIDENCE BY OTHER MEANS AS DETERMINED BY THE COMMISSIONER OF CORRECTIONS. A PERSON WHO IS SERVING A SENTENCE OF IMPRISONMENT REQUIRED UNDER (g)(1)(A) OF THIS SECTION BY ELECTRONIC MONITORING AT A PRIVATE RESIDENCE MAY NOT BE SUBJECT TO A SEARCH OF THE PERSON'S DWELLING BY A PEACE OFFICER OR A PERSON REQUIRED TO ADMINISTER THE ELECTRONIC MONITORING UNDER AS 33.30.065(a), EXCEPT UPON PROBABLE CAUSE.] Imprisonment required under (g)(1)(B) - (F) of this section may be served at a community residential center or at a private residence if approved by the commissioner of corrections. Imprisonment served at a private residence must include electronic monitoring [UNDER AS 33.30.065 OR, IF ELECTRONIC MONITORING IS NOT AVAILABLE, SHALL BE SERVED BY OTHER MEANS AS DETERMINED BY THE COMMISSIONER OF CORRECTIONS]. The cost of imprisonment resulting from the sentence imposed under (g)(1) of this section shall be paid to the state by the person being sentenced **provided,**

however, that the [. THE] cost of imprisonment required to be paid under this subsection may not exceed $2,000. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. **While at the community residential center or another appropriate place, a person sentenced under (g)(1)(A) of this section shall perform at least 24 hours of community service work.** A person sentenced under (g)(1)(B) of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction."

Renumber the following bill sections accordingly.

Page 11, following line 27:
Insert a new bill section to read:
"*** Sec. 24.** AS 33.30.065(a) is amended to read:

(a) If the commissioner designates a prisoner to serve the prisoner's term of imprisonment or period of temporary commitment, or a part of the term or period, by electronic monitoring, the commissioner shall direct the prisoner to serve the term or period at the prisoner's residence or other place selected by the commissioner. The electronic monitoring shall be administered by the department [OR BY A PRIVATE CONTRACTOR APPROVED BY THE DEPARTMENT UNDER AS 33.30.011(10)(B)] and shall be designed so that any attempt to remove, tamper with, or disable the monitoring equipment or to leave the place selected

for the service of the term or period will result in a report or notice to the department."

Renumber the following bill sections accordingly.

Page 15, line 26:
Delete "and"

Page 15, line 27, following "Act":
Insert ";
(8) AS 28.35.030(k), as amended by sec. 16 of this Act; and
(9) AS 28.35.032(o), as amended by sec. 19 of this Act"

Page 15, following line 27:
Insert a new subsection to read:
"(c) AS 28.35.030(o), as amended by sec. 18 of this Act, applies to revocation of a driver's license, privilege to drive, privilege to obtain a driver's license, or an identification card or driver's license occurring on or after the effective date of sec. 18 of this Act."

Reletter the following subsection accordingly.

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 22"

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 22"

Page 15, line 30:
Delete "Section 17"
Insert "Section 21"

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 29"

AMENDMENT 39 [30-LS0461\N.23, Glover/Martin, 10/19/17]

Page 1, following line 5:
Insert new bill sections to read:

"*** Section 1.** AS 11.46.130(a) is amended to read:

(a) A person commits the crime of theft in the second degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $1,000 or more but less than $25,000;

(2) the property is a firearm or explosive;

(3) the property is taken from the person of another;

(4) the property is taken from a vessel and is vessel safety or survival equipment;

(5) the property is taken from an aircraft and the property is aircraft safety or survival equipment;

(6) the value of the property [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $250 or more but less than $1,000 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of

(A) an offense under AS 11.46.120, or an offense under another law or ordinance with similar elements;

(B) a crime set out in this subsection or an offense under another law or ordinance with similar elements;

(C) an offense under AS 11.46.140(a)(1), or an offense under another law or ordinance with similar elements; or

(D) an offense under AS 11.46.220(c)(1) or (c)(2)(A), or an offense under another law or ordinance with similar elements; or

(7) the property is an access device.

*** Sec. 2.** AS 11.46.140(a) is amended to read:

(a) A person commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of the property or services [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $250 or more but less than $1,000; or

(2) [REPEALED]

(3) [REPEALED]

(4) the value of the property is less than $250 and, within the past five years, the person has

been convicted and sentenced on two or more separate occasions in this or another jurisdiction of theft or concealment of merchandise, or an offense under another law or ordinance with similar elements.

*** Sec. 3.** AS 11.46.150(a) is amended to read:

(a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than $250.

*** Sec. 4.** AS 11.46.220(c) is amended to read:

(c) Concealment of merchandise is

(1) a class C felony if

(A) the merchandise is a firearm;

(B) the value of the merchandise [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $1,000 or more; or

(C) the value of the merchandise [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $250 or more but less than $1,000 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions in this or another jurisdiction of

(i) the offense of concealment of merchandise under this paragraph or (2)(A) of this subsection, or an offense under another law or ordinance with similar elements; or

(ii) an offense under AS 11.46.120, 11.46.130, or 11.46.140(a)(1), or an offense under another law or ordinance with similar elements;

(2) a class A misdemeanor if

(A) the value of the merchandise [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $250 or more but less than $1,000; or

(B) [REPEALED]

(C) the value of the merchandise is less than $250 and, within the preceding five years, the person has been convicted and sentenced on two or more separate occasions of the offense of concealment of merchandise or theft in any degree, or an offense under another law or ordinance with similar elements;

(3) a class B misdemeanor if the value of the merchandise [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than $250.

*** Sec. 5.** AS 11.46.260(b) is amended to read:

(b) Removal of identification marks is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $1,000 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $250 or more but less than $1,000;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than $250.

*** Sec. 6.** AS 11.46.270(b) is amended to read:

(b) Unlawful possession is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $1,000 or more;

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $250 or more but less than $1,000;

(3) a class B misdemeanor if the value of the property on which the serial number or identification mark appeared [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than $250.

*** Sec. 7.** AS 11.46.280(d) is amended to read:

(d) Issuing a bad check is

(1) a class B felony if the face amount of the check is $25,000 or more;

(2) a class C felony if the face amount of the check [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $1,000 or more but less than $25,000;

(3) a class A misdemeanor if the face amount of the check [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $250 or more but less than $1,000;

(4) a class B misdemeanor if the face amount of the check [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than $250.

*** Sec. 8.** AS 11.46.285(b) is amended to read:

(b) Fraudulent use of an access device is

(1) a class B felony if the value of the property or services obtained is $25,000 or more;

(2) a class C felony if the value of the property or services obtained [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $1,000 or more but less than $25,000;

(3) a class A misdemeanor if the value of the property or services obtained [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than $1,000.

*** Sec. 9.** AS 11.46.295 is amended to read:

Sec. 11.46.295. Prior convictions. For purposes of considering prior convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) **or 11.46.140(a)(4)** or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c),

(1) a conviction for an offense under another law or ordinance with similar elements is a conviction of an offense having elements similar to those of an offense defined as such under Alaska law at the time the offense was committed;

(2) a conviction for an offense under Alaska law where the value of the property or services for the offense was lower than the value of property or services for the offense under current Alaska law is a prior conviction for that offense; and

(3) the court shall consider the date of a prior conviction as occurring on the date that sentence is imposed for the prior offense.

*** Sec. 10.** AS 11.46.360(a) is amended to read:

(a) A person commits the crime of vehicle theft in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right, the person drives, tows away, or takes

(1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft of another;

(2) the propelled vehicle of another and

(A) the vehicle or any other property of another is damaged in a total amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of $1,000 or more;

(B) the owner incurs reasonable expenses as a result of the loss of use of the vehicle, in a total amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of $1,000 or more; or

(C) the owner is deprived of the use of the vehicle for seven days or more;

(3) the propelled vehicle of another and the vehicle is marked as a police or emergency vehicle; or

(4) the propelled vehicle of another and, within the preceding seven years, the person was convicted under

(A) this section or AS 11.46.365;

(B) former AS 11.46.482(a)(4) or (5);

(C) former AS 11.46.484(a)(2);

(D) AS 11.46.120 - 11.46.140 of an offense involving the theft of a propelled vehicle; or

(E) a law or ordinance of this or another jurisdiction with elements substantially similar to those of an offense described in (A) - (D) of this paragraph.

*** Sec. 11.** AS 11.46.482(a) is amended to read:

(a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of $1,000 or more;

(2) the person recklessly creates a risk of damage in an amount exceeding $100,000 to property of another by the use of widely dangerous means; or

(3) the person knowingly

(A) defaces, damages, or desecrates a cemetery or the contents of a cemetery or a tomb, grave, or memorial regardless of whether the tomb, grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected;

(B) removes human remains or associated burial artifacts from a cemetery, tomb, grave, or memorial regardless of whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected.

*** Sec. 12.** AS 11.46.484(a) is amended to read:

(a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an

amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of $250 or more but less than $1,000;

(2) the person tampers with a fire protection device in a building that is a public place;

(3) the person knowingly accesses a computer, computer system, computer program, computer network, or part of a computer system or network;

(4) the person uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984; or

(5) the person knowingly removes, relocates, defaces, alters, obscures, shoots at, destroys, or otherwise tampers with an official traffic control device or damages the work on a highway under construction.

*** Sec. 13.** AS 11.46.486(a) is amended to read:

(a) A person commits the crime of criminal mischief in the fifth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, the person tampers with property of another;

(2) with intent to damage property of another, the person damages property of another in an amount [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] less than $250; or

(3) the person rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

*** Sec. 14.** AS 11.46.530(b) is amended to read:

(b) Criminal simulation is

(1) a class C felony if the value of what the object purports to represent [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $1,000 or more;

(2) a class A misdemeanor if the value of what the object purports to represent [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $250 or more but less than $1,000;

(3) a class B misdemeanor if the value of what the object purports to represent [, ADJUSTED FOR

INFLATION AS PROVIDED IN AS 11.46.982,] is less than $250.

*** Sec. 15.** AS 11.46.620(d) is amended to read:

(d) Misapplication of property is

(1) a class C felony if the value of the property misapplied [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $1,000 or more;

(2) a class A misdemeanor if the value of the property misapplied [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is less than $1,000.

*** Sec. 16.** AS 11.46.730(c) is amended to read:

(c) Defrauding creditors is a class A misdemeanor unless that secured party, judgment creditor, or creditor incurs a pecuniary loss [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] of $1,000 or more as a result of the defendant's conduct, in which case defrauding secured creditors is

(1) a class B felony if the loss is $25,000 or more;

(2) a class C felony if the loss [, ADJUSTED FOR INFLATION AS PROVIDED IN AS 11.46.982,] is $1,000 or more but less than $25,000."

Page 1, line 6:
Delete "**Section 1**"
Insert "**Sec. 17**"

Renumber the following bill sections accordingly.

Page 15, lines 7 - 8:
Delete all material and insert:
"*** Sec. 38.** AS 11.46.980(d), 11.46.982; AS 11.66.130(b), 11.66.135(b); AS 12.55.125(e)(4)(B), 12.55.125(e)(4)(C), and 12.55.125(e)(4)(D) are repealed."

Page 15, following line 12:
Insert new material to read:
"(1) AS 11.46.130(a), as amended by sec. 1 of this Act;

(2) AS 11.46.140(a), as amended by sec. 2 of this Act;

(3) AS 11.46.150(a), as amended by sec. 3 of this Act;

(4) AS 11.46.220(c), as amended by sec. 4 of this Act;

(5) AS 11.46.260(b), as amended by sec. 5 of this Act;
(6) AS 11.46.270(b), as amended by sec. 6 of this Act;
(7) AS 11.46.280(d), as amended by sec. 7 of this Act;
(8) AS 11.46.285(b), as amended by sec. 8 of this Act;
(9) AS 11.46.295, as amended by sec. 9 of this Act;
(10) AS 11.46.360(a), as amended by sec. 10 of this Act;
(11) AS 11.46.482(a), as amended by sec. 11 of this Act;
(12) AS 11.46.484(a), as amended by sec. 12 of this Act;
(13) AS 11.46.486(a), as amended by sec. 13 of this Act;
(14) AS 11.46.530(b), as amended by sec. 14 of this Act;
(15) AS 11.46.620(d), as amended by sec. 15 of this Act;
(16) AS 11.46.730(c), as amended by sec. 16 of this Act;"

Renumber the following paragraphs accordingly.

Page 15, line 13:
Delete "sec. 1"
Insert "sec. 17"

Page 15, line 14:
Delete "sec. 2"
Insert "sec. 18"

Page 15, line 15:
Delete "sec. 3"
Insert "sec. 19"

Page 15, line 16:
Delete "sec. 4"
Insert "sec. 20"

Page 15, line 17:
Delete "sec. 5"
Insert "sec. 21"

Page 15, line 18:
Delete "sec. 15"
Insert "sec. 31"

Page 15, line 21:
Delete "sec. 6"
Insert "sec. 22"

Page 15, line 22:
Delete "sec. 7"
Insert "sec. 23"

Page 15, line 23:
Delete "sec. 8"
Insert "sec. 24"

Page 15, line 24:
Delete "sec. 9"
Insert "sec. 25"

Page 15, line 25:
Delete "sec. 10"
Insert "sec. 26"

Page 15, line 26:
Delete "sec. 11"
Insert "sec. 27"

Page 15, line 27:
Delete "sec. 12"
Insert "sec. 28"

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 34"

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 34"

Page 15, line 30:
Delete "Section 17"
Insert "Section 33"

Page 15, line 31:

Delete "sec. 24"
Insert "sec. 40"

AMENDMENT 41 [30-LS0461\N.25, Glover/Martin, 10/19/17]

Page 11, following line 12:
Insert new bill sections to read:
"*** Sec. 18.** 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

(1) [(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;

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

(3) [(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. 19.** AS 33.16.090(b) is amended to read:

(b) A prisoner eligible under **(a)** [(a)(1)] of this section who is sentenced

(1) to a single sentence under AS 12.55.125(a) or (b) may not be released on discretionary parole until the prisoner has served the mandatory minimum term under AS 12.55.125(a) or (b), one-third of the active term of imprisonment imposed, or any term set under AS 12.55.115, whichever is greatest;

(2) to a single sentence within or below a presumptive range set out in **AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i)** [AS 12.55.125(i)(1) AND (2)], and has not been allowed by the three-judge

panel under AS 12.55.175 to be considered for discretionary parole release, may not be released on discretionary parole until the prisoner has served the term imposed, less good time earned under AS 33.20.010;

(3) to a single sentence under **AS 12.55.125(c), (d)(2) - (4), (e)(3) and (4), or (i)** [AS 12.55.125(i)], and has been allowed by the three-judge panel under AS 12.55.175 to be considered for discretionary parole release during the second half of the sentence, may not be released on discretionary parole until

(A) the prisoner has served that portion of the active term of imprisonment required by the three-judge panel; and

(B) in addition to the factors set out in AS 33.16.100(a), the board determines that

(i) the prisoner has successfully completed all rehabilitation programs ordered by the three-judge panel that were made available to the prisoner; and

(ii) the prisoner would not constitute a danger to the public if released on parole;

(4) to a single enhanced sentence under AS 12.55.155(a) that is above the applicable presumptive range may not be released on discretionary parole until the prisoner has served the greater of the following:

(A) an amount of time, less good time earned under AS 33.20.010, equal to the upper end of the presumptive range plus one-fourth of the amount of time above the presumptive range; or

(B) any term set under AS 12.55.115;

(5) to a single sentence under any other provision of law may not be released on discretionary parole until the prisoner has served at least one-fourth of the active term of imprisonment, any mandatory minimum sentence imposed under any provision of law, or any term set under AS 12.55.115, whichever is greatest;

(6) to concurrent sentences may not be released on discretionary parole until the prisoner has served the greatest of

(A) any mandatory minimum sentence or sentences imposed under any provision of law;

(B) any term set under AS 12.55.115; or

(C) the amount of time that is required to be served under (1) - (5) of this subsection for the

sentence imposed for the primary crime, had that been the only sentence imposed;

(7) to consecutive or partially consecutive sentences may not be released on discretionary parole until the prisoner has served the greatest of

(A) the composite total of any mandatory minimum sentence or sentences imposed under any provision of law, including AS 12.55.127;

(B) any term set under AS 12.55.115; or

(C) the amount of time that is required to be served under (1) - (5) of this subsection for the sentence imposed for the primary crime, had that been the only sentence imposed, plus one-quarter of the composite total of the active term of imprisonment imposed as consecutive or partially consecutive sentences imposed for all crimes other than the primary crime.

[(8) TO A SINGLE SENTENCE UNDER AS 12.55.125(i)(3) AND (4), AND HAS NOT BEEN ALLOWED BY THE THREE-JUDGE PANEL UNDER AS 12.55.175 TO BE CONSIDERED FOR DISCRETIONARY PAROLE RELEASE, MAY NOT BE RELEASED ON DISCRETIONARY PAROLE UNTIL THE PRISONER HAS SERVED, AFTER A DEDUCTION FOR GOOD TIME EARNED UNDER AS 33.20.010, ONE-HALF OF THE ACTIVE TERM OF IMPRISONMENT IMPOSED.]

*** Sec. 20.** AS 33.16.100(a) is amended to read:

(a) The board may authorize the release of a prisoner [CONVICTED OF AN UNCLASSIFIED FELONY WHO IS OTHERWISE ELIGIBLE UNDER AS 12.55.115 AND AS 33.16.090(a)(1)] on discretionary parole if it determines a reasonable probability exists that

(1) the prisoner will live and remain at liberty without violating any laws or conditions imposed by the board;

(2) the prisoner's rehabilitation and reintegration into society will be furthered by release on parole;

(3) the prisoner will not pose a threat of harm to the public if released on parole; and

(4) release of the prisoner on parole would not diminish the seriousness of the crime.

*** Sec. 21.** 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. 23.** AS 33.16.210(a) is amended to read:

(a) The board may unconditionally discharge a parolee from the jurisdiction and custody of the board after the parolee has completed **two years** [ONE YEAR] of parole. A discretionary parolee with a residual period of probation may, after **two years** [ONE YEAR] of parole, be discharged by the board to immediately begin serving the residual period of probation.

*** Sec. 24.** AS 33.16.210(b) is amended to read:

(b) Notwithstanding (a) of this section, the board may unconditionally discharge a mandatory parolee before the parolee has completed **two years** [ONE YEAR] of parole if the parolee is serving a concurrent period of residual probation under AS 33.20.040(c), and the period of residual probation and the period of suspended imprisonment each equal or exceed the period of mandatory parole."

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 33.16.100(f), and 33.16.100(g)"

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 22"

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

Insert "sec. 22"

Page 15, following line 29:
Insert new subsections to read:

"(d) The following sections apply to parole granted on or after the effective date of those sections for conduct occurring on or after the effective date of those sections:

(1) AS 33.16.090(a), as amended by sec. 18 of this Act;

(2) AS 33.16.090(b), as amended by sec. 19 of this Act;

(3) AS 33.16.210(a), as amended by sec. 23 of this Act; and

(4) AS 33.16.210(b), as amended by sec. 24 of this Act.

(e) AS 33.16.100(a), as amended by sec. 20 of this Act, applies to parole granted on or after the effective date of sec. 20 of this Act, for conduct occurring before, on, or after the effective date of sec. 20 of this Act."

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 30"