ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
October 26, 2017
9:01 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 Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)

OTHER LEGISLATORS

Representative Louise Stutes (alternate)
Representative Andy Josephson
Representative Geran Tarr
Representative Adam Wool

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."

- MOVED HCS CSSB 54(JUD) OUT OF COMMITTEE

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
10/25/17	(H)	Heard & Held
10/25/17	(H)	MINUTE(JUD)
10/26/17	(H)	JUD AT 9:00 AM GRUENBERG 120

WITNESS REGISTER

SUSANNE DiPIETRO, Executive Director
Alaska Judicial Council
Alaska Court System
Alaska Criminal Justice Commission staff
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

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

CARRIE BELDEN, Director
Division of Probation and Parole
Department of Corrections (DOC)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

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

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

KACI SCHROEDER, Assistant Attorney General
Criminal Division
Legal Services Section
Department of Law
Juneau, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered a question.

TONY PIPER, Program Manager
Alaska Safety Action Program
Boney Memorial Courthouse
Department of Health and Social Services (DHSS)
Anchorage, Alaska
POSITION STATEMENT: During the hearing of SB 54, answered questions.

ATTORNEY GENERAL JAHNA LINDEMUTH
Alaska Department of Law
Juneau, Alaska
POSITION STATEMENT: During the hearing of SB 54, offered testimony and answered questions.

GREG SMITH, Staff
Representative Gabrielle LeDoux
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of SB 54, presented Amendment 7 and answered questions.

ACTION NARRATIVE

9:01:31 AM

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 9:01 a.m. Representatives Claman, Fansler, Kreiss-Tomkins, LeDoux, Eastman, and Kopp, were present at the

call to order. Representative Reinbold arrived as the meeting was in progress.

SB 54-CRIME AND SENTENCING

9:02:16 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."

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

CHAIR CLAMAN advised that the committee would begin with Amendment 43.

9:03:19 AM

REPRESENTATIVE LEDOUX asked whether any amendments, other than Amendment 37, would be allowed to be tabled.

9:03:57 AM

The committee took an at ease from 9:03 a.m. to 9:04 a.m.

9:04:45 PM

CHAIR CLAMAN, in response to Representative LeDoux's question, advised that as to Amendment 37, the committee was trying to "do editing by comma" of which became unproductive of the committee's time. In the event the committee finds itself attempting similar editing, tabling may be appropriate in order to work on the amendment during a lunch break. The intent is to steadily move through these amendments and not table an amendment unless extra time is required, he advised.

9:05:36 AM

REPRESENTATIVE EASTMAN moved to adopt Amendment 43, Version 30-LS0461\N.13. Bruce/Martin, 10/19/17, which read as follows:

Page 1, following line 5:
Insert a new bill section to read:
"*** Section 1.** AS 11.56.730(d) is amended to read:
(d) Failure to appear is a
(1) class C felony if the person was released in connection with a charge of a felony or while awaiting sentence or appeal after conviction of a felony [AND THE PERSON
(A) DOES NOT MAKE CONTACT WITH THE COURT OR A JUDICIAL OFFICER WITHIN 30 DAYS AFTER THE PERSON DOES NOT APPEAR AT THE TIME AND PLACE OF A SCHEDULED HEARING; OR
(B) DOES NOT APPEAR AT THE TIME AND PLACE OF A SCHEDULED HEARING TO AVOID PROSECUTION];
(2) class A misdemeanor if the person was released in connection with a charge of a misdemeanor, while awaiting sentence or appeal after conviction of a misdemeanor, or in connection with a requirement to appear as a material witness in a criminal proceeding [, AND THE PERSON
(A) DOES NOT MAKE CONTACT WITH THE COURT OR A JUDICIAL OFFICER WITHIN 30 DAYS AFTER THE PERSON DOES NOT APPEAR AT THE TIME AND PLACE OF A SCHEDULED HEARING; OR
(B) DOES NOT APPEAR AT THE TIME AND PLACE OF A SCHEDULED HEARING TO AVOID PROSECUTION; OR
(3) VIOLATION PUNISHABLE BY A FINE OF UP TO $1,000]."

Page 1, line 6:
Delete "**Section 1**"
Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 15, line 13:
Delete "sec. 1"
Insert "sec. 2"

Page 15, line 14:
Delete "sec. 2"
Insert "sec. 3"

Page 15, line 15:
Delete "sec. 3"
Insert "sec. 4"

Page 15, line 16:
Delete "sec. 4"
Insert "sec. 5"

Page 15, line 17:
Delete "sec. 5"
Insert "sec. 6"

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, following line 27:
Insert a new subsection to read:
"(c) AS 11.56.730(d), as amended by sec. 1 of this Act, applies to sentences imposed on or after the effective date of sec. 1 of this Act for offenses committed on or after the effective date of sec. 1 of this Act."

Reletter the following subsection accordingly.

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

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

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

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

REPRESENTATIVE FANSLER objected.

9:05:42 AM

REPRESENTATIVE EASTMAN advised that Amendment 43 addresses the manner in which to sanction failures to appear. Prior to the passage of Senate Bill 91 [Passed in the Twenty-Ninth Alaska State Legislature] the manner was a common sense and reasonable approach rather than under current law. It is important to recognize that failures to appear for court hearings come with costs, although mitigating factors should be considered. Needless delays impact the entire judicial system and judicial system's resources are limited. He noted that those delays have been a driver of what brought the state to Senate Bill 91 in the first place. He commented that, for a variety of reasons, the state had defendants in pretrial confinement for a "very, very long period of time." In some of those cases, he said, it was because the law had created incentives for the defense counsel to push for delays, and the longer the delays, the less likely the prosecution's witnesses would remember the specific details about an event. The legislature, he opined, created a situation that weighs in the defense's favor and; therefore, the defense attorneys were not properly incentivized to keep the trials progressing in a timely manner. Failure to appear has a significant impact on the victims, families, the entire system, and it deprives those who need the limited resources. He pointed out that the state has limited resources, which is the reason for sanctioning things such as, failure to appear. He

opined that he does not believe that laxing those sanctions is in the public's interest.

9:08:51 AM

REPRESENTATIVE FANSLER asked whether Amendment 43 returns the law to the exact law on the books prior to Senate Bill 91.

REPRESENTATIVE EASTMAN advised that his conversation with the Legislative Legal and Research Services drafter was to return to the law exactly as it had existed prior to Senate Bill 91.

9:10:13 AM

SUSANNE DiPIETRO, Executive Director, Alaska Judicial Council, Alaska Court System, Alaska Criminal Justice Commission staff, advised she was available to answer questions.

REPRESENTATIVE FANSLER requested background information as to why this language was included in Senate Bill 91, and the rationale for providing an extra 30 days.

MS. DiPIETRO responded that the Alaska Criminal Judicial Commission had three ideas when it originally made the recommendations to revise the manner in which the system handled failure to appear, as follows: making failure to appear a crime and how that potential incarceration would be assessed was not necessary because judges can, and do, issue warrants when they believe a defendant needs to be arrested and brought to court; under the current statute, the defendant actively trying to avoid prosecution by "forgetting" about multiple court dates can still be handled through the current criminal process; and, research found that prison beds are expensive, that prison is not a good place for low-level low-risk offenders, and to reserve prison beds for the violent and serious offenders.

MS. DiPIETRO advised that another important piece the commission looked into is, what actually works to decrease failure to appear. The answer is to set up simple court date reminders. It is the same principal dentist offices uses to remind its patients of their appointments and, she described that this process has been shown to increase the number of people who appear at their court appointments. She reminded the committee that the Alaska Department of Corrections' Pretrial Enforcement Division begins January 1, 2018, and it has an application to load onto a smart phone that reminds people of their court date.

After testing the program on her smart phone yesterday, she described that it "works very well."

9:13:57 AM

REPRESENTATIVE FANSLER offered his belief that the text reminder was a good system to remind defendants of their court dates. Statistically, are folks suddenly abusing this system and using the ability "to do this" to openly flaunt the criminal justice system, he asked.

MS. DiPIETRO answered that, as part of the development of the pretrial assessment tool, consultants reviewed approximately 20,000 defendants who were released on pretrial status in 2014 and 2015 to look at the failure to appear rates, of which those were approximately 14 percent of the people released, which is not a large number. In fact, she said, the statistician who performed most of the work was quite surprised because Alaska had one of the lowest failure to appear rates she has encountered in her research, and she had worked in a number of other jurisdictions.

9:15:44 AM

REPRESENTATIVE REINBOLD commented that 14 percent sounds like a high number, and that she does not believe it is the state's responsibility to send emails and texts to defendants because liability may be involved. She asked whether this failure to appear includes pretrial, jury trial, and sentencing, or does it apply to a specific hearing.

MS. DiPIETRO advised that the failure to appear rates would be for any court date. She reminded the committee that fewer than 5 percent of the criminal cases actually go to trial; however, preliminary hearings and scheduling hearings are common hearings.

9:17:21 AM

REPRESENTATIVE REINBOLD related that giving defendants 30 days because they forgot to appear sounds like an undermining of the judges, victims, and the costs involved. In the event the courtroom was reserved for a hearing, would there be a fiscal impact if the defendant decided not to appear, she asked.

MS. DiPIETRO related that she agrees that when a defendant fails to appear it is an annoyance to all parties, and it is

potentially a resource issue for the court system. She advised that it is common place for hearings to be continued, such that certain things may have not been completed in the case, and so forth. Therefore, the failure to appear issue is not necessarily a large reason the hearings must be continued. As to the 30-day issue, she pointed out that members of the commission include: judges, trial attorneys, and a victims' advocate. The within the discussions of this issue, the presiding judges and the victims' advocate were very involved and agreed on the 30-day number because it felt right for them.

9:19:09 AM

REPRESENTATIVE KREISS-TOMKINS referred to the 14 percent failure to appear rate and the cases reviewed by the statistician for 2014 and 2015, and asked how the 14 percent compares to other types of appointments in the medical or dental industry.

MS. DiPIETRO advised that she does not know the answer to that question.

9:19:59 AM

REPRESENTATIVE KOPP asked whether Ms. DiPietro had said that this recommendation was supported by the Office of Victims' Rights and the members of the judiciary system who are on the commission.

MS. DiPIETRO clarified that the victims' rights advocate seat on the Alaska Criminal Justice Commission is held by Brenda Stanfill who works with domestic violence victims in Fairbanks. Ms. Stanfill is the commission member who worked with the two trial court judges to determine this recommendation.

REPRESENTATIVE KOPP referred to the 30-day provision and commented that it is easy to think about failure to appear within an urban context and living within the confines of a city, but then there are the folks living in rural Alaska. He asked her to comment on the work life and subsistence issues in rural Alaska this 30-day provision may address.

MS. DiPIETRO responded that in rural Alaska it is common for people to be gone for extended periods of time for subsistence activities and they may forget about a court date, or miss a court date, or may not be able to get back into town in time for the court date. It was thought by the commission that the number must make sense in terms of all Alaskans, she explained.

9:22:13 AM

CHAIR CLAMAN asked whether the change to the failure to appear law is an important piece to the whole change in pretrial supervision and pretrial management, which is part of the criminal justice reform process.

MS. DiPIETRO answered that the change around pretrial practice is one of the three fundamental tools that the commission is offering to the state to improve the criminal justice system. She explained that a significant percentage of Alaskan prison beds are taken up by pretrial defendants, and in 2014, when the commission reviewed the research and made its recommendations, it was approximately 28 percent. Research showed that many of these people would be considered low-risk and could be released with the appropriate supervision or with court date reminders and would be expected to appear at their hearings and not commit any new offenses while on pretrial release.

9:23:45 AM

CHAIR CLAMAN offered that he is familiar the State of Kentucky's research on a similar program regarding compliance with pretrial release conditions, and it has a 92 percent success rate. He explained that 92 percent of the State of Kentucky's defendants appear for their court dates and they do not commit new criminal violations. He referred to Alaska's 14 percent rate and asked whether Ms. DiPietro had information as to new arrests while on pretrial release under the current law in Alaska.

MS. DiPIETRO responded that the research of the 20,000 people who were released in 2014 and 2015, also measured which individuals were arrested for new criminal activity (NCA), and that number was approximately 37 percent.

CHAIR CLAMAN surmised that when adding the 14 percent rate and the 37 percent rate the answer is roughly 50 percent. He asked whether roughly 50 percent of the people under the current program on pretrial release are either not appearing or being arrested for new violations, or whether those numbers do not add together perfectly.

MS. DiPIETRO replied that she did not believe those numbers could be added perfectly because some of those people may have had failure to appear and a new criminal activity. She said her strong suspicion is that most of those people will have had a

failure to appear or a new criminal activity, but not both, and she would research the issue.

9:25:22 AM

CHAIR CLAMAN asked whether it would be fair to say that Alaska has at least 40 percent non-compliance with all pretrial conditions under the current system.

MS. DiPIETRO opined that that calculation would be fair.

CHAIR CLAMAN commented that in contrast, it is known that the State of Kentucky is experiencing an 8 percent non-compliance of defendants with a pretrial system similar to what Alaska will begin this January.

MS. DiPIETRO said that Chair Claman was correct, the State of Kentucky outcomes are not unusual because many jurisdictions achieve similarly good results with a pretrial system similar to the system Alaska is about to begin.

9:26:05 AM

CHAIR CLAMAN asked whether Amendment 43 would undermine the pretrial program the state is fully taking on this January.

MS. DiPIETRO answered that Amendment 43 would be a significant course change from the approach and the specific provisions that everyone has been planning to implement in January.

9:26:37 AM

CHAIR CLAMAN asked for confirmation that a number of pretrial officers had been hired, as well as judges trained in the use of the new system.

MS. DiPIETRO confirmed that yesterday, the judges were educated as to the new Pretrial Enforcement Division and the changes to the bail schedule that go into effect in January.

9:27:29 AM

JOHN SKIDMORE, Division Director, Criminal Division, Department of Law (DOL), advised that he was available for questions.

REPRESENTATIVE KOPP referred to failure to appear and Amendment 43 and offered that in his experience in hundreds of criminal

trials, he was trying to remember instances where failure to appear actually held up a trial. He asked whether, currently, there is a problem of trials being held up due to defendants' failure to appear.

MR. SKIDMORE responded that he was unaware of any issues that resulted from defendants failing to appear for trial since Senate Bill 91 was enacted. He clarified that it is certainly true there are people who fail to appear for trial and other types of hearings, but it is a very low number and possibly the 14 percent number. The amount of folks telling him about problems with defendants failing to appear is not any different than what was taking place prior to Senate Bill 91, he offered.

9:29:26 AM

REPRESENTATIVE KOPP asked whether that state differentiates between an individual who flees Alaska to avoid appearing for trial, and someone stuck in a fish camp and are delayed due to bad weather.

MR. SKIDMORE replied that the state would absolutely differentiate between those two situations. In his experience, for the vast majority of those cases, the prosecution would request a bench warrant, and frequently the judges would issue the bench warrant and hold the bench warrant in abeyance for a day or two in the event the defendant contacted the court. Oftentimes, he noted, the defendant would contact the court advising the reason they failed to appear, and the case would go back on the court calendar. However, it is not uncommon that when a defendant does not appear and cannot be located for several days, the bench warrant does get issued. As far as the prosecution filing the charge of failure to appear, the state does not file that charge frequently, and that practice probably differs from one area in the state to another area in the state. In the Southeast, he advised, there has been a more aggressive use of a failure to appear than in other parts of the state, but he does not see that on someone's record regularly. He explained that issuing a bench warrant and having someone show up is different than the prosecutor filing a new criminal charge against a person. The bench warrant is the most common way in which it is resolved, and the filing of the new charge is much rarer.

9:32:09 AM

REPRESENTATIVE KOPP referred to Amendment 43, page 1, lines 8-13, and commented that subparagraphs (A) and (B) are being amended out. It appears that the language amended out subparagraph (A) which is a 30-day window wherein if the defendant does not appear, the presumption is that the defendant does not intend to appear. He commented, "But, then there's a critical 'or' there" and his reading is, as follows:

> If at any point, you can show that someone does not appear at the time and place of a scheduled hearing to avoid prosecution. At any point, you know that they are not appearing to avoid prosecution, that that 30-day window is 'out the window.'
>
> The way I read it, it's 30-days as a time-bar, or, if you can show they are not appearing simply to avoid prosecution, that they are immediately graveled in, so to speak.

MR. SKIDMORE offered that Representative Kopp's interpretation of the law is correct. Although, he opined, the state has not had the opportunity to prosecute someone who attempted to avoid prosecution. That issue will be one of the things the prosecutors will have to look at, and how they put together that sort of a case, he said.

9:33:38 AM

REPRESENTATIVE KOPP referred to the 30-days and noted that there may be a sense among some people that a defendant is out "fluttering around 30 days scot-free" while on release. Except, he pointed out, the defendant's probation officer has immediate authority over their life, and if at any point they get the sense the defendant is trying to avoid prosecution, the probation officer can simply place them in custody.

MR. SKIDMORE explained that currently, these individuals would not have a probation officer supervising their movements. He explained that for those people on pretrial release in Alaska, no officers monitor those defendants. However, he pointed out, under criminal justice reform, a Department of Corrections Pretrial Enforcement Division was created for which officers monitor the defendants with the authority to pick them up when deemed necessary. While that division does not exist today, what Representative Kopp had described is precisely what criminal justice reform is trying to achieve, and the DOL is hopeful it has a positive impact.

9:35:06 AM

REPRESENTATIVE KOPP asked whether this division would be implemented on January 1, 2018.

CHAIR CLAMAN noted that Representative Kopp was correct, and it includes the pretrial assessment tool.

9:35:19 AM

REPRESENTATIVE LEDOUX asked for clarification that if the law goes back to pre-Senate Bill 91 law and a defendant fails to appear on a felony, it is classified as a class C felony. Whereas, if a defendant fails to appear for a misdemeanor it is classified as a class A misdemeanor.

MR. SKIDMORE advised that she was correct.

REPRESENTATIVE LEDOUX asked that pre-Senate Bill 91 law, in the event a defendant was weathered out, whether these individuals would actually be prosecuted for failure to appear, or whether it was "kind of" written in the law that there are justifiable excuses.

MR. SKIDMORE commented that in his experiences, prior to any [criminal justice reform] changes, courts would potentially issue a bench warrant, except that he saw many bench warrants quashed within Representative LeDoux's scenario. He asked the committee to remember that he separates bench warrants from the filing of a new criminal charge. He opined that a defendant would not be charged with [the new crime of] failure to appear if they did not appear due to the weather. He explained that all crimes require two components: *mens rea* - the mental state; and *actus reus* - the actual event itself. With regard to a failure to appear, the *actus reus* is not showing up in court, and the *mens rea is the* mental state of a defendant being weathered out. The state would not suddenly prosecute in that situation because it would look for the reason the defendant did not appear. He pointed out that that is what the law said prior to Senate Bill 91, and what the law says currently, that law has not changed.

9:37:40 AM

REPRESENTATIVE LEDOUX asked whether the system was broken pre-Senate Bill 91.

MR. SKIDMORE commented that he could not say that that particular aspect of the system was necessarily broken. The commission looked at failure to appear and decided that the approach developed in the recommendations better reflected practices as they existed in the system.

9:38:25 AM

REPRESENTATIVE LEDOUX asked how the system will work currently, in the event someone fails to appear and contacts the judicial officer within 30 days. The court then sets another appearance date and the defendant fails to appear a second time.

MR. SKIDMORE replied that he had not previously pondered that question and he was not prepared to offer an answer off the top of his head.

9:39:23 AM

REPRESENTATIVE REINBOLD asked the exact date the failure to appear provision went into effect.

MR. SKIDMORE answered that the change would have gone into effect at the time the bill was signed by Governor Walker, which was sometime in July 2016.

REPRESENTATIVE REINBOLD asked Mr. Skidmore to explain phases one, two, and three, of Senate Bill 91.

MR. SKIDMORE described that phase one dealt with sentencing and the classification of crimes; phase two dealt with probation and parole beginning in January 2017; and phase three deals with pretrial release which is scheduled to go into effect January 2018.

9:40:53 AM

REPRESENTATIVE REINBOLD said that phase one went into effect July 2016.

MR. SKIDMORE said that she was correct.

REPRESENTATIVE REINBOLD asked whether the probation and parole phase was the next phase.

MR. SKIDMORE responded, January 2017.

REPRESENTATIVE REINBOLD referred to the statistics Ms. DiPietro had offered and stated that they years were 2014, 2015, and 2016, to get to this 14 percent figure. During the vast majority of that time, she asked whether it was a crime to not appear in court.

MR. SKIDMORE responded that he did not know the timing of the statistics that Ms. DiPietro had provided. He said the second part of his answer is that failure to appear is a crime before and after the criminal justice reform efforts. He explained that it is the elements of the crimes and what a person would have to do, is what has changed between the two.

9:42:08 AM

REPRESENTATIVE REINBOLD said, "This, by the way, 30 days is a new -- is a new provision." Representative Reinbold said that she was listening closely to Ms. DiPietro's testimony and she said that the 14 percent figure was between 2014 through 2016, yet, this did not go into effect until July 2016. [Ms. DiPietro clarified that the 14 percent figure was during 2014 and 2015, found at timestamp 9:49:32.] Therefore, there is only a tiny window where failure to appear was, "Oh, by the way, you just have to notify the courts if you don't show up." She described it as extraordinarily troubling based on the testimony she heard from Ms. DiPietro that, "it just seems right so we decided to do this." She said that these are the positions of the governor because the governor appoints these commissioners to the commission. There was no resolution from a body of victims' rights people, it just happened to be a person who sits on the commission from Fairbanks that decided that this seemed right, so failure to appear for 30 days was just something they felt good about. She asked whether part of rehabilitation is taking responsibility for a person's actions.

MR. SKIDMORE replied that there is certainly case law that suggests that taking responsibility is an important component of rehabilitation, but to what degree taking responsibility plays in that role he could not answer.

9:43:40 AM

REPRESENTATIVE REINBOLD asked whether prosecutors would be frustrated if a defendant intentionally or "unintentionally decided not" to appear when probation officers, parole officers,

policemen, witnesses, prosecutors, defendants, and judges [were waiting for the defendant to appear].

MR. SKIDMORE said that someone who unintentionally fails to appear ...

REPRESENTATIVE REINBOLD interrupted Mr. Skidmore and said, "I never said unintentional. I said intentional or unintentional, so it could be either one."

CHAIR CLAMAN directed Representative Reinbold to let Mr. Skidmore finish his answer because no doubt he would address an intentional and unintentional failures to appear.

MR. SKIDMORE said that, as he was saying, an unintentional failure to appear is frustrating; however, it is not an issue that, prior to criminal justice reform or after criminal justice reform, would result in a prosecution. An unintentional failure to appear is frustrating, but it is not criminal in its nature, he said. Whereas, an intentional failure to appear does lend itself to a prosecution, and he pointed to page 1, lines 12-13, subparagraph (B), "does not appear to avoid prosecution". Mr. Skidmore explained that the manner in which the prosecution proves someone was attempting to avoid that intentional aspect is something with which the prosecution must wrestle. He added that intentional was not the *mens rea* associated with the failure to appear previously mentioned, it would be under AS 11.56.730(d)(1)(A), lines 8-11. In the event the defendant fails to make contact with the court longer than 30 days, the prosecution does not have to [prove] the intentional aspect. He commented that there are some nuances yet to work out, and he does not know whether the DOL has had enough time to determine how all of the fairly recent changes will work, and "there have not been many cases to test these things out."

9:46:01 AM

REPRESENTATIVE FANSLER asked whether Mr. Skidmore would say that, within the Alaska legal system, there is a presumption of guilt or innocence prior to trial.

MR. SKIDMORE answered that there is a presumption of innocence.

REPRESENTATIVE FANSLER surmised that rehabilitation is not part of the equation until guilt is found through a court trial, a jury of peers, a plea deal, or any number of avenues.

MR. SKIDMORE answered that the sentencing goals, of which rehabilitation is one, are not part of the focus until guilt is determined.

REPRESENTATIVE FANSLER commented that fitting rehabilitation into a pretrial situation is an unfair comparison.

9:47:24 AM

REPRESENTATIVE FANSLER noted to Ms. DiPietro that a couple of comments had been made that the commission randomly pulled 30 days out of the air. Whereas in actuality, the commission worked together as a group to look at the statistics and research. He then asked Ms. DiPietro to repeat her explanation.

9:47:53 AM

MS. DiPIETRO responded that she has a firm memory of active engagement around this issue, particularly by the trial court judges on the commission. She clarified for Representative Reinbold that the commissioners are not appointed by the governor and that the commissioners are appointed by the Chief Justice of the Alaska Supreme Court, and that Brenda Stanfill holds the victims' rights advocate seat. She said that she could not remember exactly how the 30 days was determined, but that Mr. Skidmore's comment that it probably took into account the state's current practice is probably right on the mark.

9:49:04 AM

REPRESENTATIVE FANSLER commented that he had heard a comment by Representative Reinbold that might have been more appropriately answered by Ms. DiPietro.

REPRESENTATIVE REINBOLD said that the statistics [for 14 percent] were from 2014 to 2016, and it was still a crime up until July 2016.

REPRESENTATIVE FANSLER requested that Ms. DiPietro repeat the date ranges for the [14 percent] statistics, and any pre-Senate Bill 91 and post-Senate Bill 91 statistics.

9:49:32 AM

MS. DiPIETRO clarified for Representative Reinbold that the dates were actually 2014 through 2015, the range did not include 2016, and 20,000 people released on pretrial release were

studied. She offered that an important piece of information is that the researchers counted a failure to appear if a bench warrant had been issued. She said that she wanted to be clear that these were not convictions for failure to appear, these were included only if a bench warrant for failure to appear was issued. The issue of whether it was a crime is not relative in this particular statistic because everyone recognizes that failure to appear is not often charged as a crime. The Alaska practitioner determined that when someone fails to appear, the issuance of a bench warrant would count as a failure to appear. She explained that within that sample of 20,000 people, 14 percent of the people had bench warrants issued against them. She added that once a bench warrant was issued, the person was arrested and brought to court.

9:51:12 AM

REPRESENTATIVE FANSLER asked whether statistics are available to compare the 14 percent pre-Senate Bill 91 numbers to the current numbers, or whether those statistics are still pending at this time.

MR. SKIDMORE answered that he does not believe those statistics are available as of yet as it is too early to make judgment calls about some of the changes that have occurred. He pointed out that this change was not sought out by the prosecution or law enforcement because there is no evidence that told the prosecution this was necessarily a problem. Although, he commented, it is something the prosecution is watching and is interested in receiving the data. He advised that he sits on one of the subcommittees for the commission that gathers data, and this is one of those data pieces that folks are interested in receiving. He then deferred to Ms. DiPietro.

MS. DiPIETRO responded that those statistics have not been re-measured because it is expensive and a time-consuming effort. However, starting in January, the software used by the Pretrial Enforcement Division will record these types of outcomes, and track how many people are released pretrial, and how many of those released had a pretrial failure event. After a certain number of months or one year, she said that she would expect there would be enough data to analyze, representative, and fair.

9:53:59 AM

REPRESENTATIVE LEDOUX asked whether it would be fair to say that prior to Senate Bill 91, the actual prosecution for failure to

appear was probably rarely used and only in the most egregious cases of failure to appear.

MR. SKIDMORE answered in the affirmative.

9:54:34 AM

REPRESENTATIVE KOPP asked whether the DOL had seen any anecdotal evidence in the last year that the new failure to appear law has raised issues or problems.

MR. SKIDMORE responded that he is not aware of any issues or problems, but he could not say that there had not been any individuals who failed to appear for a trial or for some other instance. Although, he offered, he has not talked to every single prosecutor in his division about this particular topic, but he has not heard that has been an issue.

REPRESENTATIVE KOPP referred to the editing out of the language in Amendment 43, page 1, lines 11-13, and asked whether the language being edited out is basically what the DOL does now, or pre-Senate Bill 91, as far as actually following through on a prosecution. It appears, he offered, that in Mr. Skidmore's discretion, he was looking for people who were intentionally avoiding appearing in court, and he would then prosecute those defendants. He was asked whether Mr. Skidmore saw similarities there between that standard and the standard he was using when prosecuting.

MR. SKIDMORE described that Alaska's legal system is designed on law enforcement, prosecutors, and judges having discretion. The prosecutors always use discretion when evaluating charges, that they believe should be filed, and that discretion would be used in looking at a failure to appear as to whether someone was trying to avoid prosecution. However, he pointed out, having "avoiding" [appearing in court] written directly into the statute now makes it an element, and it is now not about the prosecution's discretion, it is about the prosecution's ability to prove the avoidance beyond a reasonable doubt. He could not say that those two things are always the same, although there are similarities, he said.

9:57:31 AM

REPRESENTATIVE REINBOLD noted that Ms. DiPietro had advised that statistics for the 14 percent were from 2014 through 2015, but this failure to appear law did not go into effect ... "it's just

kind of a slap on the hand of 30 days, by the way if you don't show up." She noted that Ms. DiPietro had said that 14 percent of the people "when they did have the potential of being prosecuted for an additional crime didn't show up," and Ms. DiPietro defined it by actually having a [bench] warrant. She said she found it amazing that 14 percent of the people with a warrant do not show up. She asked whether Ms. DiPietro has the statistics, and to step back to "just people in general" who do not show up with or without the warrant.

CHAIR CLAMAN clarified to Representative Reinbold that a warrant is issued because the defendant did not appear, and "that reflects when a warrant was issued," a person may well then show up after the warrant is issued. Everyone on pretrial release does not have a warrant for their arrest, the warrant is issued the first time they do not appear.

MS. DiPIETRO answered that she did not fully understand the question and asked whether the question was whether there were people who missed a court appointment and a warrant was not issued for their arrest.

9:59:07 AM

REPRESENTATIVE REINBOLD re-asked her question by saying that she was trying to determine, by Ms. DiPietro's statistics, whether the 14 percent was everyone who did not appear.

MS. DiPIETRO commented that she was unsure she could the answer the question. All she could advise, she said, was that when the study was performed, it was designed with the input of Alaska practitioners. Ms. DiPietro said that she sat in on those meetings, which were lengthy and hotly debated about the best way to measure Alaska's failure to appear rates. The first idea was to measure by convictions or charges of failure to appear, and for the reasons Mr. Skidmore discussed, that was discarded as an approach. The other idea from the practitioners was that when people fail to appear, warrants are issued, and that is how the system responds to that situation. The practitioners advised the researchers to count each time a warrant was issued, and that is what the study offered.

REPRESENTATIVE REINBOLD requested the name of the study, a copy of the study, and who funded this study.

MS. DiPIETRO said that she will provide the study to the committee, and the study was funded by the Bureau of Justice Assistance from a federal grant fund.

10:01:12 AM

REPRESENTATIVE KREISS-TOMKINS asked Ms. DiPietro about pre-Senate Bill 91 when failure to appear was a crime and noted that Mr. Skidmore had advised that prosecutors exercised extreme discretion in charging, so it happened rarely. He asked, what would be the problem with this tool being in the toolbox. He pointed out that Mr. Skidmore also stated that since the enactment of Senate Bill 91, there have not been any problems and on the other side of the coin these reforms have been made and the sky has not fallen. He referred to Representative LeDoux's question as to whether the system was broken before, and asked Ms. DiPietro what stakes were being discussed with this particular forum, how was the system working, and how was the system not working for Senate Bill 91, vis a vis Amendment 43.

MS. DiPIETRO reiterated that the researcher who crunched the numbers for Alaska has worked in a number of other jurisdictions, and she advised the commission that a 14 percent failure to appear rate is actually fairly low. Having said that, she opined that every commissioner believes Alaska can do better than 14 percent. The reforms it recommended for the pretrial system are designed to improve that 14 percent failure to appear rate. As to the question of whether the system was previously broken, she answered that she supposed if looking at other jurisdictions Alaska was doing pretty well on its failure to appear rate, but the commission thought Alaska can and should do better, which is why the commission recommended these changes.

10:03:37 AM

REPRESENTATIVE LEDOUX asked that if Amendment 43 is passed, whether there is anything to preclude text messages, apps, or reminders, and further asked whether the amendment eliminates that function.

MR. SKIDMORE answered that he believes that requirement was placed in other parts of Senate Bill 91, and the amendment does not appear to alter that function. He opined that everything else in Amendment 43 is simply re-numbering and he did not see

anything else repealing that particular provision, so he did not believe that function would be eliminated by the amendment.

REPRESENTATIVE LEDOUX asked Ms. DiPietro whether she believes that as long as the text messaging portion of Senate Bill 91 remains, the state is likely to have the same good results being anticipated through apps and text messaging people, without eliminating the prosecutorial discretion that Senate Bill 91 eliminated.

MS. DiPIETRO acknowledged that she was unsure she knew the answer to her question and she would not want to make such a prediction. Although, she said, the research shows that court reminders are the most important element in improving failure to appear rates.

REPRESENTATIVE LEDOUX noted that it is not being changed by this amendment, and asked Mr. Skidmore whether she was correct.

MR. SKIDMORE responded that that requirement is found in the pretrial services unit, which is not impacted by this amendment.

10:06:24 AM

CHAIR CLAMAN related that the criminal justice reform pretrial service actually gives more tools for failure to appear than prior law. Within this statute there is a third category which is a violation for failure to appear, and a fine of up to $1,000. Therefore, he pointed out, the defendant who fails to appear causing a bench warrant to be issued would also be subjected to a violation of $1,000 for that failure to appear. He asked whether that is part of the criminal justice reform statute.

MS. DiPIETRO answered that she believes Chair Claman was correct. She reminded the committee that the Pretrial Enforcement Division officers have remand authority and can take a defendant to prison any time they violate the conditions of their release. She said she has not yet grasped what Alaska could gain by re-criminalizing failure to appear, and a potential complication could be when a defendant commits a new crime and the officer is involved with the defendant. She asked whether the officer would then be called as a witness in any prosecution for failure to appear, and what complications might that entail. She asked whether a defendant on pretrial release charged with a new crime would have different rights than if they were just remanded administratively by the pretrial

services officer without the problem of the new charge being injected into the equation. Ms. DiPietro commented that she has those questions and she has spoken with the director of the Pretrial Enforcement Division who also has those questions.

10:08:38 AM

CHAIR CLAMAN offered a scenario of situations wherein someone is stuck in a fish camp, their car breaks down, there is a calendaring mistake, a transportation issue, or any number of issues that would cause a defendant to fail to appear and are treated differently than avoiding prosecution. He then offered a real-life example about avoiding prosecution. He said that he was in trial and during the third day of trial the defendant was nowhere to be found. The defendant's third-party custodian advised the court that when he woke up that morning the defendant was not in his bed, his suitcase and wallet were gone, and the defendant was gone. Approximately five years later, he said that he was called as a witness in that defendant's failure to appear trial, and he assumed that under current law, there would be no problem prosecuting that defendant for failure to appear under the avoiding prosecution provisions.

MR. SKIDMORE said that Chair Claman was absolutely correct in that prosecution would have no problem with that particular fact pattern showing avoidance of prosecution. Senate Bill 91 did create a $1,000 fine and a violation for someone within that 30-day provision, he commented.

10:10:24 AM

CHAIR CLAMAN remarked that in fact, unlike the case before, there is an additional tool for a prosecutor when a defendant advised that they were stuck in a fish camp and were 15-days late. The prosecution may not choose to exercise that tool, but that violation would be available, in addition to forfeiting their bail, and there could also be a $1,000 fine for those that are poorly calendaring their court dates. The defendant may not have to go to jail, but they would have to pay the fine, he added.

MR. SKIDMORE related that the fine is at the court's discretion up $1,000, and that tool is found in statute.

CHAIR CLAMAN asked whether that tool existed prior to Senate Bill 91.

MR. SKIDMORE explained that prior to criminal justice reform efforts, the court had the authority to impose a fine or jailtime, but it was a criminal offense that required a jury trial. A violation does not require a jury trial, he explained.

10:11:25 AM

CHAIR CLAMAN noted that the prosecution would have to actually bring the charges, whereas a violation might not require the involvement of prosecution.

MR. SKIDMORE clarified that there would be a requirement of someone filing that violation, which could be a prosecutor or a law enforcement officer. The legal system in the State of Alaska is not the French system in which judges file charges, in Alaska someone would have to file the charge. Although, it would not require a jury trial or the same sort of steps and procedures a criminal trial would require, he reiterated.

10:11:58 AM

REPRESENTATIVE REINBOLD asked whether there are any fiscal impacts to the DOL when a defendant chooses not to appear in court.

MR. SKIDMORE answered that there are fiscal impacts when defendants fail to appear, particularly for trial. Although, it would depend on the type of hearing for which the defendant failed to appear, and he explained that if it is an arraignment or a similar type of hearing wherein witnesses are not called to testify there is no fiscal impact, but when some sort of preparation is required, such that the defendant was the only reason "we were there," that would have a fiscal impact. In the event the defendant failed to appear in "a larger mass hearing" where there are many other cases, there is not much of a fiscal impact.

10:13:19 AM

REPRESENTATIVE REINBOLD reiterated her previous testimony as to how failure to appear is a slap in the face and demoralizing to the judicial system. She referred to the $1,000 fine for failure to appear and said that, at some point, she would like to know the amount of money that has been collected under this provision.

10:14:59 AM

REPRESENTATIVE KREISS-TOMKINS asked whether, under current law, it is still a felony for failure to appear on a felony case after 30 days.

MR. SKIDMORE answered that Representative Kreiss-Tomkins was correct.

10:15:19 AM

REPRESENTATIVE LEDOUX said she wanted to make clear that, under the previous system, if someone was charged with failure to appear, it could be settled out with a fine.

MR. SKIDMORE answered in the affirmative.

10:15:44 AM

REPRESENTATIVE REINBOLD suggested that under [current law] criminal defendants may see this as a loophole. In the event a person chose not to appear, "it really does pay to not appear," because if 37 percent of defendants decide to reoffend, then crime does pay in Alaska. Wherein, if a defendant does not appear, they will not be convicted or sentenced, so it is a motivator for people charged with crimes to "hurry up and go do more." She pointed out that if the person does not have a previous class C felony conviction they will receive a much lighter sentence. She asked that if there is a 50 percent increase in failure to appear, would this have an impact on a defendant if they committed several other crimes.

CHAIR CLAMAN clarified Representative Reinbold's question and asked that if there is a 50 percent increase in failure to appear, would that have an impact on other crimes.

MR. SKIDMORE responded that he was unsure how a 50 percent increase in failure to appear has an effect on other crimes. After a defendant fails to appear, that does not automatically equate with the fact that they are committing some other crime than the failure to appear. He explained that the two most important aspects of failure to appear for a prosecutor is: to make sure people show up for their court dates because as time passes it becomes more difficult to prosecute a case. The concept of failure to appear is if a defendant has disappeared in order to avoid prosecution, by the time the defendant shows back up in the system, the prosecutors may not be able to prosecute that original crime. Except, he pointed out, the

failure to appear still allows prosecutors to hold the defendant responsible for that, and prior to criminal justice reform and under current law, that tool is still available to the prosecution for the precise reason. He expressed that he remembers when the 30-day timeframe came up, and that the 30 days was not the Alaska Criminal Justice Commission's recommendation. That 30-day timeframe is an agreement between Quinlan Steiner, Public Defender Agency, and himself. The 30-day timeframe needed to exist in the law for the law to still work, and without that agreement, this law would be toothless, and it would not help. He stressed that this is the compromise that was reached by opposing parties to achieve the reform efforts desired that still left the prosecution with the tools.

10:19:21 AM

REPRESENTATIVE REINBOLD referred to the discussion regarding "14, you know, plus 37," and whether those numbers could be added together. She asked that "if you add a 50 percent, because now they just get a slap on the hand if they don't -- don't get a criminal conviction. Just a slap on the hand, a violation potentially." Under current law, the defendant does not have the potential of receiving a criminal conviction, and then add those number together, there is more motivation to not appear. With regard to the 37 percent of reoccurring crimes, it appears that it pays for the defendant and that it will increase the state's pretrial numbers. Prior to Senate Bill 91, that is exactly what the state was trying to avoid, which makes it important to be tough on failure to appear. She asked whether this would increase the pretrial cases if a significant number of people, over 14 percent, decided [not to appear] and whether that would increase the pretrial status.

10:20:50 AM

MR. SKIDMORE answered that if failure to appear percentages increased, that would create more pretrial delay. He pointed out that the problem is that the DOL has not seen those increases at this time, and it is waiting to get those numbers. He related that he is a prosecutor by trade and relies on the evidence, and currently he does not have the evidence to lead him in one direction or another. Therefore, until he has the evidence he will not say whether this is a good or bad thing, he remarked.

10:21:29 AM

REPRESENTATIVE LEDOUX asked what the Alaska Criminal Justice Commission had originally recommended, and what did the prosecution want because the 30-day timeframe is a compromise between Mr. Steiner and Mr. Skidmore.

10:23:43 AM

CHAIR CLAMAN asked Ms. DiPietro to locate the original recommendation relating to the failure to appear.

MS. DiPIETRO responded that the failure to appear recommendation is located in the December 2015 Alaska Criminal Justice Commission Report, page 18. Ms. DiPietro paraphrased the recommendation as follows:

> Violations of conditions of release and failure to appear offenses with certain exclusions. For these pretrial violations law enforcement will be authorized to arrest the defendant and the DOC will be authorized to detain the defendant until the court schedules a bail review hearing.

10:24:22 AM

REPRESENTATIVE LEDOUX surmised that the commission recommended that basically nothing happened with the defendants. She asked whether defendants would just be held until they received a new court schedule.

MS. DiPIETRO answered that the defendant is arrested, and perhaps people would differ with this view, but many people would feel that being arrested is something unpleasant that they wish to avoid.

10:25:24 AM

MR. SKIDMORE noted that Ms. DiPietro had pointed to the December 2015 Alaska Criminal Justice Commission Report, page 18, and he pointed to certain exclusions under Recommendation 5(a)(iii), which read as follows:

> (iii). Violations of conditions of release ("VCOR") and failure to appear ("FTA") offenses, with certain exclusions.[36]

FN[36] FTA with intent to avoid prosecution and FTR for more than 30 days; and for violations of a protective order or no-contact order.

MR. SKIMORE noted that the 30 days is in the commission's recommendations. He clarified that he had previously described to the committee a conversation between Mr. Steiner and himself wherein they came to this conclusion, which is why the commission ended up adopting the 30 days.

REPRESENTATIVE LEDOUX surmised that that was a compromise and asked what [recommendation] was desired by the prosecution.

MR. SKIDMORE responded that the prosecution was concerned about continuing to have failure to appear as a tool, and this agreement allowed it to remain as a tool. He said he could not remember precisely where it started or the discussion at the time because it was two-years ago.

10:26:53 AM

REPRESENTATIVE LEDOUX related that she was trying to figure out that, if this was a compromise, where was the commission originally. She asked whether the DOL viewed the original ideas of the commission "as kind of 'pie in the sky' academics" who possibly were not in touch with the real world.

CHAIR CLAMAN noted that during his experience in serving on the commission, the process is much more about how to improve things and whether a consensus could be reach on how to improve things. Rather than the notion that the consultants come in and say, "Here is the recommendation" and then the commission debates the recommendation. He stressed that the overwhelming majority of the time, the commissioners actually reached the recommendations by consensus, other than the class C felony recommendation. The commissioners discuss how to improve public safety and improve results in order that less offenses take place, particularly in a pretrial sense, he advised. The goal to reach consensus highlights the fact that there was no recommendation until the recommendation was placed in the report, he stressed.

REPRESENTATIVE LEDOUX said that she is trying to determine, if Mr. Skidmore had his druthers prior to Senate Bill 91 being enacted, whether he would have recommended, unless he saw the writing on the wall, that nothing needed to be done with failure to appear.

MR. SKIDMORE answered that his role in testifying in the House Judiciary Standing Committee today and his role in any process with the Alaska Criminal Justice Commission, has been to advocate on behalf of the prosecution, in consultation with the DOL. He stressed that "none of this is just my opinion or my thoughts," the commission's effort was an effort because there were concerns that the criminal justice system could improve, and that certain things needed to change. Failure to appear is an area that was discussed, the recommendations the commission made, and what was adopted in Senate Bill 91, is precisely what the DOL supported, he said.

10:29:56 AM

REPRESENTATIVE LEDOUX surmised that it was the commission's recommendation that folks be arrested, and she asked when, how, and with what resources would they be arrested.

CHAIR CLAMAN acknowledged that there was talk about arrest, but the committee went through the recommendation with the footnotes that Mr. Skidmore presented. The recommendation was arrest, as well as continuing to have it a criminal charge, the commission's recommendation was not just arrest, he offered.

MR. SKIDMORE, in response to Representative LeDoux as to resources, answered that it would be the same resources there were before, which is that a warrant is issued for a defendant who fails to appear, and law enforcement executes those warrants.

10:30:58 AM

REPRESENTATIVE KREISS-TOMKINS stated that given that the committee had deliberated Amendment 43 for 90 minutes, he proposed that the committee move on to discussion of the amendment, and vote.

CHAIR CLAMAN noted that a repetition of questions was taking place and agreed to move to discussion. In response to Representative Eastman's comment that he had a new question, he advised that as the maker of the amendment who had not asked a question the entire time, he would allow him to ask a question.

CHAIR CLAMAN advised Representative Reinbold that she had asked a number of questions as had everyone else.

10:31:36 AM

REPRESENTATIVE EASTMAN noted to Ms. DiPietro that the committee had heard that the failure to appear change is important to the criminal justice reform effort, and that if the committee decided to walk back on this there was the potential to undermine the entire project. The committee also heard testimony from Mr. Skidmore that there was not much of a problem with the prior statute, and it was only prosecuted under extreme or egregious cases. Therefore, relaxing the requirements for failure to appear has not had much of an effect and it did not solve a big problem. He asked how it is that this is so fundamentally important to the criminal justice effort to not walk it back.

MS. DiPIETRO answered that the testimony she had intended to convey was that the entire pretrial reform package is fundamentally important to the reform effort in each aspect. Every change that was recommended by the commission and placed in Senate Bill 91, works together to create the most effective pretrial practice that the commission knew how to make. She pointed out the importance of remembering that the Pretrial Enforcement Division will make a huge difference in Alaska's pretrial practice. The fact that pretrial enforcement officers have remand authority is critical because that is a big change. She said that "throwing a new criminal charge in there at this stage," has the potential to confuse things or cause problems for the implementation of pretrial services because it was carefully structured.

10:34:39 AM

REPRESENTATIVE EASTMAN asked how making it easier for the prosecution to prosecute failure to appear would have that effect on the Pretrial Enforcement Division, and how it would be problematic going forward.

MS. DiPIETRO remarked that it was not her understanding that Amendment 43 would make it easier for prosecutors to prosecute because she understood the amendment to re-criminalize failure to appear.

10:35:19 AM

REPRESENTATIVE REINBOLD stated a point of order. Representative Reinbold said that the person who wants to rush and call the question right now, she finds completely inappropriate. She said, "He sat on the bill for roughly six months. We are in

this special session for 30 days, just because someone wants to rush it, I find that absolutely unacceptable. He sat on this bill, it was so unimportant in his committee, he waived this bill out of committee. I think we deserve the opportunity to ask as many questions as needed. This is "gonna have dramatic impacts" to Alaskans, and I'd like the opportunity to ask questions so I under -- fully understand the amendment and who is influencing this 'so called justice commission.' And, I do have more questions."

CHAIR CLAMAN ruled that her point of order was noted, but the rules allow the chair of committees to manage debate and move the process forward. He pointed out that the committee members have had more than enough opportunities to ask a number of questions, and noted that more often than once, Representative Reinbold was unable to complete a question within the time allotted for asking questions. He said, "I think you, particularly, have had substantial opportunities to ask questions," and advised that the committee would now move into debate.

10:36:51 AM

REPRESENTATIVE LEDOUX commented that during her first review of Amendment 43, she was not going to vote for it. Except that the three things that have changed her mind are as follows: Mr. Skidmore said that prior to Senate Bill 91, charging someone with failure to appear was used only in the most egregious circumstances; and she asked Mr. Skidmore how the process would work if a defendant repeatedly failed to appear, and Mr. Skidmore did not have an answer; and, the good things, such as the reminders that will continue to try to cut down on the instances of failure to appear. Therefore, she offered, there actually was no reason to change the law prior to Senate Bill 91, and that she is comfortable going back the previous law.

10:38:09 AM

REPRESENTATIVE KREISS-TOMKINS commented that in the big scheme of things, this is not a "big potatoes change" because it is not currently a problem, and it was not a big issue prior to Senate Bill 91. He related that the big difference here is that, prior to Senate Bill 91, there was not a Pretrial Enforcement Division of which changes the context of the status quo prior to Senate Bill 91. As Ms. DiPietro had noted, he said, this policy is integrated and complimentary of the Pretrial Enforcement Division; therefore, it is not an "apples to apples comparison"

when looking at what happened prior to, and after, Senate Bill 91. In his mind, he offered, this is not a fire that needs to be extinguished as there have not been problems since its implementation. Thus, it makes a lot of sense to hold tight and see how things unfold to possibly further lower the 14 percent failure to appear rate and make changes only with the benefit of evidence and data, he said.

10:39:42 AM

REPRESENTATIVE REINBOLD said that failure to appear is critical to address properly and reiterated that it is an insult to the state's judges, courts, victims, and prosecutors. Re-criminalizing failure to appear is a critical tool in the toolbox and without this amendment a loophole is created that says that crime pays, and she passionately supports Amendment 43.

10:40:51 AM

CHAIR CLAMAN stressed that being tough on crime is of the highest importance in criminal justice reform, and this particular feature of the pretrial services program is a tough on crime measure. It is one of the best ways that the state can be smart on spending and improving public safety. The most important feature of that, he stressed, is that it is known from the statistics in the pretrial setting, within in the 2014 through 2015 range, that the state had a new arrest rate of 37 percent. He pointed out that more than one-third of the people on pretrial release commit a new criminal offense, and there is a 14 percent rate of failure to appear. While a 14 percent rate is good, he related that in the State of Kentucky, the combination of new arrests and failure to appear is at 8 percent, and the goal is to improve public safety with better compliance. The pretrial services program is in phase three of criminal justice reform and those results are critical because that will do more to improve public safety than the status quo, he stressed. He commented that the quick and certain result is one of the strongest parts as to why this particular feature of criminal justice reform is tougher on crime than the prior structure. He said that for those reasons he will be a no-vote on Amendment 43.

10:42:38 AM

REPRESENTATIVE EASTMAN commented that if he was a member of the public and listening to this discussion over the last 90

minutes, he would think the Alaska criminal justice system was a splendid model for a nation to follow. The reason being is that "we have created and designed a system to tell us through statistics exactly what we already want to hear." However, he related, it is known from our constituents that that is not what is taking place in Alaska today. He said that the legislature is focused on a 14 percent reduction and the legislature has already tried to close its eyes to the fact that the conditions of release "and others" are not actually being enforced and are not being followed. In any other committee, he advised, the members would be talking about the fact that more resources are needed for the Alaska Court System because 7,000 cases are not being prosecuted. But, he remarked, that is not a problem in this situation because things are working perfectly and if people are failing to appear "it's a small problem." In the event those cases were actually being prosecuted, it would be noticed that the 14 percent of people failing to appear were having a significant effect on Alaska's justice system and the court system, he offered.

REPRESENTATIVE FANSLER maintained his objection.

10:43:50 AM

A roll call vote was taken. Representatives Eastman, Reinbold, and LeDoux voted in favor of the adoption of Amendment 43. Representatives Kopp, Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, Amendment 43 failed to be adopted by a vote of 3-4.

10:44:25 AM

REPRESENTATIVE EASTMAN moved to adopt Amendment 44, Version 30-LS0461\N.14, Bruce/Martin, 10/19/17, which read as follows:

> Page 5, following line 25:
> Insert a new bill section to read:
> "*** Sec. 11.** AS 12.55.135(n) is amended to read:
> (n) A court sentencing a person convicted of misconduct involving a controlled substance in the fourth degree under AS 11.71.050(a)(4) or misconduct involving a controlled substance in the fifth degree under AS 11.71.060(a)(2) may not impose
> (1) a sentence of active imprisonment, unless the person has previously been convicted more than once of an offense under AS 11.71 or a law of

this or another jurisdiction with elements substantially similar to an offense under AS 11.71; or

(2) a sentence of [SUSPENDED IMPRISONMENT GREATER THAN]

(A) **suspended imprisonment greater than** 30 days, if the defendant has not been previously convicted of an offense under AS 11.71 or a law of this or another jurisdiction with elements substantially similar to an offense under AS 11.71; or

(B) **active imprisonment greater than** 180 days, if the person has been previously convicted of an offense under AS 11.71 or a law of this or another jurisdiction with elements substantially similar to an offense under AS 11.71."

Renumber the following bill sections accordingly.

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

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

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

Page 15, following line 27:
Insert a new subsection to read:

"(c) AS 12.55.135(n), as amended by sec. 11 of this Act, applies to sentences imposed on or after the effective date of sec. 11 of this Act, for offenses committed on or after the effective date of sec. 11 of this Act."

Reletter the following subsection accordingly.

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

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

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

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

REPRESENTATIVE FANSLER objected.

10:44:33 AM

REPRESENTATIVE EASTMAN explained that Amendment 44 returns to the law prior to Senate Bill 91. He explained that the previous amendment dealt with making it more difficult to prosecute for failure to appear, and this amendment deals with how jailtime has been reduced, and other consequences, for first-time drug convictions. Also addressed in this amendment, he further explained, is the fact that there is suspended jailtime, which practically speaking means no jailtime for second-time convictions in these types of situations. Amendment 44 recognizes that the leniency currently offered sends the wrong message to criminals in Alaska and the public has also received that message. He related that the message should be swift and certain prosecution when violating the law, but that message is not getting through to the criminals. He said that the law needs to go back to pre-Senate Bill 91 law, which while it may not have been perfect, certainly was closer to sending the appropriate message.

REPRESENTATIVE FANSLER referred to Representative Eastman's statement that the state needs to get back to swift and faster prosecutions, and he asked whether it was his understanding that a suspended sentence no longer allowed the state to have a swift push for prosecution.

REPRESENTATIVE EASTMAN answered that he does not believe a suspended sentence has much to do with whether the prosecution is swift.

10:46:39 AM

REPRESENTATIVE FANSLER surmised from Representative Eastman's response that a suspended sentence still provides for swift prosecution.

REPRESENTATIVE EASTMAN responded that swift prosecution is handled by other factors and a suspended sentence will come into play after those factors.

REPRESENTATIVE FANSLER surmised that the state will not get back to swift prosecutions because the state is still there by having suspended sentences.

REPRESENTATIVE EASTMAN advised that the state is not there currently, and he would like to get back there. This amendment is part of getting back to swift and certain, and it "focuses on the certain of swift and certain."

10:47:13 AM

REPRESENTATIVE FANSLER asked Ms. DiPietro to walk the committee through why this provision was changed in Senate Bill 91.

MS. DiPIETRO responded that the Alaska Criminal Justice Commission spent quite a while discussing what to do about drug offenses in Alaska. The first piece of information the commission received was the status of Alaska's current situation and found that a significant amount of prison resources devoted to non-violent drug possession offenders suffering from the medical condition of addiction. During the decade prior to criminal justice reform, admissions to prisons for drug offenses increased 35 percent, and the length of stay for felony drug offenders had increased 16 percent. She reminded the committee that prior to criminal justice reform, simple possession of drugs was a class C felony and many of those individuals would have been simple possession felony offenders, their length of stay increased 16 percent. The commission looked at what really works for drug offenders, and the research showed that long prison terms for drug offenders had a low deterrent value. The research also showed that the detection chances of a typical street level drug transaction are at approximately one in 15,000, and with such a low risk of detection, the drug offenders were not likely to be dissuaded by the remote possibility of a longer stay in prison, she explained. It is well known that as to the deterrence effect, offenders do not think so much about what will happen if they are caught, they mostly just think about whether they will be caught. The approach supported by the research de-emphasizes the use of prison for drug offenders with the idea that rather than prison, the offenders would receive treatment. Clearly treatment resources are not sufficient in Alaska, and she offered that 9 out of 10 people in the nation seeking treatment for drug

addiction cannot find treatment. She advised that Medicaid assisted treatment for opioid disorders is "pretty effective," which is found in Alaska, but more is needed. The commission's approach to this serious problem in Alaska, she explained, is to emphasize the use of prison beds for the large buyers and dealers, and instead use treatment in the communities for the "addict dealers," those who possess small amounts of drugs and are possibly selling it to their friends to support their habit. She advised that that was the basis for the commission's recommendation.

10:51:05 AM

REPRESENTATIVE FANSLER asked whether statistics show that there are quantities of drugs in prison and that prison is not a place where people can dry out.

MS. DiPIETRO answered that she believes Representative Fansler's understanding was correct, but she deferred to Commissioner Dean Williams.

10:52:24 AM

REPRESENTATIVE FANSLER requested confirmation that as much as the state tries, Alaska's penal system is not void of drugs. Typically, he noted, putting folks convicted of a drug offense in jail is not the proper manner in which "they dry out" and receive their desired recovery treatment.

10:52:58 AM

CARRIE BELDEN, Director, Division of Probation and Parole, Department of Corrections (DOC) advised that while she does not specialize on the institutional side, the Department of Corrections (DOC) prefers that people not detox within the walls of the state's prisons and, if at all possible, stay in the community to receive treatment and detoxing. Prison is not always the best solution for people who require medical assistance or help through detoxing, the DOC would like to reserve prison for dangerous people and those who are a public safety threat.

10:54:09 AM

REPRESENTATIVE REINBOLD requested current statistics that depicts the number of violent crimes involving some sort of a substance, such as drugs or alcohol.

MS. BELDEN asked that Representative Reinbold repeat her question because if it was a DOC question, she did not have the answer now, but she could get it to the committee.

REPRESENTATIVE REINBOLD asked, nationally and for the State of Alaska, what percentage of violent crimes involve drugs, alcohol, or some sort of substance.

MS. BELDEN suggested that the Alaska Criminal Justice Commission may have researched that issue.

CHAIR CLAMAN explained that the question was not necessarily directed to Ms. Belden and possibly Ms. DiPietro or the prosecutor's office could provide information as to the relationship between people convicted of a violent crime and those convicted of a violent crime with substance abuse issues.

10:55:59 AM

MS. DiPIETRO responded that that is a surprisingly difficult question to answer due to manner in which charges are filed and police reports are prepared, so it is difficult to pinpoint. As far as she knows, no one has been able to calculate what percentage of violent crimes are related to drugs or alcohol. Although, she said she could offer two pieces of information: practitioners will say that alcohol, in general, decreases inhibitions and is often seen in connection with violent crimes; and the Mental Health Trust Authority has shown that about 65 percent of the people in prison have either a mental illness or a substance abuse problem. She added that of that 65 percent, approximately 70 percent have problems with substance abuse. She pointed out that that number is a significant proportion of the prison population with substance abuse problems.

10:57:38 AM

REPRESENTATIVE REINBOLD noted that when people are charged, there are breathalyzers or blood tests, and she offered surprise that the statistics were not available. She asked for confirmation that Ms. DiPietro does not have the data correlating the number of violent crimes committed by people with a mind-altering substance in their body.

MS. DiPIETRO explained that breathalyzer tests are usually used in DUI situations, which normally is not considered a violent crime unless there was injury to another party, possibly. She

advised that it is not at all common for people to have breathalyzer tests performed when charged and convicted of crimes. The Alaska Criminal Justice Commission looked carefully for all available data in Alaska and the data is just not there, at least that the commission could find, but Ms. DiPietro related that it would be terrific if someone would come forward with that information. The commission asked itself, "What are the important things to research," and she commented that there is no disagreement that alcohol, particularly, is a problem in Alaska and it is correlated with criminal activity. The commission did not research that data because it would be very difficult and expensive to research for an outcome that would not add much to the discussion. Clearly, most people agree that alcohol in Alaska is a problem and that it is correlated with criminal activity, she said.

11:00:04 AM

REPRESENTATIVE REINBOLD commented that this information is critical, and it would be another tool for law enforcement to see whether there was anything in the system when charging someone. Amendment 44 is important, she said, because if there is a correlation between drugs/alcohol and violent crimes every tool in the toolbox is necessary possible. The correlation between violent crimes and drugs is critical "because a lot of people are not defining DUIs and other things as violent crimes." She asked whether Ms. DiPietro could get that information to the committee.

MS. DiPIETRO asked for clarification as to whether Representative Reinbold's research question was, whether people convicted of violent crimes had alcohol or drugs in their system.

11:01:36 AM

REPRESENTATIVE REINBOLD requested research regarding the correlation between someone who committed a violent crime and at the time of the crime, had any type of illicit substance in their body. She clarified that her question was not whether they had been convicted and requested the definition of a violent crime.

CHAIR CLAMAN asked Ms. DiPietro what it would take to research the question Representative Reinbold requested, the cost of that research, and where Ms. DiPietro would go to collect that information.

MS. DiPIETRO offered her understanding that the research request is, for all of the people who abuse substances, how many are involved with violent crimes. Initially, she said, she would determine all of the people in Alaska abusing substances, and then determine whether they had ever been charged with a [violent] crime, and not a conviction.

MS. DiPIETRO then corrected herself because Representative Reinbold had actually said "committed a violent crime," and not charged with a crime. Except, she pointed out, it would be impossible to determine whether a person committed a crime if they were not charged with a crime. There could possibly be a determination if they had been arrested with a crime, but she said, "You can see already, from how I'm describing this study, that it would be a very expensive and time-consuming study to do."

REPRESENTATIVE REINBOLD said, "We have our mental health, we have lots and lots of money, that was established so long ago." She commented that it is unacceptable that Ms. DiPietro does not have data on the linkage between "violent crimes and that," while noting that she lacks confidence in the criminal justice commission.

11:04:22 AM

REPRESENTATIVE EASTMAN referred to the crimes being discussed in Amendment 44 and asked whether the discussion was about drug use.

MS. DiPIETRO opined that the Amendment 44 is for persons charged and convicted of drug possession. Although, she said, she has not had a chance to closely review the amendment.

CHAIR CLAMAN said that there is nothing in this amendment having to do with violent crimes, it is strictly regarding drug possession.

REPRESENTATIVE EASTMAN added, "Or, drug use."

CHAIR CLAMAN clarified for Representative Eastman that it is about drug possession and drug use.

REPRESENTATIVE EASTMAN commented that he had not found "anything here" about drug use, and that he is actually sympathetic to not identifying drug addicts and putting them in prison simply

because they are drug addicts. In the event this had to do with drug use, it would be an entirely different conversation. Since the time these more relaxed statutes dealing with drug possession have gone into effect, how small is the prison population based on these drug laws under current law, he asked.

MS. DiPIETRO replied that the changes under Senate Bill 91, in general, would not have caused release for those people serving sentences for, what used to be, class C felony drug possession. The question then becomes, who is currently going to prison. Ms. DiPietro referred to the October 22, 1917, Alaska Criminal Judicial Commission Annual Report, page [14, Figure 10: Drug Admissions] and noted that between FY16 and FY17, drug admissions for a class C felony fell by 68 percent because drug possession is no longer a class C felony. The question then is, how many people are going to prison for misdemeanor drug possession crimes, and she noted that the percentage is quite small.

MS. DiPIETRO, in response to Representative Eastman's question as to how it has affected prison beds, answered that the admissions for class A misdemeanor drug offenses rose from "97 to 181," which is a small number. The net effect would be that less prison beds are being used for drug possessors, post-criminal justice reform, she offered.

11:08:46 AM

REPRESENTATIVE LEDOUX asked the definition of drug possession in the fourth degree.

MR. SKIDMORE answered that misconduct involving a controlled substance in the fourth degree is currently classified as a class A misdemeanor. He explained it is possession of almost all illegal narcotics or drugs, unless at the time of possession the person had the intent to distribute, which would make it a felony.

REPRESENTATIVE LEDOUX asked the definition of drug possession in the fifth degree.

MR. SKIDMORE responded that misconduct involving a controlled substance in the fifth degree talks about possession of schedule VIA controlled substances, which is generally understood to be marijuana. He explained that it can also be possession of one or more preparations, compounds, mixtures, or substances of an aggregate weight. At the time of the marijuana initiative, that

statute was not repealed, it is still on the books, but is not necessarily enforced, he added.

11:10:52 AM

REPRESENTATIVE LEDOUX surmised that the issue is actually drug possession in the fourth degree, which is just about everything other than marijuana.

MR. SKIDMORE opined that the only other substance not listed under fourth degree is "GHB, which was otherwise known as the date rape drug," which is still a felony.

CHAIR CLAMAN asked about [schedule] IIIA controlled substances, because the fifth degree includes reference to possession of [schedule] IIIA controlled substances.

MR. SKIDMORE opined that Chair Claman was looking at a statute book published in the beginning of 2016, which would not include the changes to the schedule after Senate Bill 91. Schedule IIIA substances should be found as a misdemeanor crime and possession of those substances would be a misdemeanor crime, he said.

11:12:10 AM

REPRESENTATIVE LEDOUX noted that after thoroughly reviewing Amendment 44, she could not determine its purpose, and asked what the law was prior to Senate Bill 91, the law currently, and the law under Amendment 44.

MR. SKIDMORE explained that prior to criminal justice reform there was a fairly detailed framework of how to address controlled substances. Under current law, much of that framework has changed and shifted. He offered that it would be difficult for him to explain the differences succinctly, so he would focus his answer on Amendment 44.

REPRESENTATIVE LEDOUX surmised that this amendment does not take the law back to the law prior to Senate Bill 91.

MR. SKIDMORE agreed, and he explained that the amendment does not reorganize the structure of how conduct is criminalized, this amendment is focused solely on sentencing.

11:13:46 AM

REPRESENTATIVE LEDOUX explained that her confusion related to AS 12.55.135(n)(2)(A)(B), Amendment 44, page 1, lines 12-21.

> (2) a sentence of [SUSPENDED IMPRISONMENT GREATER THAN]
>
> (A) **suspended imprisonment greater than** 30 days,if the defendant has not been previously convicted of an offense under AS 11.71 or a law of this or another jurisdiction with elements substantially similar to an offense under AS 11.71; or
>
> (b) **active imprisonment greater than** 180 days, if the person has been previously convicted of an offense under AS 11.71 or a law of this or another jurisdiction with elements substantially similar to an offense under AS 11.71.

CHAIR CLAMAN offered that under current law, under misconduct involving a first offense for a controlled substance in the fourth degree, the eligible sentence is zero to 30 days of suspended time, and that does not change under Amendment 44.

CHAIR CLAMAN explained that it is zero to 30 days for drug possession, which is essentially a drug user, and the zero to 30 days means a strictly probation misdemeanor sentence for the first offense. He added that under current law for the second offense, the eligible sentence is zero to 180 days of suspended time with no active jailtime for the second offense for someone solely charged with drug possession and one prior conviction for possession of drugs.

11:15:02 AM

MR. SKIDMORE advised that he agreed with the first part of Chair Claman's explanation; except, he was unsure he agreed with the second part of his answer.

CHAIR CLAMAN clarified that he was not asking about the amendment, he was asking about the current law.

REPRESENTATIVE LEDOUX surmised that under current law, the first time ...

CHAIR CLAMAN explained that the first-time offense is zero to 30 days suspended, and for second offense, for possession only, is zero to 180 days suspended. He added that Amendment 44 does not make a change to the first-offense because it is still zero to 30 days suspended. As to the second offense, the amendment

changes the law so that the court "may, but is not required" to impose jailtime, and the range of permissible jailtime on the second offense would be zero to 180 days. He pointed out that the court could still impose suspended time and zero active jailtime, but under the amendment the court would have the option of sentencing up to 180 days of jailtime.

11:16:27 AM

REPRESENTATIVE LEDOUX surmised that currently, the court does not have the option of imposing any jailtime for a second offense.

MR. SKIDMORE noted that there are two categories, active jailtime and suspended jailtime. Active jailtime is that the person is going to jail now; and suspended jailtime places the person on probation with the possibility of going to jail if they violate their conditions of probation. Under current law and for the second offense, the person would be on probation under a certain amount of suspended time, and Amendment 44 shifts it to the possibility of active jailtime. He noted that the court could do either one under Amendment 44.

11:17:17 AM

REPRESENTATIVE LEDOUX commented that one of the ideas behind criminal justice reform is treatment rather than jail.

MR. SKIDMORE responded that treatment is absolutely one of the primary goals of the criminal justice reform efforts, getting individuals into treatment rather than simply locking addicts up in prison.

REPRESENTATIVE LEDOUX asked, assuming treatment beds were actually available, whether a more potent tool would be to advise the person that they could either go to treatment or go to jail.

MR. SKIDMORE commented that there is a greater incentive for a person to engage in treatment when there is the risk of jailtime. In offering the counter-point, he remarked that it could be argued that the person could be told that they have to go to treatment or go to jail; or, advise the person that they they will be put on probation and they must go to treatment, and if they violate their conditions of probation, they will go to jail. The distinction, he described, is that it depends on whether that treatment requires residential treatment versus

out-patient treatment. The reason for the distinction, he explained, is that the court's ability to order someone into residential treatment is based upon its ability to order someone to go to jail in the first place.

REPRESENTATIVE LEDOUX surmised that the person is more likely to end up in residential treatment if the court has the authority to put them in jail.

MR. SKIMORE explained that if residential treatment is what is required, the possibility of jail under Nygren v. State of Alaska, [658 P.2d 141 (1983)] is the legal analysis.

11:20:31 AM

REPRESENTATIVE REINBOLD asked Mr. Skidmore whether he was aware of any correlation between substance abuse and violent crimes.

MR. SKIDMORE responded that it is accurate that many of the crimes being prosecuted involve people under the influence of substances. Except, he pointed out, Representative Reinbold's specific questions have been about statistics, and he does not have statistics from his own experience as to the amount of cases that involve substance abuse. The Department of Law's case management system and data base does not include the number of people who have been under the influence of controlled substances at the time they committed a violent crime, he remarked.

11:22:43 AM

REPRESENTATIVE REINBOLD asked whether there is any correlation between substance abuse and violent crime.

MR. SKIDMORE responded that he recognizes that Representative Reinbold would like a yes or no answer, but he does not know of a correlation. Correlation, he pointed out, says that there is a strong connection, and he is unaware of the number of people abusing substances that never engage in violent crimes, so he could not say that that correlation exists. While he is aware that a number of violent crimes occur as a result of someone being under the influence of a controlled substance or alcohol, he could not say that that results in some sort of correlation or causation.

REPRESENTATIVE REINBOLD commented that news casters appear to know whether methamphetamines were involved, and she is

"appalled" by Mr. Skidmore's "answer that is complete "loopty doopty, we have no idea." She asked whether "hanging longer times" over the abuser's head would be a good tool to motivate them to get into treatment.

MR. SKIDMORE responded that she had spoken about class B misdemeanors, and clarified that drugs are not class B misdemeanors - they are class A misdemeanors; therefore, the 10 days is not associated. The concept of whether or not the possibility of jailtime provides assistance is certainly a theory, wherein the threat of jailtime seems to make sense, he said.

11:26:22 AM

REPRESENTATIVE REINBOLD asked whether the tool of a longer jail sentence would help prosecutors motivate these defendants into treatment. She further asked whether a class A misdemeanor is 30 days.

MR. SKIDMORE answered that a generic class A misdemeanor currently has 30 days, but exceptions are carved out for crimes against persons for domestic violence that can be up to one year. Except, he pointed out, drugs do not fall under that same classification of 30 days, it has a separate sentencing provision wherein it is currently 30 days suspended for a first-offense, and up to 180 days suspended for a second or subsequent offense. Amendment 44 read that for the second or subsequent offense, a court has the discretion of zero to 180 days, and he remarked that he believes that tool would be helpful.

11:27:52 AM

REPRESENTATIVE KOPP surmised that Amendment 44 read that the court would not impose active imprisonment greater than 180 days if the person was previously convicted of a drug offense. He asked whether he was correct.

MR. SKIDMORE advised that the way he read the amendment, it is a six-month cap.

REPRESENTATIVE KOPP referred to an earlier question as to why the state does not do drug test every violent offender. He explained that as the arrests occur, for any offense or violent crime, there is always anecdotal evidence, such as smelling alcohol wherein a breath test would take place. A intoximeter would be involved in the event of an injury or crime against a

person, and a crime against a person would involve a blood test. Now, he said, the only way to really know what is in a person's system is to perform a blood test, and if the goal is a quantitative analysis verses qualitative analysis, the costs are in in the area of sometimes thousands of dollars, and a qualitative test was $500 for a single test. He asked how expensive it was to definitively identify a drug in the system of someone who had committed a violent crime, and whether it is still as difficult to perform the test currently as it was in the past, as to the cost and ability to perform the tests.

MR. SKIDMORE answered in the affirmative.

11:31:02 AM

REPRESENTATIVE EASTMAN noted that Amendment 44 is focused simply on the penalties imposed under the state's current laws, Amendment 44 looks back to the penalties in existence prior to SB 91 and looks to return to some of those penalties. Under current law and "these penalty changes," he asked the effect on law enforcement and prosecutors in not having this jailtime as an option, and the impact that law enforcement and prosecutors have seen on the street.

MR. SKIDMORE responded that his question was difficult to answer because the referrals that come to the Criminal Division for this type of crime, at the moment are "not very large." He said he does not know the precise reason for that, although, one could argue that it is due to the budget cuts and the lack of resources to handle every case that comes into the division.

MR. SKIDMORE added that the lack of resources has an impact on the crimes his office is able to prosecute, he remarked, and it has an impact on what offenses officers refer to his office. The department carefully reviews drug prosecutions and drug crimes while recognizing the current opioid epidemic in Alaska. In addressing the problems with opioids in the state, the department has been working aggressively on a public safety action plan, and "this is a tool." He said that he does not know whether it is the right tool, but those issues are being reviewed carefully. From his standpoint, he said, he looks at the whole process and appreciates the desire of folks to give prosecutors the right tools. Except, he pointed out that the tools the prosecution identified in SB 54 are the tools it needs right now. He said he does not know what impact the changes have had, and that there are not a lot of prosecutions for possession of drugs currently.

11:35:00 AM

REPRESENTATIVE EASTMAN commented that if Mr. Skidmore could not tell the committee the impacts, then to walk the committee through how he determines how to allocate the finite resources that the DOL does have available. He referred to the referrals the DOL receives for potential convictions that have no opportunity for jailtime attached and asked whether his office is actively pursuing the referrals that it does receive.

MR. SKIDMORE clarified that when the DOL distributes resources and evaluates cases as prosecutors, it is not necessarily looking at the amount of jailtime someone might receive for a crime to decide whether it is a priority. The DOL does look at, "what is it that is on our plate right now," and in the Anchorage office there are 29 prosecutors with 40 plus active homicides currently on their places. He advised that the Anchorage office will focus on those biggest cases, the homicides, sexual assaults, and focus on what they need to do for those sorts of cases. The Bethel office has seen increases in violent crimes and property crimes, which is where he will initially focus those resources. Whenever the DOL decides to prosecute a possession of drugs case, it has nothing to do with the penalty associated with it, it is due to these other significant crimes and where the DOL must focus its priorities. Those cases have a direct correlation to public safety because someone was harmed, which is not to say that drug crimes do not end up with people being harmed. Currently, he pointed out, the DOL is "beyond its max" trying to deal with those felony crimes and the focus on domestic violence, sexual assault, homicides, and other felony crimes. The referrals to the DOL have been dramatically reduced, and he reiterated that the department is currently focused on felonies, but some drug possession cases may be pursued.

11:38:01 AM

REPRESENTATIVE EASTMAN referred to the DOL focusing on these felonies and core priorities and asked whether he sees the trend of those felonies staying the same, increasing, or whether there is light at the end of the tunnel. When the DOL might have the opportunity to shift its attention back to these less directly related to public safety types of offenses and pursuing those convictions.

MR. SKIDMORE commented that he does not know what the future holds in terms of the types of crimes referred to the DOL. Currently, he reiterated, the trend is moving up and that he does not know what will cause that trend to shift, but the DOL is working on that issue of making the trend shift.

11:39:12 AM

CHAIR CLAMAN referred to the current version of AS 12.55.135(n), providing suspended sentences for the first and second offenses, and asked whether those are all of the tools the DOL needs right now to do its job effectively. He further asked whether the DOL is seeking any change to AS 12.55.135(n).

MR. SKIDMORE responded that the DOL is not seeking any changes to AS 12.55.135(n) at this time.

CHAIR CLAMAN asked Ms. DiPietro whether she had located any national statistics depicting a relationship between violent crimes and substance abuse.

[MS. DiPIETRO was offline.]

11:40:27 AM

REPRESENTATIVE REINBOLD commented that Mr. Skidmore is in a "tough situation because I recognize that you're here on behalf of the attorney general representing the Department of Law. Not necessarily fighting for the prosecutors. But, I'm really happy that -- that the trend that you stated -- that the trend is going up for violent crimes and -- and drug activity, it appears." She asked whether Mr. Skidmore would say that drug activity is increasing or decreasing under current law.

MR. SKIDMORE expressed that first and foremost he would correct Representative Reinbold's misrepresentation of his testimony. Mr. Skidmore stressed that he is sitting here fighting for prosecutors and trying to make sure that the prosecutors receive the right tools. He further stressed that he had indicated previously that, currently the DOL has not reached any conclusions about what tools are the right tools when it comes to dealing with controlled substances. He suspects, he said, that the DOL will be before the committee at some point to talk about tools. He stated that he is not testifying today asking for any such tools because the DOL has not reached those conclusions at this time.

MR. SKIMOPRE further expressed that when he testifies on behalf of the Department of Law (DOL) and on behalf of Attorney General Jahna Lindemuth, that means he is testifying on behalf of the prosecutors. Attorney General Lindemuth is, without a doubt, fighting for prosecutors each and every day. "And, I will not tolerate anyone who suggests otherwise." As to the trends and the uses of substances, he reiterated that he does not have the data as to what is happening with the uses of substances. He further reiterated that he is seeking that information himself and he has asked for the information in any number of different places. He pointed out that that is one of the factors in helping the DOL determine its next correct steps.

11:42:27 AM

REPRESENTATIVE REINBOLD advised that it was "not a misrepresentation in my mind. It's not about you tolerating my positions and the 18,000 people that I represent. It's not about that. I am bringing very important positions to the table." She requested a resolution from all of the DOL's prosecutors offering their support for all the recommendations from the Justice Commission. Representative Reinbold asked whether Mr. Skidmore has seen an increase or decrease in drug activity in Alaska under current law.

CHAIR CLAMAN pointed out that Mr. Skidmore had answered the question previously, but he would give him a chance to answer the question a second time.

MR. SKIDMORE reiterated that he does not know whether there is an increase in drug use all across the state, it is well known that an opioid epidemic is causing problems. He does not have the statistics to say precisely what is happening in that area, he reiterated, and the statistics he has deal with the crimes the DOL prosecutes. Mr. Skidmore emphasized that he could not say precisely that there was an increase, or in what amount, or for any particular drug. The opioid crises plagues Alaska and the nation, there has been an increase in deaths as a result of opioid abuse, but his focus is on the prosecution and he could not say how much of the increase in crime is related to opioid abuse.

11:44:22 AM

REPRESENTATIVE REINBOLD questioned whether he knew the trends.

MR. SKIDMORE reiterated that the trends of crimes are up, and they have been up for the last several years.

11:44:52 AM

CHAIR CLAMAN asked whether Ms. DiPietro was able to locate any federal statistics regarding the connection between substance abuse and violent crimes.

MS. DiPIETRO responded that she looked around the internet and found a study by the Bureau of Statistics wherein in it interviewed inmates in state and federal prisons and asked whether the inmates committed their crimes to get money for drugs. Interestingly, she commented, only about 8-9 percent of violent offenders in state prisons and local jails said they had committed their violent crimes to secure money for drugs. There is evidence within the study that drug related homicides were about 4 percent in 2007, she noted that the statistics only applied to homicides for which the circumstances were known, so that would exclude some instances where the circumstances were unknown. Within the study, she said, victims of violent crimes were interviewed as to whether they believed the offender was using drugs or alcohol at the time of the crime. Approximately 6 percent of the victims believed that the offender was under the influence of drugs, and a significant percentage of victims responded that they did not know. She advised that she had offered this information to the committee as the little bit of information that is out there.

11:46:46 AM

CHAIR CLAMAN asked the date of the study and the time period it reflects.

MS. DiPIETRO answered that, unfortunately the study is a little old in that the victims' survey was performed in 2007, and the interviews of the inmates in prison and jail were performed between 2002 and 2004.

CHAIR CLAMAN remarked that all of the data is more than 10 years old.

11:47:17 AM

REPRESENTATIVE REINBOLD described this information as "baloney research" because to survey inmates and ask them a question, "did you beat the crap out of someone to secure money for drugs"

is a ridiculous piece of information to bring forth to this committee. She said that her question was clear, do drugs influence criminal violent behavior.

11:47:57 AM

REPRESENTATIVE EASTMAN noted that Ms. DiPietro mentioned a concern of the commission as to drug users being held in prison, and that possibly jail was not the best place for these people. He asked that Ms. DiPietro explain the data the Alaska Criminal Justice Commission has on drug use in Alaska's prisons.

MS. DiPIETRO responded that the commission does not have information about drug use in prisons, and the commission's recommendation was not necessarily based on the idea that people convicted of drug possession could get drugs in prison, the recommendation was more based on research that it is best for low-level possessors to receive treatment in the community because putting them in prison could actually make them worse.

11:49:20 AM

REPRESENTATIVE EASTMAN asked Ms. DiPietro to speak generally as to whether an inmate is more or less likely to be addicted to drugs upon their release from prison.

MS. DiPIETRO answered that the commission does not have those statistics. She then reminded the committee that the commission looked at recidivism reduction and studied whether people coming out of prison were more or less likely to commit new offenses.

11:50:42 AM

REPRESENTATIVE EASTMAN commented to Nancy Meade, Alaska Court System, that Amendment 44 is confusing to understand because it includes language that is addressed to the courts, wherein "a court may not impose," and the committee is then dealing with what happens after that portion of the language. He asked what the impact has been to judges and the court system, under current statute, that directs courts not to impose these sentences, and in some cases not permitting the courts to impose active imprisonment after a defendant's conviction.

11:51:29 AM

NANCY MEADE, General Council, Alaska Court System opined that she does not have a satisfactory answer to that question. The

judges were trained as to the new laws in effect after Senate Bill 91, they were given checklists as to the penalties, and the maximums and minimums for certain crimes. The judges simply apply the law as written, she offered.

11:52:10 AM

REPRESENTATIVE EASTMAN asked, during the period of time since these laws went into effect, whether the number of convictions for these two offenses stayed the same, increased, or decreased.

MS. MEADE advised that the court system has not collected data on all of the changes pre-Senate Bill 91 and post-Senate Bill 91, so she does not have the answer to that question. Although, she said, there could be a huge data collection effort. The court system has been carefully prioritizing requests for its sole data collector/report writer. The request as to what were the convictions before and after has not been done.

11:53:02 AM

REPRESENTATIVE EASTMAN asked Ms. DiPietro to go back to the time that Senate Bill 91 was being debated, and he requested the court's position, in this specific instance, where the legislation made limitations on what the court could provide.

MS. MEADE stated that, as always, the Alaska Court System is neutral on what penalties can be for certain crimes. and she reiterated that the judges simply apply exactly what the legislature says the maximums and minimums can be for any offense.

11:53:59 AM

REPRESENTATIVE REINBOLD commented that Alaska has horrific statistics and it is known there is a correlation between substance abuse and violent crimes. She said that she believes SB 54 is a step in the right direction, but it is imperative to get tougher drug laws on the books in Alaska. This is a baby step, she described, and it only addresses a sentencing tool for judges to allow for jailtime for second offenders. It is important to have another small tool in the toolbox to help get the drug epidemic under control, she related.

11:55:26 AM

REPRESENTATIVE LEDOUX commented that she was uncertain as to the correlation between drug use and violent crimes. Although, she related, it is clear from the spike in the use of opioids and in shoplifting that there is at least a correlation between people shoplifting and committing crimes of that nature due to substance abuse. In the event the goal is treatment rather than prison, it appears more likely that someone would go into treatment if given the option of treatment or jail. Therefore, she pointed out that it makes more sense to give the judge the option of offering the two options, and currently the judges do not have that option. She said that she supports Amendment 44.

11:56:56 AM

REPRESENTATIVE FANSLER related that he appreciates serving on this committee with its diverse points of view, and he re-emphasized Representative Kopp's point that it is frustrating to not have the data on crimes involving drug and alcohol use. He explained that during his time on the Bethel City Council he discovered that the City of Bethel was not tracking that information either. Knowing that that information could not be tracked in the City of Bethel and how it would work in a village, puts [the difficulty] into perspective. He said that that that information is not available as it is difficult to gather, and there are no tests in the villages. Alaska does not have the ability to perform tests everywhere, and sometimes it takes several days for troopers to arrive in a village to possibly arrest someone. The ability to track that information is not possible, he expressed. He then reminded the committee that Alaska is a diverse state with very different regions and very different aspects to its different issues. He thanked Representative Eastman for continually dwelling on an issue for which he would like to dwell, in that the major reason for Alaska's crime epidemic is not due to Senate Bill 91, it is due to Alaska's lack of resources to make Senate Bill 91 work. Alaska does not have resources to keep the public safe and prosecute crimes due to the "budget cuts, cuts, cuts, cuts," for the last three years from the state's budget, he stated.

REPRESENTATIVE FANSLER commented that this is a rare time wherein everyone agrees that the lack of resources is an issue, and that he is hopeful the next time the decision will be for more revenue, thereby allowing the legislature can act because that is what is needed. He stressed that this is not the time to throw out Senate Bill 91, but rather it is time to obtain the resources needed to properly implement Senate Bill 91. Everyone wants these rehabilitation centers, he pointed out. He said

that he that would not vote for Amendment 44 at this time because the amendment is actually a repeal, together with being part of a process to strip away something that has not yet been given a chance.

12:00:04 PM

REPRESENTATIVE KOPP advised that not all members agree on the fiscal picture, and he was glad to see the "new 10-year revenue forecast was up." The legislature's highest priority is protecting the public, and he pointed out that the Department of Law (DOL) specifically stated that it did not request Amendment 44, and that it is not a tool the department recognizes as needed. He pointed out that Mr. Skidmore advised that the department would come back to the legislature each year and present its recommendations. Representative Kopp reminded the committee that for any delivery of state services, there is not a point in time wherein the legislature would finally arrive in its efforts to reform and build a better system for delivering all state services. The path to success is one of constant renewal and constantly "coming back and looking at what we did." He advised that he has supported several strong amendments that "do make this tougher," SB 54 is leading in the right direction and it will continue to be amended to make it a bill that better protects Alaskans.

12:01:48 PM

REPRESENTATIVE KOPP advised that in various times of his life, he sometimes spent up to six weeks of his life living in small shacks in small areas of Alaska because he was involved in major trials with state prosecutors. He pointed out that prosecutors suffer their own blood, sweat, and tears to bring some cases to resolution while managing witnesses, managing testimony, and managing discovery because that is what it took. He expressed that there is exceeding stress on the state prosecutors simply in doing their job than the committee members could imagine. Unless, he pointed out, the members have worked with prosecutors during these stressful times, the members have no capacity to appreciate the fact that it leaves scars on the souls of those prosecutors protecting Alaskans.

Therefore, he remarked, when the DOL in comes here and tells the legislature what it believes is right, he defers to its judgment. These people have suffered to get to the wisdom they have in order to advise the legislature as to what is needed,

and he stressed that it is to the legislature's detriment that some members ignore and mock these people.

12:0305 PM

CHAIR CLAMAN commented that Amendment 44 is specific to the issue of how the state manages people with drug problems. This amendment, he advised, is not about dealers or people charged with violent felonies, this is simply about how the state treats people with addiction problems. He said that he is reminded of the people he knows who have had alcohol problems over many years wherein some get their problem figured out the first time they go to Alcoholics Anonymous(AA), but others may have not figured it out so well. He is struck by the prosecution and the attorney general advising that, "What we have today, the tools we need is a recognition that people with drug addiction ... we all want them to get it right the first time, but we know realistically that sometimes they don't." Therefore, keeping the statute in the form the prosecution desires, it recognizes that it is tough on crime, smart on spending, improving public safety, and that it is right for Alaska. For all of those reasons he will be a no-vote on Amendment 44., he said.

12:04:38 PM

REPRESENTATIVE EASTMAN offered that this aspect of Senate Bill 91 deals with an assumption there will be access to a greater amount of resources, which "there never will be in this state. There never will be economically, politically." He offered that taxes cannot be raised enough to create the resources to give the opportunity for police officers to arrest, re-arrest, and re-arrest the same person, including traveling, gas, and all of the various things that keep the state from actually treating this process. No one will receive a second conviction because they never receive a first conviction, because they never get that chance, he said. Alaskans can no longer wait for Governor Walker, who directs the Department of Law, to develop the intestinal fortitude to recognize that if Senate Bill 91 did not work, it needs to be changed to match the level of resources the legislature can reasonably expect the Alaskan people to put toward the criminal justice system in the next few years. Currently, he said, that match is not accurate because the state is "totally off the reservation."

REPRESENTATIVE FANSLER maintained his objection.

12:05:47 PM

A roll call vote was taken. Representatives Eastman, Reinbold, and LeDoux voted in favor of the adoption of Amendment 44. Representatives Fansler, Kopp, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 44 failed to be adopted by a vote of 3-4.

12:06:32 PM

REPRESENTATIVE FANSLER offered a statement as follows:

> I just wanted to clarify something, and it didn't seem proper to do it during our amendment process because it wasn't the basis of amendments.
>
> But, we've been continually hearing this idea that this is a rushed process, and that this is trying to be pushed through, and the people are not being given adequate time. And, I just want to clear that up for the folks that are watching. To date, we started this process back on October 5th with this committee, by hearing about this bill with our subcommittees. We've spent over 35 hours hearing this bill now. We spent 4 hours on the 5th, we spent 2 hours on the 16th, we've spent 8 hours on the 23rd, we spent 10 hours on the 24th, we spent 9 hours yesterday. So, there is a massive fallacy to say that this is being rushed through, or to say that people haven't been given adequate opportunity in which to comment, or in which to probe. We're doing that, we've continued to do that, we're still doing that. We have 23 more amendments on our docket, we don't know how many all of those will be offered, but at the pace we're going, that would be approximately 30 more hours. So, I think we need to stop pretending that we're not giving this its due or the people are not getting an opportunity to be heard. Thank you.

12:08:16 PM

REPRESENTATIVE REINBOLD offered a statement as follows:

> First of all, as stated, Senate Bill 91 is the most dramatic criminal reform in the history of Alaska. It's having unprecedented effects on the State of Alaska, on victims, on perpetrators, on businesses, on our resources. It is a tremendous drain on our

resources and it is transforming Alaska. I believe this process is being rushed and I want the people to judge for themselves if we are being cut off. We're being forced to ask questions in a minute, very complicated. This bill, I think was 130 pages long, originally Senate Bill 91, that have had dramatic -- a word or two can dramatically change the impact of the lives of Alaskans. I think to undermine members on the committee and make false accusations that completely defy the 10 Commandments that are behind them, is outrageous. In regard to the time we're spending right now, let's say 40 hours or so, I think that is absolutely a drop in the bucket. A trial may take hundreds if not thousands of hours. I think it is absolutely critical, these changes are going to impact between 700,000 and 800,00 Alaskans potentially. I think taking a thoughtful process and being able to completely understand and have not this baloney research or recommendations from a commission, that many of us haven't even met all of the members. We do not know where, we do not know if there's PEW Foundation influence, we do not know if there's lobby influence, we do not know if they've been traveling and being entitled to many benefits of being on a board. We don't know. We don't know -- they do not seem to have research that I need in order to make informed decisions that are gonna impact. Asking a little survey in a prison, did you beat somebody up to get drug money? I just think that was a lunacy to bring that forward. So, I guess my bottom line is I want good, sound, solid research, not just little surveys committed in a -- in a prison. So, I think it is just critical that we take our time, that we go slow, and I do respect your opinion, I really do. And, I can see that this is a frustrating, long process, but knowing that the bill has been in play, it was waved out of committee, was it yesterday, or the day before, after sitting on it for six months? I have an identical bill, and in addition, we had most of these probably a good -- probably 15 of these amendments on the House floor. You guys decided to table them on June 14th. I think it is critical that we get this right and that we take every moment necessary.

12:11:21 PM

REPRESENTATIVE EASTMAN offered a statement as follows:

> I'll -- I'll simply say that we can spend any number of hours, days, or weeks, in a process and we will have spent that time, but we may well never have gotten to any of the "actual core issues need to be got to." I think not having the opportunity to interact with fellow committee members after I've presented an amendment. I can hear the conversation, that's fine, but having only 60 seconds to respond to any of those things, that's not even a response, that's just a -- I don't know, whatever I get to say at the end. That doesn't permit us to delve to the level of detail that we need to for my constituents to have their concerns heard. I know that for sure. And, I would -- I would say that Representative Reinbold's statement about this being a large reform effort in Alaska is probably an understatement. You know, the Department of Law itself looked at all 50 states and compared our reform efforts to the reform efforts in those other states. Alaska was far and away a much more radical departure, a much more comprehensive reform, if you want to call it a reform, than any other state in the nation. And, it's been very clear that the administration simply wants SB 54 to pass without amendments. That is something that we hear, and we see that reflected in the Department of Law, we see that reflected in the attorney general's office, we see that reflected from the justice commission. Certainly, those who were in favor of SB 91 have countless ways of testifying to the fact that they like what they did, and they want to keep it with very, very few exceptions. But, there is very little opportunity for my constituents, who are not of that opinion, to have their voice heard through this process. So, we could be here for weeks, but unless we do the process right, we're never actually going to reach consensus, we're never going to be able to hear both sides and find the solutions to some very difficult problems that face our state right now.

12:13:36 PM

CHAIR CLAMAN offered his appreciation for the ongoing discussions and debate the committee has been engaged in with regard to SB 54. He noted that some of the upcoming amendments contain issues that the committee had touched on previously and

he will begin shortening the discussion on some of these upcoming amendments to get through this process in a careful and methodical, but efficient manner.

12:14:15 PM

CHAIR CLAMAN announced that the meeting of the House Judiciary Standing Committee was recessed until 1:45 p.m.

1:49:30 PM

CHAIR CLAMAN called the House Judiciary Standing Committee meeting back to order at 1:49 p.m. Representatives Claman, Fansler, Kreiss-Tomkins, Eastman, Reinbold and Kopp, were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

1:49:47 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 45, Version 30-LS0461\N.15, Bruce/Martin, 10/20/17, which read as follows: [The text of Amendment 45 is listed at the end of the 10/26/17 minutes of SB 54.]

REPRESENTATIVE FANSLER objected.

1:49:53 PM

REPRESENTATIVE EASTMAN explained that Amendment 45 deals specifically with drug crimes and it reverts to the classification of drug crimes pre-Senate Bill 91. He said that he offered this amendment as a way to turn back the clock and return to a better state of affairs prior to the passage of Senate Bill 91.

1:51:22 PM

REPRESENTATIVE FANSLER asked whether the amendment makes any possession of drugs a felony.

REPRESENTATIVE EASTMAN responded that the drug offenses that were a felony crime prior to the passage of Senate Bill 91, would be classified as a felony.

1:52:09 PM

REPRESENTATIVE FANSLER surmised that since all of the classes were a felony, that all possessions of drugs would now qualify as a felony.

REPRESENTATIVE EASTMAN explained that only the actual crimes that were felonies prior to Senate Bill 91 would be felonies, and he does not have a breakdown of that percentage.

1:52:42 PM

REPRESENTATIVE FANSLER asked Ms. DiPietro to explain what Amendment 45 would do when compared to current law, and the law prior to Senate Bill 91, including the thoughts behind the "91 roll back."

MS. DiPIETRO responded that Amendment 45 would take the law back to the pre-criminal justice reform situation. She reiterated from her previous testimony that simple possession of drugs without the intent to distribute was a class C felony. The Alaska Criminal Justice Commission received information that admissions to prison for drug offenses had increased 35 percent during the decade prior to criminal justice reform; and the length of stay for felony drug offenders had increased 16 percent. The other part of the amendment, she explained, applies to situations where the offense is a "commercial offense," an offense that involves an intent to distribute. She reminded the committee that the recommendations from the Alaska Criminal Justice Commission were to create a tiered commercial drug statute with the recommendations of amounts of drugs that could be a class B felony or class C felony. She commented that she could not recall the details of exactly which commercial distribution offenses were a class B felony versus the other types of felonies, and the exact amounts. In other words, she reiterated, the main change would be that this is taking that simple possession without the intent to distribute and putting it up to the felony level. As to the commission's reasoning, she further reiterated that research has shown that long prison terms for drug offenders have a low deterrent value, and the chances of a typical street level drug transaction being detected are approximately 1 in 15,000. Therefore, drug offenders are not dissuaded by the remote possibility of a longer stay in prison. Also, she said, research has shown that putting low-risk offenders in prison can actually cause them to recidivate more after their release. Whereas, she explained, these individuals are potentially a greater threat to public safety when they are released than when they went into prison.

1:56:09 PM

REPRESENTATIVE FANSLER surmised that many of the policy arguments and the lines of questioning for Amendment 45, are "incredibly similar" to Amendment 44.

MS. DiPIETRO answered that that is the way she would analyze the amendments.

1:56:45 PM

REPRESENTATIVE REINBOLD asked Ms. DiPietro whether she is paid witness or a volunteer because she was not sure who this testifier ...

CHAIR CLAMAN advised that Ms. DiPietro is the executive director of the Alaska Judicial Council and is a salaried employee.

MS. DiPIETRO advised that she has been the director of the Alaska Judicial Council for approximately four-years. She explained that she is testifying here because the legislature directed the Alaska Judicial Council to staff the Alaska Criminal Justice Commission, and she has been part of the staff and has worked to the best of her ability.

1:57:43 PM

REPRESENTATIVE REINBOLD asked Ms. DiPietro whether she fully stands behind the recommendations of the Alaska Criminal Justice Commission, asked whether she is representing the commission.

MS. DiPIETRO answered that she does not have decision-making authority over the recommendations and that all of the recommendations in all of the reports come from the commissioners. Her role, she explained, is to serve as staff to the commissioners and perform the research the commissioners request that helps them to make their recommendations. She said that she stands behind the research that has been performed, and she supports the commission in any manner the commissioners request.

1:58:47 PM

REPRESENTATIVE REINBOLD commented that she was unsure whether Ms. DiPietro had provided the committee with the research and asked whether the commissioners had asked her to prepare

research as to any correlation between substance abuse and violent crimes.

CHAIR CLAMAN interrupted and reminded Representative Reinbold that she had asked that question three or four times of this particular witness prior to the lunch break. Ms. DiPietro had answered as best as she could, and later found statistical information from a federal study. Subsequently, Representative Reinbold stated that she did not find that research credible and rejected the findings of that research. He asked that Representative Reinbold ask a new question.

1:59:35 PM

REPRESENTATIVE REINBOLD argued that she asked Ms. DiPietro whether she had been asked to perform research on the correlation between violence "and she doesn't have the answer," it was a survey, a little questionnaire and she did not consider that highly dependable research.

CHAIR CLAMAN instructed Representative Reinbold to ask a new question.

1:59:53 PM

REPRESENTATIVE REINBOLD said she would like Mr. Skidmore to specifically review the classes of drugs as to the law prior to Senate Bill 91, and under current law.

MR. SKIDMORE responded that misconduct involving a controlled substance is in four primary degrees, although there were six degrees, he will focus on the four degrees at the felony level because those were generally altered. He explained as follows: misconduct involving a controlled substance in the first degree dealt with providing drugs to minors, or running a criminal enterprise which was a large drug distribution; the next two are misconduct involving a controlled substance in the second degree which deals with methamphetamine, or the making of methamphetamine; misconduct involving a controlled substance in the third degree dealt with the delivery of schedule IIA or IIIA drugs to anyone, providing lower scheduled drugs to minors, or being in possession of higher scheduled IA and IIA when close to a school or youth center; and misconduct involving a controlled substance in the fourth degree, otherwise known as a mix-IV, was really about the possession of drugs that ranged from schedule IA and IIA to various amounts of schedules IIIA, IVA, VA, and VIA drugs. He offered a number of changes, post criminal

justice reform, as follows: primarily, the law changed to create classifications of distribution based on the amount that was to be distributed; and possession of most drugs was changed to a class A misdemeanor.

2:02:30 PM

CHAIR CLAMAN noted that during the discussions on Amendment 44, Representative Eastman had articulated a lack of interest in putting people in jail who were basically drug users charged with possession and were not distributing drugs. He noted that Representative Eastman appeared to be receptive to the notion that folks with substance use issues, and not dealing issues, should be treated differently than those individuals dealing drugs. He asked Representative Eastman, in light of Amendment 44, why he was now offering an amendment that would raise possession of drugs back into the felony level as opposed to keeping it at the misdemeanor level.

REPRESENTATIVE EASTMAN offered that within his earlier distinction, there was talk about drug users and that amendment did not deal with drug use as a crime, it dealt with possession as a crime. He commented that if the committee is simply talking about someone who is a drug addict, he did not believe that was reason enough to put them into confinement. Although, he noted, it may be that a certain part of the person being an addict deals directly with public safety, and in that case, there may be a reason for that person and the public to be protected. He related that his earlier point was that just the fact someone had a dependency issue was not sufficient reason to put them in jail.

2:04:05 PM

CHAIR CLAMAN asked whether that would be a reason to charge them with a felony.

REPRESENTATIVE EASTMAN responded that just by virtue of using a drug, he does not have anything that he would say specifically. He explained that what he is doing with Amendment 45 is understanding that there have been some significant impacts in moving from the "old regime to the new regime," and those impacts have not served the public's interests. While, he said, he does not know whether there is the opportunity to reconstruct a better solution, the "old solution" was probably preferable. As a starting point, he would like to go back to the previous law because it worked better.

2:05:12 PM

CHAIR CLAMAN surmised that Representative Eastman was not interested in putting people with drug abuse issues, but are not dealing drugs, in jail.

REPRESENTATIVE EASTMAN explained that the distinction he drew earlier was the fact that someone was using drugs, as reason for putting them in jail. Again, he said, there is a distinction between using, possessing, and distributing, so his earlier focus was to speak strictly on drug use, which was not at all part of that amendment, which is why he drew that distinction.

2:05:52 PM

REPRESENTATIVE KOPP related that he agrees with Representative Eastman's take in these situations, and he is sympathetic with drug addicts and not being put in prison simply because they are drug addicts. Under current law, a person possessing any amount, meaning there "was no dosage limitation, there was no felony threshold, it was any amount." Wherein possession of one grain of hydrocodone, without a prescription, was a class C felony. He said, "Just like pointing a gun at somebody's head and saying, 'I'm going to blow your brains out' was a C felony," just like stalking someone and threatening them with a firearm was a class C felony, or sexually abusing someone who was mentally incapable, is a class C felony. The issue of proportionality in the law has been under and the offense should always fit the crime, meaning justice in proportionality. He asked Representative Eastman whether he could reconcile what he had said earlier to what this amendment does, which is turning this type of an offense into proportional as to those same levels of felonies he had described.

REPRESENTATIVE EASTMAN opined that there is a false dilemma wherein there is option 1, which existed prior to Senate Bill 91; and in option 2 there is a situation where those who are addicts are not being put into prison any longer and receive the treatment they need, plus they are not committing additional crimes against the public. He commented that he has not seen option 2 materialize so he does not believe that that is really on the table, even though that is what was intended with Senate Bill 91. Therefore, he offered, short of finding a way of actually achieving that in real life, he would like to go back to the previous law, "all be it imperfect" because it is better

than the current law. He related that that is what he is hearing from his constituents.

2:09:27 PM

REPRESENTATIVE REINBOLD asked Mr. Skidmore whether Senate Bill 91 reduce possession of less than one gram of heroin, or any schedule IA drugs, from a class B felony to a class C felony.

MR. SKIMORE explained that criminal justice reform reduced possession crimes from class C felonies down to class A misdemeanors. Other crimes wherein possession with the intent to distribute was attached and considered drug trafficking or drug dealing of which were felonies that may have been altered. No distribution was reduced to a misdemeanor under the criminal justice reform efforts, he said.

2:10:26 PM

REPRESENTATIVE REINBOLD surmised that Senate Bill 91 does not reduce possession of less than one gram of heroin or any schedule IA drugs from a class B felony to a class C felony. She asked whether that was "a no?"

CHAIR CLAMAN advised that Mr. Skidmore did answer that possession of quantities [audio difficulties] from quantities of heroin are reduced to a misdemeanor.

MR. SKIDMORE responded that his answer to her question was about quantities and quantities were not generally found in the statutes, as it related to mere possession. Quantities, he explained, generally dealt with distribution in prior law. He said he was trying to unpack her question because there are two pieces there and they do not make sense to him. In the event the question was whether possession was reduced, the answer is yes, but it started as a class C felony and not a class B felony.

2:11:27 PM

REPRESENTATIVE REINBOLD advised that the question was whether it reduced possession of less than one gram of heroin or any schedule IA drugs and prior to Senate Bill 91, what was possession or [audio difficulties] "class IA drugs?".

CHAIR CLAMAN interrupted and directed that Mr. Skidmore had answered the question, simple possession of heroin was a class C felony. He instructed her to ask a new question.

2:11:50 PM

REPRESENTATIVE REINBOLD asked whether Senate Bill 91 reduced misconduct involving controlled substances, generally, by a class and resulting in lower penalties.

MR. SKIDMORE answered that criminal justice reform did reduce a number of classifications of drug offenses, and as a general statement, they were reduced by one level.

2:12:21 PM

REPRESENTATIVE REINBOLD asked whether Senate Bill 91 requires reinvestment to go directly toward recidivism.

MR. SKIDMORE responded that it was not an easy question to answer, and he was unsure he could offer all of the details related to the question.

MS. DiPIETRO replied that reinvestment and recidivism reduction programs and a recidivism fund are part of Senate Bill 91, There is also language in Senate Bill 91 that a portion of the marijuana tax will go into the recidivism reinvestment fund to be directed toward the Department of Corrections (DOC), Department of Health and Social Services (DHSS), and one other department, for the recidivism reduction activities.

2:14:10 PM

REPRESENTATIVE REINBOLD re-stated her question by referring to the savings that Commission Dean Williams had claimed yesterday and asked whether Senate Bill 91 mandated that all of the money that is saved by letting people out of jail is to be appropriated into recidivism reduction programs.

MS. DiPIETRO noted that she was unsure what Representative Reinbold meant by mandated, but fiscal notes were submitted by the DOC with Senate Bill 91 depicting reductions to its institutions budget of approximately $3 million in FY17, and approximately $18 million in FY18. Those savings were used for reinvestment, she offered.

CHAIR CLAMAN surmised that Representative Reinbold was asking whether there are earmarked funds coming from the savings. He noted that that would be inconsistent with the legislature's whole budget process such that, when money is saved in one place that money basically goes back, and the legislature has the authority to re-appropriate those funds. He opined that there is not anything in Senate Bill 91 that earmarks funds in a broad term, in terms of savings. There is some indication about funds raised from the marijuana tax directed toward certain things, but the answer, in broad terms, is that they are not earmarked.

2:16:03 PM

REPRESENTATIVE REINBOLD asked whether Senate Bill 91 deleted the requirement for those persons on probation or parole to have "sober living" as a part of the programs for rehabilitation and recidivism reduction.

MR. SKIDMORE replied that he did not know the answer to that question.

REPRESENTATIVE REINBOLD recalled that Commissioner Williams had stated that the DOC "released 10,000 to 11,000 people back out on the streets, and that even with an increase of crime there is 500 less people in jail." She commented that one of her "beefs with Commissioner Williams is that he just let 32 male prisoners in a jail that is about a half a mile from a high school, from a campground, from trails, and from a neighborhood." The jail is a minimum-security women's prison that now has 32 males incarcerated, including the murderer who killed the sister of a person living in Eagle River. She asked that by releasing so many inmates and having so many more people out on the streets, whether this poses any additional risk to police officers, prosecutors, public safety, or to the public.

MR. SKIDMORE answered that as a prosecutor, he knows that almost everyone sentenced to prison will be released from prison because few people stay in jail for the rest of their lives. The question is not one of, are they going to come back out, but rather, when they are released what efforts the state can take to protect the community. He said that state entities, such as the parole board, assess whether a person should be released earlier than not, based on risk. A person released on parole has a parole officer, and a person released on probation has a probation officer. The question is that when a person is released, what can the state do to reduce the risk to public safety, which is where the criminal justice reform has focused.

CHAIR CLAMAN reminded Representative Reinbold that he had advised the committee that he would make a real effort to narrow the questions. As to the question Representative Reinbold just asked, this amendment deals with the specific question of whether the state should be returning a large number of possession only drug offenses from a misdemeanor level to a felony level. Representative Reinbold's question had nothing to do with whether to return misdemeanor drug crimes to felony drug crimes. He warned Representative Reinbold that if she was not asking questions focused on the specifics of Amendment 45, he would not allow the question to be answered because the committee needs to focus on the issues that are here, and not the broader issues with which the committee had been discussing literally for hours.

2:19:51 PM

REPRESENTATIVE REINBOLD declared a point of order. She advised that the Alaska State Legislature Uniform Rules state that Chair Claman cannot deny to her what Chair Claman does not deny to himself. She noted that police officers brought this question to her with the belief that with these changes in Senate Bill 91, they are at a greater risk. Amendment 45 has everything to do "with that. He did not answer my question in any way. He completely regurgitated and promoted the 'criminal justice center.'" She advised that Mr. Skidmore did not answer her question as to whether police officers, the public, and businesses are at a greater risk by releasing this dramatic number of prisoners causing havoc in the communities, she commented.

CHAIR CLAMAN ruled that, as chair, he has the authority to direct the conversation to the issues before the committee on this particular amendment. He pointed out that it is reasonable for him to exercise his authority in that manner and he thanked Representative Reinbold for making that point.

2:21:02 PM

REPRESENTATIVE EASTMAN referred to the discussion that Amendment 45 deals primarily with the simple use of illicit substances, and further referred to Amendment 45, page 7, [lines 19-22], and asked whether it falls within the use category or something a bit higher than use there.

MR. SKIDMORE pointed out that he had not stated that this amendment only deals with possession. He advised that the language on page 7, lines 19-22, "are returning delivery or manufacturing," essentially known as drug trafficking or drug dealing. In his view, there is a complete reversal in the amendment of all of the changes made in Senate Bill 91 and returns to the law prior to Senate Bill 91. Mr. Skidmore stressed that his testimony has been that there were two types of changes, possession and delivery, and Representative Eastman pointed out one of the areas in which delivery was impacted.

2:22:31 PM

REPRESENTATIVE EASTMAN said there is "a parallel here" as to what was accomplished in Senate Bill 91 in reducing penalties and sanctions as to certain drug offenses across the board and during the time in the 1920s wherein certain prohibitions against alcohol were repealed. He opined that, overall, the crime rates went down when the prohibitions were repealed, and whether that had been observed in this situation.

MR. SKIDMORE acknowledged that he remembers prohibition, but he is not familiar with the crime rates that existed before, during, or after that timeframe, and he could not speak to any comparisons or whether the changes had any negative impacts on the crime rates that are being seen today. That, he explained, is one of the things "we are trying to monitor" and figure out because crime was on the rise before any criminal justice reform efforts were implemented. Those trends, for many categories, have remained consistent so it does not appear as though the criminal justice reform efforts impacted those rates, he advised. Although, he added, there are other rates that seem to have changed a bit, but it is still too early to determine the outcome.

2:24:56 PM

REPRESENTATIVE EASTMAN noted that Skidmore did not yet know the impacts these changes to the drug laws have had on crime and requested a rough estimate as to how long before that information is available.

MR. SKIDMORE reiterated that the DOL is actively determining what actions can be taken to improve public safety in addressing the crime rates currently in effect. He said that expected some of those things will be discussed in the next regular session, but the question as to whether these changes in drug laws have

impacted crime rates, he does not have an exact timeframe in which he will know that information. He stated that he does not know whether the changes in crime rates would be evident to him when the next set of statistic come out.

REPRESENTATIVE EASTMAN asked whether it would be years or decades.

MR. SKIDMORE pointed out that the next set of criminal justice statistics, published at the same time every year annually, is offered around September or October of 2018. He said that "we will try to monitor it beyond just those."

2:26:57 PM

REPRESENTATIVE LEDOUX noted that Mr. Skidmore had remarked that some of these issues might be dealt with during the next session.

MR. SKIDMORE clarified that he had said there was the possibility that within the action plan, there would be things the DOL would propose, but he did not yet know.

2:27:14 PM

REPRESENTATIVE LEDOUX surmised that Mr. Skidmore did not have any idea right now what he might propose, but what were his druthers.

MR. SKIDMORE explained that it was not about his druthers, the Department of Law (DOL) is looking into various issues and those conversations have not yet reached a conclusion. The DOL is trying to get there quickly and when it does, that information would be shared with everyone, he promised.

REPRESENTATIVE LEDOUX surmised that Mr. Skidmore does not have the authority to advise the committee as to any of the issues being reviewed.

MR. SKIDMORE advised that it was not that he did not have the authority, but rather that it would be premature for him to comment on issues while they were still being discussed internally.

2:27:54 PM

REPRESENTATIVE LEDOUX noted that since the committee is available and working on a crime bill, whether the things the DOL is looking into could be fixed at this time.

MR. SKIDMORE answered that while he greatly appreciates Representative LeDoux's invitation, when the DOL is ready, it will talk about it with folks.

2:28:21 PM

REPRESENTATIVE REINBOLD declared a point of personal privilege. She said she would like to put some research down because she has done research and the questions ...

CHAIR CLAMAN ruled that he would not grant a point of personal privilege because the committee is considering Amendment 45, after the discussion of this amendment he would allow her to put her research on the record.

2:28:43 PM

REPRESENTATIVE EASTMAN asked when the changes to the state's drug laws go into effect.

MR. SKIDMORE replied that these changes went into effect 7/2016.

REPRESENTATIVE EASTMAN asked Mr. Skidmore that, as a prosecutor and based upon these new laws, to share his greatest success story coming out of these newly changed laws, how they have helped the public, the DOL, and the justice system.

CHAIR CLAMAN stated that for the same reasons as above, that question is much broader than Amendment 45 and he would not allow the witness to answer that question.

2:29:49 PM

REPRESENTATIVE EASTMAN referred to the changes being made in Amendment 45, noting that he does not want to undo things that are working well, and requested an example of successes coming out of these changes.

MR. SKIDMORE pointed out that for the last four-to-five years he has not personally handled cases because he manages people and reviews policy, so he does not have an example of a particular success or failure.

2:31:15 PM

REPRESENTATIVE KOPP said he would speak to the issue of arresting drug offenders and offered that a challenge is the supervision of offenders. He noted that "We only had supervision if you were a felon, and then we could -- you know, we could get them under supervision and treatment." That, commented, was one of the problems the state had in the system, no misdemeanant supervision. He asked whether, currently, there is anything in the law or with the Pretrial Enforcement Division that is coming on line January 1st, that would allow the state to actively supervise drug misdemeanant offenders and help keep them in recovery.

MR. SKIDMORE noted that the Pretrial Enforcement Division evaluates and monitors people prior to trial and files conditions of release. It is not about whether the person is in treatment or whether they have a job, he explained, it is just conditions of release. The type of supervision Representative Kopp was referring to is post-conviction, and he advised that there is not anything that helps the state with supervision for misdemeanors that it had before, or it has currently.

2:32:27 PM

REPRESENTATIVE KOPP surmised that "that is a hole," in that the state still cannot supervise misdemeanant drug possession offenders "either if you are arrested" for such an offense up to trial, or post-conviction under probation after trial.

MR. SKIDMORE explained that the state does not have supervision by an officer in the manner in which Representative Kopp described with felonies. He related that Senate Bill 54 expands the Alcohol Safety Action Program (ASAP) to include monitoring of treatment for those misdemeanor drug offenses. He explained that it is not a probation officer such that Representative Kopp had originally described, but he did not want to leave the committee with the impression that there was nothing that would be looking at that issue. One of the issues identified by both law enforcement and prosecution was the need to be able to monitor those people, he pointed out, and that is why this is included in SB 54.

CHAIR CLAMAN noted that the Pretrial Enforcement Division covers people charged with misdemeanors and felonies. For example, someone who elected to go into drug court, or even as a condition of their release was that they go to ASAP, the

pretrial supervision would track whether the person attended their ASAP appointments. That, he offered, would be something for which the Pretrial Enforcement Division would provide services in terms of monitoring the person's compliance with the pretrial conditions of release.

2:34:26 PM

REPRESENTATIVE REINBOLD said that she would offer information with regard to the Manhattan Institute, particularly directed to Representative Eastman for bringing forth Amendment 45. Alaska did the most radical criminal justice reforms in the nation with some of the "softest crime laws and drug sentencing laws on the table." California ...

CHAIR CLAMAN interrupted Representative Reinbold and pointed out that her information does not have anything to do with Amendment 45 and the issue of lowering the penalties for drug possession and other offenses. While he understands that, in her view, everything relates to everything else, he needs a specific question about these drug offenses.

2:35:20 PM

REPRESENTATIVE REINBOLD declared a point of order.

CHAIR CLAMAN stressed to Representative Reinbold that the committee must be orderly in its process and she could make her point of order. In the event the committee is unable to keep questions focused on this amendment, and because no members were in the que, the committee would move to discussion.

REPRESENTATIVE REINBOLD declared a point of order. She said that Chair Claman cannot deny to her what he allows for everyone else because everything is based on equality. She said that she wants the opportunity to answer her colleagues' question having everything to do with his concern with the impacts of the law. She said that she has statistics from the Manhattan Institute as to what happened in California and she should have the right to give him this information during the debate. If not, she said she would like to call an at ease and print this information, and Chair Claman could allow time to read this information from the Manhattan Institute. She noted these "goofy reforms" that the Pew Foundation put forth, which were tried in the 1960s and 1970s with "massive failure of 353 percent increase in crimes."

CHAIR CLAMAN pointed out that Representative Reinbold had made her point of order, and Chair Claman ruled that it is appropriate to keep the committee focused on Amendment 45. He reminded her that as he had told her earlier, after the committee finishes the deliberation of Amendment 45, she could make her point of personal privilege, present her information, and that he looks forward to hearing the information.

2:37:09 PM

REPRESENTATIVE EASTMAN commented that he would have preferred to have specific information from the Department of Law (DOL) because these reforms have been in effect for 16 months and the committee has not been advised as to when that specific information would be available. Although, he noted, there may be good things in the criminal justice reform, the manner of putting the expansiveness and the radical nature of the reform all together in a single bill has become toxic to his constituents and the state. The legislature must go back and be more surgical in identifying the appropriate reforms that the public can "come along with and get on board with and understand," he said.

2:38:19 PM

REPRESENTATIVE REINBOLD declared a point of order. She said that Mason's Manual of Legislative Procedure, Section 126, Complaints against the presiding officer, read as follows:

> 1. The presiding officer is subject to the same rules regarding disorderly words as members.
>
> 2. Complaint of conduct of the presiding officer should be presented directly for action by the house, in which case the presiding officer should vacate the chair and call a member to preside until the matter is settled.

2:38:47 PM

REPRESENTATIVE REINBOLD offered the following:

> I believe we need to go before the House and decide if you are the right person to preside over this meeting because you are not fairly representing Mason's Manual of Order or keeping good decorum in this meeting.

2:39:02 PM

CHAIR CLAMAN ruled that he rejected Representative Reinbold's perspective that he was not equally administering the rules, and that he does not believe the claim that he has been unfair to her or anyone else is well placed. He advised that Representative Reinbold was welcome to bring whatever she likes to the House of Representative's Speaker's office, but the committee will proceed.

REPRESENTATIVE FANSLER maintained his objection.

2:39:29 PM

[CHAIR CLAMAN and Representative discussed closing comments and her research.]

2:40:08 PM

A roll call vote was taken. Representatives Eastman and Reinbold voted in favor of the adoption of Amendment 45. Representatives Kopp, Kreiss-Tomkins, LeDoux, Fansler, and Claman voted against it. Therefore, Amendment 45 failed to be adopted by a vote of 2-5.

2:40:35 PM

CHAIR CLAMAN offered Representative Reinbold five minutes to present her information.

REPRESENTATIVE REINBOLD then read research from the Manhattan Institute.

2:44:48 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 46, Version 30-LS0461\N.69, Glover/Martin, 10/24/17, which read as follows: [The text of Amendment 46 is listed at the end of the 10/26/17 minutes of SB 54.]

REPRESENTATIVE FANSLER objected.

2:44:56 PM

REPRESENTATIVE EASTMAN noted the previous discussion regarding "how to properly deal with inflation" as to certain offenses such as theft. The value of theft is important because the

current threshold is under $250, and there are little repercussions if an offender is caught, arrested, and convicted. Inflation adjusts that amount and affects all levels of theft. Current law has a mechanism by which the calculations are automatically changed based on inflation, and the Alaska Judicial Council and the Department of Labor & Workforce Development (DLWD) have a part to play in that there are a number of different parts. His concern, he noted, is that when the legislature gives non-legislative agencies the ability to make calculations that directly impact offenses and penalties for criminal offense, the legislature is abrogating its responsibility as the state's legislature, the legislature should be making those determinations. He opined that he understands that it would be more convenient for the legislature to let it go onto auto-pilot, except that decision should be maintained in the legislature and addressed in legislation. This amendment removes the auto-pilot setting, and the automatic adjustment of inflation for these criminal offenses, he explained.

2:46:55 PM

CHAIR CLAMAN noted that this is a subject that began during the discussions of Amendment 39, and he encouraged the committee to truly focus on whether there should be inflation adjustment.

REPRESENTATIVE FANSLER asked Ms. DiPietro to provide her understanding as to the rationale behind inflation adjustment, and why the state would have inflation proofing when it has the different class levels of crimes.

MS. DiPIETRO responded that this issue came into the commission's recommendations due to the fact that the original felony theft threshold was set at $500 in 1978, and it was changed to $750 in approximately 2014. The felony theft threshold was raised from $750 to $1,000 with the passage of Senate Bill 91, in 2016. During the time the felony theft threshold was $500, the equivalent value in today's dollars would have been more than $1,800 with inflation. The idea was simply that as inflation increases the costs of items, there could be a situation where in 1978, $500 "was an awful lot of money." In 2014, it was not that much money, certainly compared to 1978, which effectively funneled more theft offenders into the felony range by virtue of the operation of inflation. The idea was that this might be a more automatic mechanism to correct that problem, she said.

2:49:59 PM

REPRESENTATIVE KOPP commented that inflation adjustment protects the assets in Alaskan's personal and financial lives, whether as an employee, savings accounts, municipalities, and the state. Savings accounts are constantly reviewed, not only as to what inflation is but the rate of savings and making sure the state wants to actually build its account and stay ahead of [inflation]. He opined that this is a little different because inflation adjustment is generally meant to protect an individual's assets and grow the assets into perpetuity. He related that he sees this differently in that inflation adjustment here is meant to actually keep a dollar value the same as it was "going on down the line historically," but for the purpose of not making a felony charge easier or more difficult. That concerns him a bit because those two things are not equivalent.

REPRESENTATIVE KOPP advised that the second issue is with regard to law enforcement training. It is important to have fixed numbers in the law as much as possible, and to allow law enforcement to know when something is, or is not, a felony. In this case, he pointed out, having a schedule revisited fairly often causes law enforcement to have one number firmly fixed in their minds and then the statute changes to a new number. Also, he opined, it sends a message to Alaska businesses that the legislature is more concerned about the inflation adjustment than the dollar value of a business's loss and being consistent year after year to equal a felony. He said that he supports Amendment 46 and agrees that inflation does change the value of money, and that the legislature can revisit this issue. Leaving a fixed amount in the law, he reiterated, makes it easier for law enforcement to train and implement, and it sends a better message to Alaska's businesses that the state supports a firm felony standard and that businesses can rely on that standard.

2:53:00 PM

REPRESENTATIVE EASTMAN commented that the appropriate manner in which to deal with inflation troubles would be for the legislature to address the issue in a bill form, and perhaps that may be on a frequent basis. A situation could be created wherein one day a person is found guilty of theft and receives one penalty, except the next day the change takes effect and basically the same theft is given different sanctions, he pointed out. Clearly, he related, that is problematic from a moral standpoint if nothing else, and it is important that the

legislature maintains its hand on the lever here rather than delegating it to some outside agency, he said.

REPRESENTATIVE FANSLER maintained his objection.

2:54:06 PM

A roll call vote was taken. Representatives Reinbold, Kopp, and Eastman voted in favor of adopting Amendment 46. Representatives Kreiss-Tomkins, LeDoux, Fansler, and Claman voted against it. Therefore, Amendment 46 failed to be adopted by a vote of 3-4.

2:54:42 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 47, Version 30-LS0461\N.73, Bruce/Martin, 10/24/17, which read as follows:

Page 1, following line 5:
Insert a new bill section to read:
"*** Section 1.** AS 11.46.460 is amended to read:
Sec. 11.46.460. Disregard of a highway obstruction. (a) A person commits the **crime** [OFFENSE] of disregard of a highway obstruction if, without the right to do so or a reasonable ground to believe the person has the right, the person
(1) drives a vehicle through, over, or around an obstruction erected on a highway under authority of AS 19.10.100; or
(2) opens an obstruction erected on a highway under authority of AS 19.10.100.
(b) Violation of this section is a **class B misdemeanor** [VIOLATION PUNISHABLE BY A FINE OF NOT MORE THAN $1,000]."

Page 1, line 6:
Delete "**Section 1**"
Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 15, following line 12:
Insert a new paragraph to read:
"(1) AS 11.46.460, as amended by sec. 1 of this Act;"

Renumber the following paragraphs accordingly.

Page 15, line 13:
Delete "sec. 1"
Insert "sec. 2"

Page 15, line 14:
Delete "sec. 2"
Insert "sec. 3"

Page 15, line 15:
Delete "sec. 3"
Insert "sec. 4"

Page 15, line 16:
Delete "sec. 4"
Insert "sec. 5"

Page 15, line 17:
Delete "sec. 5"
Insert "sec. 6"

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"
Insert "Section 18"

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

REPRESENTATIVE FANSLER objected.

2:54:48 PM

REPRESENTATIVE EASTMAN advised that similar to previous amendments, Amendment 47 looks at the penalty for a class B misdemeanor. This amendment reverses the changes that took place in Senate Bill 91 to the law prior to the passage of Senate Bill 91. In this case, as in many others, the penalty was initially more severe, and the penalty was reduced as a consequence of Senate Bill 91, he explained.

2:55:29 PM

REPRESENTATIVE FANSLER surmised that Amendment 47 only relates to highway obstructions.

REPRESENTATIVE EASTMAN answered no, and he explained that the drafter had to deal with that specific portion because it is specifically spelled out in that statute. The request to the drafter was to revert the penalty more generally, and he commented that he does not know anything particularly unique and special about highway obstruction because that was not the focus of his drafting request.

REPRESENTATIVE FANSLER surmised that Amendment 47 just focuses on highway obstructions.

REPRESENTATIVE EASTMAN advised that it impacts highway obstructions, but the amendment references a number of different portions of the statute that are changed there.

2:56:31 PM

CHAIR CLAMAN asked whether the amendment affects anything other than AS 11.46.460, disregard of a highway obstruction, or whether some other penalty provision was changed.

REPRESENTATIVE EASTMAN offered his belief that this is where it was spelled out, so this is where it was changed. There are other amendments that deal with other portions of statute.

CHAIR CLAMAN surmised that Amendment 47 is limited to highway obstruction.

REPRESENTATIVE EASTMAN answered, "Effectively, yes."

2:57:08 PM

REPRESENTATIVE KOPP asked Representative Eastman whether a situation had come forward where the Department of Transportation & Public Facilities (DOTPF) or the Department of Public Safety(DPS) had requested this amendment, because Amendment 47 talks about official signs.

REPRESENTATIVE EASTMAN explained that for purposes of putting together an amendment, his request to the drafter was to pare things down into bite size pieces. Obviously, he said, Senate Bill 91 impacted many different issues, and this bite size piece of highway obstruction was not specifically brought to his attention by the department or anyone else. Although, he said, the fact that by changing a class B misdemeanor to a violation punishable by a fine of not more than $1,000 was brought to his attention because "we are now" trying to use fines, in this case $1,000, to do the work of what a misdemeanor historically has done. He opined that the evidence he has received, since the passage of Senate Bill 91, shows that fines are not sufficient because someone cannot be compelled to pay a fine in the same manner as compelling someone with a stiffer penalty. The feedback he has received from constituents and others is that the fines are next to worthless because they are not acting as intended, he said.

2:58:49 PM

REPRESENTATIVE KREISS-TOMKINS asked that Representative Eastman confirm that the intent behind Amendment 47 is representative of a broader concern, but there is nothing specific to highway obstruction offenses that is of concern.

REPRESENTATIVE EASTMAN answered in the affirmative.

2:59:14 PM

CHAIR CLAMAN asked Mr. Skidmore whether he was familiar with any prosecutions under AS 11.46.460 for misdemeanor disregard of a highway obstruction.

MR. SKIDMORE answered, "No."

CHAIR CLAMAN advised that prior to Senate Bill 91, he was driving home from a family trip, it started to get dark, a portion of the Glen Highway was closed with orange cones, he he became a bit disoriented and ran over a couple of the cones. He asked whether he had committed a class B misdemeanor, under the prior statute, by running over the highway obstructions.

MR. SKIDMORE responded that his question would require him to look up the definition of a highway obstruction.

CHAIR CLAMAN offered that it is under AS 19.10.100 Closing Highways, which read as follows:

> When it is necessary to exclude traffic from any portion of a highway, the department may close that portion of the highway by posting in a conspicuous manner, at each end of the portion closed, suitable signs warning the public that the road is closed under authority of law, and by erecting suitable obstructions.

3:01:44 PM

MR. SKIDMORE commented that that provision talks about closing highways, and he asked whether Chair Claman's question was if he had committed a class B misdemeanor under those circumstances.

CHAIR CLAMAN asked whether it is arguable that he committed a class B misdemeanor.

MR. SKIDMORE said that he does not mean to be nitpicky, "but I am a lawyer."

CHAIR CLAMAN said that Mr. Skidmore did not need to answer the question.

3:02:20 PM

REPRESENTATIVE LEDOUX offered a scenario of someone committing the crime of disregard of a highway obstruction and seriously injured or killed a workman. She asked whether there are any other crimes the person could be charged, and what charges.

MR. SKIDMORE answered, "Absolutely," and he said that in the event someone was injured, there are various levels of assault that could be utilized, and if someone was killed there are various crimes that involve the death of a person. The disregard of highway signals would be the sort of thing the DOL would take into consideration as to whether there was criminal negligence, criminal recklessness. He opined that he did not believe any of the situations described thus gets to intentional, but there are certainly a whole host of crimes that could potentially apply.

3:03:27 PM

REPRESENTATIVE LEDOUX offered a scenario of someone running a stop sign could be charged with running a stop sign, similar to an infraction or an offense; or, depending upon the circumstances they may be charged with negligent driving; or, they may also be charged with reckless driving. She said that all of those sorts of options would be available in the event that the driving over the highway obstruction showed extreme disregard for life or property.

MR. SKIDMORE answered in the affirmative.

3:04:21 PM

CHAIR CLAMAN reminded the committee that last year a change was made to the criminal code specific to events wherein Representative Kopp's personal friend was helping someone on the highway and someone drove through the barriers and the gentleman was killed. That statute was changed to provide additional protections, he said.

REPRESENTATIVE KOPP advised that the gentleman was not a personal friend, he was a Department of Transportation & Public Facilities (DOTPF) employee who responded in his work truck during an icy day on the Seward Highway due to a significant accident just south of Girdwood. He related that in the process of helping people at the scene, someone struck and killed this gentleman even though his lights were activated, and he did everything he could to keep himself safe. The legislation passed last year read that if a person did not yield to DOTPF personnel or marked DOTPF trucks, they could be charged with a misdemeanor; a felony if the person actually injured a DOTPF employee or manslaughter if the DOTPF worker was killed.

3:05:46 PM

REPRESENTATIVE EASTMAN commented that he did not know whether there was a great deal of interest in protecting highway cones, but of interest is that it is difficult to run someone over if there is a cone between "you and them and you don't run over the cone." In committing the crime of running over that cone, a person definitely comes closer to being able to hit someone, and law enforcement measures cases where people have been injured, or killed, or close calls, and uses that as a way of making sure it does not happen in the future. He asked Mr. Skidmore to speak to how a prosecution might unfold when a DOTPF worker was almost injured or killed but jumped out of the way at the last minute, after a driver had committed the offense of disregard of a highway obstruction. He asked whether the fact that this offense is on the books would be something helpful to the prosecution, or would it really not matter.

MR. SKIDMORE offered that the scenario described is that someone else is placed in danger. The immediate crimes he could think of are either reckless endangerment, assault in the fourth degree. It would be in the neighborhood of AS 11.41.240 or 11.41.250, and a reckless driving statute found under Title 28, either statute would likely apply. He noted that having this as a violation on the books, as a prosecutor, is the sort of thing he would ask the court to take judicial notice. It would be taken into consideration in the case wherein the person disobeyed the traffic laws, and whether that law amounted to an additional crime in and of itself. He explained that he used the crime to mean something that is punishable by jail.

3:08:50 PM

REPRESENTATIVE EASTMAN said that, absent the fact that someone was almost injured, what is the likelihood this would be prosecuted.

MR. SKIDMORE responded that he has difficulty fathoming the set of circumstances that would bring such a situation to his desk. He could not envision who would investigate, report, and be the witness for the prosecution because he could not call the driver to testify against themselves. Absent someone physically observing the incident, he could not imagine prosecution would happen, and if it was brought to the DOL he could not imagine that its resources would allow the prosecution at the moment, he offered.

3:10:02 PM

REPRESENTATIVE EASTMAN commented that when the legislature sets penalties for crimes, it communicates to the public and law enforcement that the legislature is assessing a priority. The legislature is also assessing and communicating to someone who would potentially be in violation as to whether or not this is a serious offense. He remarked that by making it a violation and attaching the maximum penalty of a fine, "that may never be paid," the legislature comes dangerously close to simply deleting the offense entirely because the legislature is saying that it really is not that high of a priority, "and maybe it isn't." He said that the communication to the public is that there is a statute on the books that will probably not have a direct impact.

REPRESENTATIVE FANSLER maintained his objection.

3:11:10 PM

A roll call vote was taken. Representatives Reinbold and Eastman voted in favor of the adoption of Amendment 47. Representatives Kopp, Kreiss-Tomkins, LeDoux, Fansler, and Claman voted against it. Therefore, Amendment 47 failed to be adopted by a vote of 2-5.

3:11:45 PM

REPRESENTATIVE EASTMAN moved to adopt Amendment 48, Version 30-LS0461\N.80, Bruce/Martin, 10/24/17, which read as follows:

> Page 2, following line 29:
> Insert new bill sections to read:

"*** Sec. 6.** AS 12.30.006(b), as amended by sec. 55, Ch. 36, SLA 2016, is amended to read:

(b) At the first appearance before a judicial officer, a person who is charged with a felony [, OTHER THAN A CLASS C FELONY AND THE PERSON HAS BEEN ASSESSED AS LOW RISK UNDER AS 12.30.011(c)(1),] may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under **AS 12.30.011(a)** [AS 12.30.011] would not reasonably ensure the appearance of the person or will pose a danger to the victim, other persons, or the community.

*** Sec. 7.** AS 12.30.006(c), as amended by sec. 56, Ch. 36, SLA 2016, is amended to read:

(c) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any judicial officer in the judicial district may review the conditions. [UPON REVIEW OF THE CONDITIONS, THE JUDICIAL OFFICER SHALL REVISE ANY CONDITIONS OF RELEASE THAT HAVE PREVENTED THE DEFENDANT FROM BEING RELEASED UNLESS THE JUDICIAL OFFICER FINDS ON THE RECORD THAT THERE IS CLEAR AND CONVINCING EVIDENCE THAT LESS RESTRICTIVE RELEASE CONDITIONS CANNOT REASONABLY ENSURE THE

(1) APPEARANCE OF THE PERSON IN COURT; AND

(2) SAFETY OF THE VICTIM, OTHER PERSONS, AND THE COMMUNITY.]"

Renumber the following bill sections accordingly.

Page 15, line 17:
Delete "and"

Page 15, following line 17:
Insert new paragraphs to read:
"(6) AS 12.30.006(b), as amended by sec. 6 of this Act;

(7) AS 12.30.006(c), as amended by sec. 7 of this Act; and"

Renumber the following paragraph accordingly.

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

Insert "sec. 17"

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

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

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

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

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

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

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

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

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

Page 15, line 30:
Delete "Section 17 of this Act takes"
Insert "Sections 6, 7, and 19 of this Act take"

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

REPRESENTATIVE FANSLER objected.

3:12:00 PM

REPRESENTATIVE EASTMAN offered that in keeping with the spirit of his previous amendments, Amendment 48 reverses the change made in Senate Bill 91. He explained that the legislature is giving those people convicted of a crime many options and opportunities for bail, and the changes made have been excessive and have sent the wrong message to the people committing crimes and to the public. It is his goal, he said, to bring the public back into the process because without the public's active participation, support, and ownership of the state's criminal justice system, the legislature cannot accomplish the lofty goals set forth. Rather than focusing simply on an academic study of changing statutes and trying to find the perfect combination of words, the clock needs to return to the law prior to Senate Bill 91, and then revisit some of these issues, he said.

3:14:13 PM

REPRESENTATIVE FANSLER pointed out that Amendment 48 deals with pretrial, which was extensively discussed in Amendment 43. He asked Ms. DiPietro what the Alaska Criminal Justice Commission recommended, why the changes were made, and what Amendment 48 would do to those changes.

MS. DiPIETRO responded that Amendment 48 would make changes to the process the judges use to review the release conditions of individuals who have been detained pretrial, and not yet convicted. The Alaska Criminal Justice Commission performed the original file review research in Alaska and focused on a file review of court cases for people who had been charged. The review showed that only approximately one-half of all detained people charged with a crime in Alaska were actually released before their case was resolved. In other words, she explained, approximately one-half of the people arrested and charged with a crime stayed in jail until they either pled guilty, were found guilty at trial, or were acquitted before their case was dismissed, and that research had never been previously performed. The commission found that somewhat troubling because that is a large percentage of people who never got out on bail during the pretrial period. She explained that that research was behind the recommendations for the creation of the Pretrial Enforcement Division, the creation of the risk assessment tool, and the revisions to the bail procedures, contained in Senate

Bill 91. It was all a package and it all goes together with the idea to be careful about whether the state is really detaining people pretrial that need to be detained, she explained.

MS. DiPIETRO related that his research was performed on approximately 20,000 records of people released in 2014 and 2015, and the researchers also took a sample of the people detained. In other words, she said, for people not released during that same time period, researchers applied the risk assessment factors to what is called, "detained sample" and the results were quite interesting, she commented. The bottom line is that over one-third of the detained review sample of people were comprised of very low to low-risk of having a new criminal arrest. She restated that in this study of Alaskans detained pretrial, if over one-third of those Alaskans had had the benefit of the risk assessment tool, they would have scored very low to low risk. By the same token, she said, 54.8 percent of those detained defendants were at very low risk of failure to appear, and 27 percent were at low risk of failure to appear. These statistics mean, she explained, that before the revision to the pretrial procedures and the creation of the Pretrial Enforcement Division, there is good evidence to suggest that those people who were safe to be released probably were being detained. That is the basis of all of the recommendations, she remarked, and these amendments would change some of the procedures that have been put in place ensuring that the release decision is based as much as possible upon a person's risk of reoffending with a new criminal activity, or failure to appear.

3:19:27 PM

REPRESENTATIVE LEDOUX asked whether this study showed how many people were detained because they could not meet the bail requirements, and how many were actually convicted at the end of the day.

MS. DiPIETRO answered that the study did not show that information, but it is known from other information that a large majority of people charged with crimes are convicted.

3:20:12 PM

REPRESENTATIVE LEDOUX noted that a person receives credit for the amount of time they serve in jail, and as long as the person is receiving credit for the time they are serving in jail pretrial, why is this issue so important.

[The committee suddenly lost communication with Ms. DiPietro.]

CHAIR CLAMAN responded to Representative LeDoux's question and advised that in his service on the Alaska Criminal Justice Commission, the key distinction is that it found, particularly with lower level non-violent offenders, that people were staying for six-months and one-year in jail waiting for their court hearing. Frequently, he pointed out, the person would have served more time in jail waiting for their case to be resolved, than they were actually ordered to serve when they were finally sentenced. Therefore, it resulted in a lot of costs for incarcerating people who, due to the offense they were involved in, tended not to be ordered to serve anywhere near as much time as they actually spent in jail waiting. At the same time, he pointed out, the person is in jail and in the company of all of the other folks who are bad influences. Plus, the person is basically in jail for a long time because they cannot afford bail, he remarked.

3:22:27 PM

REPRESENTATIVE LEDOUX commented that it is possible the person is ordered to serve shorter sentences because the judge knows they had already spent a significant amount of time in jail.

CHAIR CLAMAN responded that that gets into a lot more of the details and he deferred to Ms. DiPietro.

REPRESENTATIVE LEDOUX said that she was also wondering that since Alaska has a speedy trial rule of 120 days, "why they haven't taken advantage of that rule."

CHAIR CLAMAN related that there has been a lot of testimony on the speedy trial rule, and the speedy trial rule is routinely waived, which is a function of resources.

3:23:28 PM

DEAN WILLIAMS, Commissioner, responded to Representative LeDoux's questions and advised that what she reference earlier is exactly right, the data showed that people end up spending more time in jail than their eventual plead. In the event a person sat in jail because they could not afford the monetary bond to get out of jail, but Commissioner Williams, for example, could afford the $500 to get out wherein he may do five days in jail and the other person may do 50 days in jail for the same exact offense and plead.

That, he described, is the problem with holding people in pretrial under the old system. His second point, he offered is that "in other states we talk about pretrial before, that you do a better job" when there is an assessment based upon risk and not based upon money [audio difficulties]. He explained that many other states have adopted this similar model and it is more likely that if the offender is assessed up front with a risk assessment tool, the chances the person will show up for court in the future increases, and the likelihood a person will get in trouble or commit another offense before they get to court decreases. Use of the tool is a tremendously important part of the criminal justice efforts, he said.

3:26:23 PM

KACI SCHROEDER, Assistant Attorney General, Criminal Division, Legal Services Section, Department of Law, advised that she was available to testify.

REPRESENTATIVE LEDOUX noted to Ms. Schroeder that under current law, all class C felonies are treated the same. She asked the rationale for treating the person who bounced a check versus the person who is stalking someone, the same. Both offenses are class C felonies and while she may not mind the person getting out of jail who bounced the check, she would be uncomfortable about the person who is stalking someone, she said.

CHAIR CLAMAN surmised that the question was how the assessment tool treats those two different crimes.

REPRESENTATIVE LEDOUX agreed that that is what she is asking.

3:27:45 PM

MS. SCHROEDER deferred to the DOC because it has intimate knowledge of the assessment tool and how it may assess those two different crimes.

CHAIR CLAMAN asked Commissioner Williams whether he could answer Representative LeDoux's question about the pretrial assessment tool in practical terms, and how the tool would treat a person charged with felony bad check writing versus felony sexual abuse of a minor.

COMMISSIONER WILLIAMS answered that the DOC director of the Pretrial Enforcement Division could offer a comprehensive

answer, but he offered that the tool measures the charge of which carries weight in terms of the risk factor. In the event a person committed a violent crime versus a theft crime or bad check writing crime, that is taken into account in terms of the scoring. Also, he noted that the person's prior criminal history, failure to appear, and approximately four to five other data points are considered when scoring. The assessment tool determines whether the person should be released back into the public under some type of supervision [audio difficulties]. The pretrial effort and the tool look at the differences, and the risk assessment tool takes into account the very differences Representative LeDoux had mentioned, and there is a distinction made between what a person is charged with in terms of a risk to the public, he said.

3:30:45 PM

CHAIR CLAMAN asked Ms. DiPietro to provide more detail in terms of the assessment tool and how it distinguishes between, for example, sexual abuse of a minor and bad check writing, both as class C felonies.

MS. DiPIETRO responded that it is important to understand the tool versus the recommendation of the Pretrial Enforcement Division officer. She explained that the tool is simply a mathematical tool, an actuarial tool based on statistics the same way a 16-year old son's car insurance rates are set by the insurance company. The insurance companies have data about driver characteristics, such as the people involved in crashes and the people who are not involved in crashes, and the insurance company crunches that data and generates risk profiles. This risk assessment tool assesses certain factors for every defendant, for example, the person receives points for previous failure to appear scale, if the person is currently booked on a property charge or is booked on a non-DUI motor vehicle charge. These are issues that have been statistically shown to predict risk of failure to appear. The Pretrial Enforcement Division officer takes all of these things into account, assigns the points, and tallies the points on the failure to appear scale and the new criminal arrest scale, which is a low, medium, or high-risk assessment - it is just math. The Pretrial Enforcement Division officer then takes that risk assessment score, considers the current charge, looks at the statute to see what it says about how that officer makes the recommendation, and makes the recommendation to the judge about whether the defendant should be released, and if so, under what conditions. The judge then, with the argument of the parties,

takes the recommendation from the Pretrial Enforcement Division officer and the parties review the score from the risk assessment tool with the recommendation from the officer. The parties argue about it in court, or not, and the judge makes the final release decision. She stressed that it is important to understand that the score on the risk assessment tool, although some items on the tool are related to the currently booked charge, the tool itself is simply an actuarial tool that puts the person in the bucket of low, medium, or high risk.

3:33:54 PM

REPRESENTATIVE LEDOUX commented that if the risk assessment tool is just like an actuarial tool wherein she is a woman, over 65 years of age, never had an accident, and she does not have any points on her driver's license, she asked why she should buy insurance. She said that she would answer her question by stating that she buys insurance "just in case" because quite often that actuarial tool is sort of a gamble. It does not make her feel extremely comfortable, she stressed that the state releases people on charges, such as sexual abuse of a minor, just because the actuarial tool says that they are more likely than not to show up in court. She asked Ms. DiPietro whether she had a response.

MS. DiPIETRO answered that the risk assessment score is just one piece of information that goes into the judge's release decision. The other factors that go into the release decision are as follows: the statutory structure, which does very much depend upon the charge; there are different ways of handling people who are charged with misdemeanors versus class C felonies versus class C felonies offenses against the person. That is the recommendation from the Pretrial Enforcement Division officer and that information goes to the judge and the parties, and the judge then makes the ultimate decision.

3:36:02 PM

REPRESENTATIVE LEDOUX asked whether Ms. DiPietro was saying that someone charged with sexual abuse of a minor would never be released right away under this actuarial tool.

MS. DiPIETRO replied that what she could say is that a person charged with sexual abuse of a minor would be assessed as to their actuarial risk of failure to appear or a new criminal arrest if they were released. The person would be assessed as low, medium, or high risk for those two scales, and then the

Pretrial Enforcement Division officer would look at the charge and make a recommendation to the court based upon a combination of the charge and the risk assessment. Then, the judge and the parties take that recommendation as to the charge and any other information that may come to light. Such that, something in a police report or something else may be brought to the judge's attention in court, and the judge makes the ultimate decision. She stressed that she wanted to be clear that "the tool is not the only thing, it's just not, it's a helpful piece of information." Studies have shown over and over again that providing this actuarial information to a professional decision maker, such as a judge, causes the judge's predictions of who to release and who not to release to be more accurate than if they did not have this information.

CHAIR CLAMAN predicted that, as to class C felony sexual abuse of a minor charges, people charged with that crime are out on bail on pretrial release. In this structure, he said, the information before the court in deciding bail includes: this actuarial recommendation from a Pretrial Enforcement Division officer, the opinion of the lawyer for the defense, the opinion of the prosecutor. In the event the prosecutor believed a $10,000 bail was adequate and the defense did not contest the amount, the person would be out on bail under the supervision of the Pretrial Enforcement Division. The actuarial tool does not replace the court's independent judgment in determining bail on felonies, and all felonies require a judge to make a decision on bail, he offered.

3:39:33 PM

REPRESENTATIVE LEDOUX noted that she is confused by "this language" because the statute currently read as follows:

> (b) At the first appearance before a judicial officer, a person who is charged with a felony [, OTHER THAN A CLASS C FELONY AND THE PERSON HAS BEEN ASSESSED AS LOW RISK UNDER AS 12.30.011(c)(1),] may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under **AS 12.30.011(a)** [AS 12.30.011] would not reasonably ensure the appearance of the person or will pose a danger to the victim, other person, or the community.

REPRESENTATIVE LEDOUX commented that under current law, if a person has been charged with a class C felony, and the person is determined to be low risk under AS 12.30.011(a), the person

could not be detained for 48 hours for the purpose of enabling the prosecutor time to demonstrate that the person's release would pose a problem.

CHAIR CLAMAN offered that in his copy of the statute book at AS 12.30.006(b) and the language that appears in Amendment 48 relating to the class C felony does not appear in his version of the statutes, and in looking at the notes, this version includes the 2016 amendments.

MR. SKIDMORE explained that the statute books will not contain the appropriate statutes because when looking at the amendment, it does not actually amend the statute, it amends the session law that does not take effect until January.

3:42:05 PM

REPRESENTATIVE LEDOUX noted her confusion and surmised that the state holds people for 48 hours in order for the prosecutor to demonstrate that there is a danger if they have been charged with a class C felony, under current law. She asked whether, currently, the prosecution holds the defendants.

MR. SKIDMORE answered that under current law, the state is allowed up to 48 hours to file a charging document if necessary. Generally, he advised, the prosecution tries to file the charging document within 24 hours, and rarely would it hold someone for 48 hours. The amendments in the criminal justice reform change it to 24 hours, and not within 48 hours. Amendment 48 specifically says that a person charged with a class C felony could not be included in this group because two things work in conjunction at the same time. He explained that he was talking about the risk assessment tool, and AS 12.30.011(c)(1) because that sets out in language in a grid form. The grid lays out "four different categories" of offenses and then it talks about a low risk, medium risk, or high risk, and depending upon where the person falls, the grid will dictate what discretion the court has in addressing the person's release. Amendment 48, Sec. 6, page 1, lines 3-9, specifically carves out class C felonies that are assessed as a low risk when they are a certain type of class C felony.

3:44:35 PM

REPRESENTATIVE LEDOUX asked Mr. Skidmore whether he was speaking about the amendment to the law under Senate Bill 91, or about Amendment 48.

MR. SKIDMORE responded that he was discussing both issues [and he handed Representative LeDoux a page out of the bill review letter dated June 16, 2016]. He asked Representative LeDoux to look at the top of page 12, which depicts that grid. He explained that the grid lays out his previous description of the "four different categories" of crimes with the low, medium, and high-risk groupings. Amendment 48 specifically carves out that class C felony for a non-person offense that is a low-risk, he offered that it is shaded in the darkest grey color on the chart.

REPRESENTATIVE LEDOUX surmised that Amendment 48 carves-out and says that those people can still be held.

MR. SKIDMORE clarified that the carve-out is saying that the people that fall into that category are not held and they will be released. He explained that that is why holding someone for 48 hours was carved out in Senate Bill 91, and if a person is assessed as low-risk for a non-person class C felony, they will be released under that grid.

3:46:08 PM

CHAIR CLAMAN requested clarification that for a non-person class C felony, Mr. Skidmore was essentially speaking about the assaultive offenses, such as sexual abuse offenses, or rape offenses.

MR. SKIMORE said that Chair Claman was correct.

CHAIR CLAMAN surmised that all of the offenses against a person will never fit under this low-risk assessment that would be carved out, and if it is an offense against a person, that person will always have the 48-hour hold available.

MR. SKIMORE advised that Chair Claman was correct. As to Amendment 48, only those crimes that fall into that dark shaded grey area for class C felonies are carved out. The type of offenses Chair Claman spoke of will be on the far right-hand side of the grid, upper right-hand corner. For those other crimes, the court has discretion about setting bail and the state would be able to hold those people for some period of time to assess the filing of charging documents.

3:47:42 PM

CHAIR CLAMAN requested that Mr. Skidmore provide examples of offenses that may qualify for low-risk that are not against a person.

MR. SKIDMORE responded that here it carves out class C felony non-person offenses, domestic violence offenses, and DUIs. He then asked Chair Claman whether he had requested examples of instances wherein someone could still be held or be released.

CHAIR CLAMAN said that he had requested the non-person class C felony offenses where a person could be assessed low-risk and the 48-hour hold would not apply.

MR. SKIDMORE answered that low-risk non-person offense, class C felonies subject to release include: theft in the second degree and criminal mischief, but not a domestic violence offense.

3:49:35 PM

REPRESENTATIVE LEDOUX asked whether it would include breaking into someone's home.

MR. SKIDMORE responded that breaking into someone's home is burglary in the first degree, a class B felony.

REPRESENTATIVE LEDOUX asked whether it would include breaking into a store.

MR. SKIDMORE offered that breaking into a store would be a class C felony and it would be "subject to this" if it was low-risk.

REPRESENTATIVE LEDOUX surmised that the low-risk is determined by the actuarial tool.

MR. SKIDMORE answered in the affirmative.

3:50:22 PM

CHAIR CLAMAN asked Ms. DiPietro whether the tool was easier to read in color and not black and white.

MS. DiPIETRO pointed to a document on the Alaska Criminal Justice Commission's website " A Practitioner’s Guide to Criminal Justice Reform SB 91," and advised that the tool is in color.

[CHAIR CLAMAN, Mr. Skidmore, and Representative LeDoux discussed the documents to copy during the at ease.]

3:52:17 PM

The committee took an at-ease from 3:52 p.m. to 4:11 p.m.

4:11:52 PM

CHAIR CLAMAN advised that the committee had been provided a full color document regarding the tool.

REPRESENTATIVE LEDOUX remarked that subsequent to this recent at ease, she has a handle on this issue.

4:12:31 PM

REPRESENTATIVE REINBOLD commented that she would like the camera to zoom in on the tools and explain them to the listening public.

CHAIR CLAMAN stated that he would not tell the camera people what to do, but she could hold it up and the camera people could or not, film

REPRESENTATIVE REINBOLD asked Mr. Skidmore to explain the chart.

MR. SKIDMORE responded that the page in front of her lays out two charts, and he would focus on the second chart because the first chart talks about recommendations that come from the Pretrial Enforcement Division. The second chart matters because it discusses a judge's discretion, and this chart has a fifth category for failure to appear in violations of conditions of release. Mr. Skidmore referred to the five categories across the top and read as follows: misdemeanors; class C felonies; DUI refusal; failure to appear violations of conditions of release; and other; and it then creates a grid with low-risk, moderate-risk, and high-risk. This chart is in color, he noted, and explained as follows: the darkest shade of blue talks about mandatory own recognizance (OR); those that read "mandatory," if someone is assessed a low-risk or a moderate-risk and charged with a misdemeanor, it would be a mandatory OR release - it is not domestic violence misdemeanors or person offenses; and to the right of that, under class C felonies, note the caveat that these class C felonies do not include domestic violence, person crimes, failure to appear or DUIs. These, he explained, are only the other types of class C felonies, and if it is a low-

risk there is a mandatory release on the class C felony. If there is a moderate risk for the class C felony, it is a presumptive OR, and that is the exact status quo today "where our constitution" talks about a presumption of OR release where judges will exercise discretion based on arguments made by both parties about what should happen.

4:15:48 PM

REPRESENTATIVE REINBOLD asked whether Mr. Skidmore had any concerns with this tool as the director of the criminal division.

MR. SKIDMORE answered "No." He explained that this tool is based upon the concept "provided to us" from the State of Kentucky. He said that Alaska did not duplicate the same thing as the State of Kentucky, but studies were utilized, and this makes sense. It makes sense because during his 20 years as a prosecutor, he has observed multiple bail hearings in which different prosecutors show up and assess the defendant's previous criminal history in a certain manner and another prosecutor would assess the same criminal history differently, resulting in disparate outcomes. This concept is to try to unify [the assessment] and make it consistent, which is what the tool does as by weighing each case in the same manner, and it is the most objective manner in which to provide that information. He related that that is not the end of the story because for all of the areas in grey or light blue, the court continues to exercise its discretion and prosecutors can and will continue to make arguments as to what it believes to be the appropriate conditions of release and bail.

4:17:33 PM

REPRESENTATIVE REINBOLD asked who was involved in designing this tool for the State of Kentucky, the cost of the tool to develop, and whether it had been tested and proved ...

CHAIR CLAMAN interjected that Ms. DiPietro is the best person to answer her question as to the development of the tool.

MS. DiPIETRO responded that Kristin Bechtel, Ph.D., developed the tool, who until recently worked at the Crime and Justice Institute, a non-profit organization. She reiterated that the tool was paid by a grant from the Bureau of Justice Assistance, a federal agency that provides grants to states to improve their justice systems. She added that Alaska's tool was developed

with Alaska data, and it was designed for Alaska's defendants and the Alaska Criminal Justice System, not for the State of Kentucky.

4:19:14 PM

REPRESENTATIVE REINBOLD asked whether the chart is the full tool and whether this tool had been used in trials in Alaska to prove its effectiveness, and whether it will increase public safety.

MS. DiPIETRO responded that the chart in front of the committee is not the tool, that chart is a statutory decision-making grid for judges. The risk assessment tool is a series of questions about a defendant that are answered based upon the defendant's criminal records. She offered to send the committee the questions noting that there are six questions on the failure to appear scale, and seven questions on the new criminal arrest scale. She explained that a defendant is arrested, brought into a DOC facility, fingerprinted, the Pretrial Enforcement Division officer is alerted, reviews the defendant's criminal record, and uses that information to answer the questions on the tool. For example, she said, as to the new criminal arrest scale, question 1: What was the age of the defendant at the time of first arrest and in the event the defendant was 22 or older, the defendant would receive zero points; and the defendant receives one point if they were 21 or younger at the time of the first arrest. The officer continues through the mechanical and consistent process, determines the score from zero and 10, which then translates into a category of low, medium, or high risk. The best way to think of the tool is that it is information the Pretrial Enforcement Division officer uses to make the recommendation to the judge, it is also information the judge and the parties will use and argue about in court when the judge makes the decision about release and the conditions of release.

4:22:40 PM

REPRESENTATIVE EASTMAN noted from previous testimony that these tools do not override the discretion of judges, and that the chart is a reflection of statute. Although, he offered, a mandatory OR appears to preclude discretion from judges, and asked how the low, medium, and high risk is determined.

MR. SKIDMORE reiterated Ms. DiPietro's testimony and advised that low, medium, and high risk is evaluated through the use of the risk assessment tool. That piece of information would be plugged in to determine where the defendant fell on this grid,

the other piece is what crime the defendant had been charged with committing.

REPRESENTATIVE EASTMAN surmised that the levels of risk is determined by the risk assessment tool and not by the discretion of the judge.

MR. SKIDMORE answered that the tool evaluates which of the three rows would be used on the grid, and where the defendant falls on the grid determines the amount of discretion given to the judge.

4:24:26 PM

REPRESENTATIVE LEDOUX noted that class C felonies might be vehicle thefts and surmised that if the defendant is low-risk, that is a mandatory OR.

MR. SKIDMORE clarified that it is a mandatory OR only if the defendant is determined to be low-risk, it is not that the crime was determined low-risk.

REPRESENTATIVE LEDOUX asked whether the criteria for the tool was actually articulated in statute.

MR. SKIDMORE answered that it is not articulated in statute. The requirement of the statute is the development of the risk assessment tool, and at the time the statute was written, the tool's criteria was unknown. The criteria of the risk assessment tool was based on research that occurred after the statute authorized the development of the tool.

4:25:46 PM

REPRESENTATIVE LEDOUX asked why someone who had committed a class C felony would not be determined as a high risk to not show up for a hearing. She further asked why it would be a presumptive OR, if they were high-risk.

MR. SKIMORE explained that the presumptive OR comes from the Constitution of the State of Alaska wherein everyone is presumed entitled to OR and bail. As is known in practice, courts regularly assess that and make the determination as to what is most appropriate, and that will continue to happen.

CHAIR CLAMAN commented that judges override the presumption on a routine basis.

MR. SKIDMORE answered in the affirmative.

4:26:46 PM

REPRESENTATIVE REINBOLD requested the complete tool and asked whether there is a time limit for completing the score.

MR. SKIDMORE responded that the tool is utilized from the time a person is arrested until they are arraigned the next day, and the score is developed within 24-hours, essentially.

4:27:52 PM

REPRESENTATIVE REINBOLD surmised that the Pretrial Enforcement Division officer has 24-hours, and she asked whether the officer has a full opportunity to make a good judgement based on witnesses, based on police reports, and possibly interviewing witnesses to assess the risk.

MR. SKIDMORE explained that the tool is not based on witness statements and the other sorts of information Representative Reinbold had described, as that is information a prosecutor would rely on to make arguments to the court as to how bail should appropriately be set. He pointed out that her questions describe a current challenge for prosecutors in obtaining that information in a timely manner. The prosecution is required to make recommendations about bail using whatever information was at the prosecutor's disposal at that time. That process will not change, and the tool does not rely on that same information, he reiterated.

4:29:24 PM

REPRESENTATIVE REINBOLD surmised that currently the prosecution is rushed to interview victims within 24-hours and asked whether "this is just based on a tool," and whether this tool had been tested.

MR. SKIDMORE advised that the Constitution of the United States requires states to arraign people within a certain period of time. The State of Alaska's practice follows the same practices as in other states wherein the prosecutors rely on the police reports and hope the reports are provided in a timely manner, but the prosecutors do not interview the witnesses themselves.

4:30:23 PM

REPRESENTATIVE REINBOLD asked whether the tool was a tested and true model and whether Mr. Skidmore would guarantee that the tool is effective. She said, "If not, is there a warranty on this tool?"

MR. SKIDMORE expressed that he had testified that the tool was a better method than the previous method, that does not mean it is a guarantee. As to whether the tool has been tested, it was developed based upon Alaska data, and the Department of Law, Public Defender Agency, Alaska Court System, and law enforcement are all working together to make sure the tool is implemented smoothly. He reiterated that he could not make promises or guarantees about the tool, and stated that as he had said about every aspect of criminal justice reform, it is the intent of Department of Law (DOL) to monitor it, evaluate it, see how it works, and when problems are found to bring them to the legislature and ask that changes be made. He remarked that he has confidence there are reasons to believe this will succeed, and if he is wrong, he will be back before the legislature asking to do something different.

4:31:39 PM

CHAIR CLAMAN asked why the department supports use of this entire new pretrial process, including the pretrial assessment tool.

MR. SKIDMORE responded that the department supports the use of the assessment tool because it is an objective measure that allows people to be treated in the same manner. The goal of prosecutors is to always try to make things objective in a manner that is fair to all of the citizens of this state, which is one of the things the tool brings to the table. The assessment tool causes the system to evaluate that defendant's criminal history in exactly the same manner as every other defendant, and it does not allow disparate opinions to alter the system. He remarked that that evaluation is part of the tool that makes sense.

CHAIR CLAMAN asked, in the department's view, whether the tool will actually do a better job evaluating pretrial assessments than what is being done today.

MR. SKIDMORE answered that he hopes the tool does not make it that much better because that would suggest the prosecution was "doing a really bad job initially." However, he added, he is hopeful there is more consistency and some improvement, and that

any concerns people have had about disparate treatment are resolved through the use of the tool. He advised that the second aspect of all of this, and why the department has supported it, is due to the use of the Pretrial Enforcement Division officers that will monitor folks. The department considers that to be an extremely valuable tool and it will be an improvement for public safety for those individuals released before trial, and there are always people released prior to trial.

4:33:22 PM

CHAIR CLAMAN asked Mr. Skidmore how this total program worked in the State of Kentucky, acknowledging that Alaska's tool was designed specifically for Alaska.

MR. SKIDMORE clarified that the State of Kentucky tool includes the use of an interview with the defendant, and Alaska's tool does not because studies have shown that the interview questions did not have an impact on the accuracy of the tool in Kentucky. The State of Kentucky found that in releasing individuals, it had a high rate of success in its ability to predict which individuals were of low, medium, or high-risk, and which individuals would likely show up in court. From that standpoint, he advised, the crux of all of the questions is determining who should be in jail and who does not need to be in jail, and this tool should help the state get closer. During the development of the tool, they were advised that they will need to evaluate the tool and continue reviewing the tool after it had been in place for one-year to determine whether it performed as well as was hoped, and if not, "we will" adjust it. That process is part and parcel of all of this, monitoring what happens and making adjustments when necessary. That has been understood from the beginning about this tool and it is part of the reason for his support. Any reforms made in the criminal justice process must be monitored and where there are problems the department will bring it to the attention of the legislature and the House Judiciary Standing Committee. He pointed out that that has been the process with SB 54 and it is why the bill should be passed. He stressed that he is not in a position to make any changes to this because he does not have evidence to say that it does not work, and he follows the evidence.

4:35:51 PM

CHAIR CLAMAN noted that the State of Kentucky is receiving 92 percent compliance with pretrial conditions, which is both

appearing in court and not committing new offenses. As to the data in Alaska, 37 percent of the defendants commit a new crime and have new charges come up while on bail. In the event the state could improve to 92 percent, as has the State of Kentucky, that would be a substantial improvement for public safety, he offered.

MR. SKIDMORE replied that that is certainly the hope of what will be achieved.

4:36:31 PM

CHAIR CLAMAN noted that questions were asked as to why the details of the tool were not articulated in statute, and asked Ms. DiPietro to provide information about the development of the tool, how the tool is updated as time goes on, and then modified in the future based on the data received.

MS. DiPIETRO answered that she had described a little bit about the development of the tool with the records review of the 20,000-people who were released and the study Dr. Kristin Bechtel, Ph.D. of the people detained. Dr. Bechtel, she described, is a top researcher in the nation on pretrial risk assessment and these tools cannot be set in stone. Dr. Bechtel has been clear with Alaska that there must be continuous testing and a validation process. She advised that the Pretrial Enforcement Division built software into its case management system to collect information as to how the tool is performing and that information is then fed back to the analysts. Dr. Bechtel has refused to reassess the validity of the tool because, having developed the tool, has a stake in it and she would not be able to be objective about assessing the validity of the tool. Therefore, another researcher will be found to assess the validity of Alaska's tool, one who can be completely objective. As to the reassessment process, the data will be reviewed after the first year to determine whether it is performing as expected. These tools are actuarial tools so there are no guarantees, in the same manner that an insurance company may offer a person a low rate of insurance because they were low-risk and then they get into an accident the next day. There are always exceptions, and she said she does not want the committee to think that this tool is some sort of magic bullet because there are no magic bullets. This is good information that will help the judges, prosecutors, and defense attorneys make better judgements than if they did not have this information, she reiterated.

MS. DiPIETRO related that after the first year there will be the revalidation of the tool by a new independent researcher, and then every three years it will be revalidated. These tools evolve and get better and better as information is fed into the tools about outcomes, she remarked.

4:40:18 PM

CHAIR CLAMAN asked whether passage of Amendment 48 would undermine the implementation and use of, not only the pretrial tool, but the entire new pretrial process that is set to begin on January 1, 2018.

MS. DiPIETRO responded that the pretrial reforms all work together as a package and they have not gone into effect yet. She noted that everyone has been trained as to the pretrial changes currently, and there is a risk that if making changes, it would destabilize what the commission is trying to build.

4:41:13 PM

REPRESENTATIVE LEDOUX surmised that within the State of Kentucky, 8 percent of the defendants fail to appear.

MS. DiPIETRO asked whether she was asking about the 8 percent figure as to failure to appear, or failure to appear and a new criminal arrest.

REPRESENTATIVE LEDOUX said that she did not know, which is why she was asking the question.

MS. DiPIETRO advised that she does not have the State of Kentucky's statistics in front of her.

4:41:43 PM

REPRESENTATIVE LEDOUX asked how the Alaska Criminal Justice Commission received the State of Kentucky's statistics.

CHAIR CLAMAN advised that he had been talking about those statistics and "I'd read it more than a week ago," but Ms. DiPietro does not have the study available at the moment.

REPRESENTATIVE LEDOUX noted that she would like to determine the level that the State of Kentucky began, as compared to where the State of Alaska started.

CHAIR CLAMAN commented that the State of Kentucky has had a substantial improvement, but he could advise as to the numbers.

4:42:18 PM

REPRESENTATIVE LEDOUX offered a scenario of someone attending a bail hearing and not being released and asked what would have been the next step prior to Senate Bill 91, and the next step currently.

MR. SKIDMORE noted that the process has not changed at this point, but it will change in January 2018. He explained that after a person is arrested, they are taken to court, and the bail is set. In the event they cannot make their bail, they are entitled to a bail hearing to make a proposal to the court as to why they should be released and why the bail should be altered. That hearing is noticed, the defense attorney and prosecutor attend wherein they will come to an agreement or a disagreement on the proposal, and after both sides have made their case to the court, the court will make the final decision as to whether the bail stays the same or changes.

4:43:45 PM

REPRESENTATIVE LEDOUX asked, prior to the implementation of the Senate Bill 91 changes, whose burden of proof is it to show that the bail conditions should be changed in that the person will make their appearance in court, and they pose no danger to the safety of the victim. She asked whether that is an element of the standard of proof.

MR. SKIDMORE answered that when the court initially sets bail, the burden of proof is on the prosecution to establish the reasonable bail initially, and it then depends upon the requesting party. He explained that if the defendant is still in custody and is asking to be let out of jail, the defendant will have the burden of proof. In the event the defendant was already out of jail and the state is asking them to be returned to custody, it would be the state's burden. The quantity of that burden is a preponderance of the evidence, he added.

4:45:11 PM

REPRESENTATIVE LEDOUX asked how the burden of proof changes after the implementation of Senate Bill 91.

MR. SKIDMORE turned to the color chart previously discussed, and noted that there is mandatory OR, a presumptive OR, and a statutory bail (SB) authorized, meaning that it is presumed the person should be released. Under the statute, the burden of proof standard is clear and convincing that the person should remain in jail.

4:46:24 PM

REPRESENTATIVE LEDOUX asked that Mr. Skidmore explain the difference between preponderance of evidence and clear and convincing burdens of proof.

MR. SKIDMORE explained that preponderance of the evidence is a lower burden standard used in civil cases, some people think of it as 50 percent. Clear and convincing is a higher standard used for issues such as terminating parental rights, but he was hesitant to ever put a percentage on that burden of proof. He explained that the clear and convincing standard is a lower standard than the beyond a reasonable doubt standard, of which the prosecution must meet to convict someone.

4:47:03 PM

REPRESENTATIVE LEDOUX offered a scenario of someone, currently not convicted, being in jail who requests to be released from jail. She asked whether the defendant would bear the burden of proof that they did not pose a risk to their victim and that they would appear in court.

MR. SKIDMORE answered that if the determination of bail had already been set and they are the requesting party, the answer is yes.

REPRESENTATIVE LEDOUX asked, prior to the implementation of Senate Bill 91, whether the defendant must show by a preponderance of the evidence.

MR. SKIDMORE answered in the affirmative.

4:47:55 PM

REPRESENTATIVE LEDOUX surmised that after January 1, 2018, the prosecution must meet the more difficult standard of clear and convincing evidence that the defendant will fail to appear and will pose a threat to the security of the victim.

CHAIR CLAMAN asked whether she was asking about a defendant who is in jail trying to their bail lowered, or about the first time the defendant appears in court to have their bail set. He noted that her earlier question was about someone being in jail and requesting that their bail be lowered.

REPRESENTATIVE LEDOUX referred to Amendment 48, Sec. 7, AS 12.30.006(c), [page 1, lines 10-23], and opined that subparagraph (c) is "after the original conditions have been set." She offered that it appears a defendant can go back to court, and the prosecutor must show by clear and convincing evidence that the conditions of release should not be changed. She commented that it appears to be "an almost insurmountable standard because it's like proving a negative."

MR. SKIDMORE referred to Amendment 48, AS 12.30.006(c), page 1, lines 15-20, and advised that the amendments which will occur in January read as follows:

> (c) ... [UPON REVIEW OF THE CONDITIONS, THE JUDICIAL OFFICER SHALL REVISE ANY CONDITIONS OF RELEASE THAT HAVE PREVENTED THE DEFENDANT FROM BEING RELEASED UNLESS THE JUDICIAL OFFICER FINDS ON THE RECORD THAT THERE IS CLEAR AND CONVINCING EVIDENCE THAT LESS RESTRICTIVE RELEASE CONDITIONS CANNOT REASONABLY ENSURE THE
>
> (1) APPEARANCE OF THE PERSON IN COURT; AND
>
> (2) SAFETY OF THE VICTIM, OTHER PERSONS, AND THE COMMUNITY.]

MR. SKIDMORE explained that the language refers to a defendant who has been in jail for 48-hours after the initial bail had been set. The idea is, he offered, when the defendant has not been able to post the money, the court is supposed to review the case and under the standard of clear and convincing evidence determine whether the defendant is a risk not to show up or is a risk to harm others. In the event there is a risk, the defendant stays in jail, and if not, the presumption means the court should adjust the bail.

4:50:27 PM

REPRESENTATIVE LEDOUX surmised that if the prosecution can only prove by a 51 percent chance that the defendant is a risk to others, meaning more likely than not is a risk to others. Except, the prosecution does not show it by the roughly 75

percent clear and convincing evidence, she asked whether the person is released from jail.

MR. SKIDMORE clarified that he could not say that the defendant is necessarily released from jail, but the statute requires the judge to "revise conditions that have prevented the defendant". He said that he assumes that is what it results in, but in being careful about the language he uses, explained that it is not an automatic as the court is supposed to revise the conditions, and depending upon how the court revises the conditions, it may have an impact on whether the defendant is released.

REPRESENTATIVE LEDOUX commented that Mr. Skidmore's response caused her to feel fairly uncomfortable because the prosecution could prove that it is more likely, than not, that the defendant will not appear for court, or that the defendant in jail will harm others. She related that it is known that it is more likely than not, that the defendant is released from jail. She expressed that that caused her a degree of discomfort.

4:52:10 PM

REPRESENTATIVE REINBOLD advised that she was employed in pharmaceuticals and it could take 17 years from the time of conception and production and asked what phase this tool is in currently.

MR. SKIDMORE advised that he could not tell her how to compare where the development is as to any phases used in pharmaceuticals

REPRESENTATIVE REINBOLD asked whether this tool has been validated to reduce risks to Alaskans or whether it has undergone any "mini-trials" in the state. "I don't do things on faith," she commented.

MR. SKIDMORE answered that the development of the tool has evolved through validated studies. He noted that Representative Reinbold had asked him to show her where the tool has worked, except he could not show her until the tool has actually been used. Mr. Skidmore commented that he does not do things based on faith either, and that he has made it clear in his testimonies that he does things based on evidence. He pointed out that evidence has been provided that suggests the tool, as they develop it, will result in these outcomes. Based on that evidence, the state is trying out the tool and if it does not work, adjustments will be made, but he has every reason to

believe the tool will work, he stressed that his belief is based on evidence, not faith.

4:55:46 PM

REPRESENTATIVE REINBOLD remarked that Mr. Skidmore had contradicted himself because he said, "this is early, we're still developing it" and trying to figure out how to implement the tool. In her years of pharmaceutical work, each phase became more rigid with double-blind peer-reviewed and validated tests, she said.

CHAIR CLAMAN pointed out to Representative Reinbold that Mr. Skidmore has advised that he knows nothing about pharmaceutical trials.

REPRESENTATIVE REINBOLD commented that Alaskans want to know if this is a good tool, since "we got it through grants or whatever." She described the tool as currently being in phase one of a trial and it is not ready for prime time. She said she wants to know that this is a good tool and will give Alaskans reductions in risk because victims have a guarantee for protections in the constitution.

MR. SKIDMORE commented that he previously advised her, and he would state the fact again that this tool was developed based upon data from Alaska, and evidence shows that "this is what is" going to work. The tool was developed by looking at the questions [Ms. DiPietro previously stated] and the list of information and apply it to the people released in the past. The advice has been that if the state had asked these questions and had this score at the time the people were assessed, "would it have been right, would it have not been right? And, the answer is, it worked." That is why the tool will be used, he offered. The confusion Representative Reinbold appears to have about the comments made today with regard to being in the process of implementing the tool is incorrect. The tool is not in the process of being developed because the tool is developed, he said. This discussion has been about how everyone will use the tool, how to be certain that everyone communicates smoothly with one another, and how everyone will be trained for its use, he clarified. Mr. Skidmore reiterated that the development of the tool is finished, and the tool has been validated. The discussion about why it is not implemented are pointed to all of the other logistics involved with that implementation, he stated.

4:58:42 PM

[CHAIR CLAMAN and Representative Reinbold discussed Chair Claman's clarification of various questions.]

4:59:09 PM

REPRESENTATIVE REINBOLD characterized that [the tool] as more like a theory because Mr. Skidmore does not have the evidence because the tool has not yet been used and he does not have the outcomes. She asked repeated a question from someone on her iPhone, as follows: "The risk assessment will be in direct opposite of what you were previously talking about. The statute may say that they are medium to high, but the risk assessment may say that they're low. Can you explain that?"

MR. SKIDMORE answered that he does not know who provided that question to Representative Reinbold, but they have misunderstood the testimonies, and repeated that the statutes do not label someone as high or low risk. Again, he said, the statutes set out the framework of where to look on the grid based on the low, medium, or high-risk assessment provided by the risk assessment tool. The statutes do not control whether a person is low, medium, or high-risk, he further reiterated.

5:00:04 PM

REPRESENTATIVE REINBOLD advised that "this person" is seeking to understand this tool

CHAIR CLAMAN advised Representative Reinbold that she needs to ask her own questions, she is not here to ask someone's else's questions.

REPRESENTATIVE REINBOLD advised that the person is "a colleague" and that she feels it is appropriate to ask one of her colleague's questions. It says ...

CHAIR CLAMAN instructed Representative Reinbold that if her colleague is another legislator, that this is not the place for other legislators to ask questions. He reminded Representative Reinbold that legislators can ask questions as a member of whichever committees they are on, and that legislator is out of order asking another legislator to ask their questions on this committee. He stated that Representative Reinbold is a member of the House Judiciary Standing Committee and to ask her own questions.

5:01:17 PM

REPRESENTATIVE EASTMAN noted that he is familiar with the pharmaceutical industry, and that there are a lengthy series of safeguards and firewalls between the implementation and deployment of a product before it reaches the public. He asked what sort of safeguards, firewalls, and pilot programs are between the public in Alaska and the implementation of this tool. He asked whether this tool is simply going off of the social science and it will then reach the public in a trial and error mode because it is not right the first time. He asked whether Mr. Skidmore understood his question.

MR. SKIDMORE responded that he understood the question to be more of a logistics question and his expertise is in the law. The question asked is how the logistics are being developed and noted that he has heard about the possibility of a pilot program but, he advised, that question should be directed to the Department of Corrections (DOC) as it is ultimately responsible for the tool.

5:03:41 PM

COMMISSIONER WILLIAMS advised that he is aware a pilot is being rolled out and deferred to Ms. DiPietro.

MS. DiPIETRO offered caution about the pharmaceutical analogy because within the pharmaceutical industry a product must be tested on a live person to determine the effects of the drug. That is not the case here because, luckily, the risk assessment tool can be tested on cases that have already taken place. She explained that the test process included the following: obtaining the names of previously arrested and released defendants; run the tool and assess them with a low, medium, or high-risk score; and determine their actions after their release. She used a scenario that during the file review testing, the tool assessed someone as a high-risk for new criminal arrest and the file showed that the person did commit a new offense after release; or someone had obtained a low-risk score and that person did not re-offend, for example. She attended a presentation by the DOC's director of the Pretrial Enforcement Division, and the director is "doing a trial" in advance of January and expects that trial to be completed in advance of January 1, 2018.

5:06:21 PM

REPRESENTATIVE EASTMAN commented that it is good to be able to use history and create benchmarks and test the tool. Although, he said that if he is using the tool to assess someone making decisions post-bail ten years ago, he would only get a good read on that particular time period, which will be different than the present time. He asked whether there are firewalls or safeguards as the DOC tailors the tool to the changing present time now that the state is in a post-Senate Bill 91 environment.

MS. DiPIETRO agreed, and she advised that that is not the data being used in the trial program. The pretrial release period is not that long of a period of time; therefore, information can be used about people released within the last six months to one-year and received good information.

5:08:30 PM

REPRESENTATIVE EASTMAN asked Ms. DiPietro to explain the firewalls and safeguards as the tool is being used on recent data, the pilot projects, and phases of deployment.

MS. DiPIETRO advised that she was not sure what Representative Eastman meant by firewalls and safeguards, but currently, there is a [pilot] trial going on, or soon to start, of people being arrested now or arrested in the very recent past. That last bit of information will be used to be as sure as possible that the tool will "be as good as possible" going forward. In terms of rolling it out in stages, she opined, that because this goes into effect on January 1, 2018, that would not be possible, and she did not believe that was the plan.

5:10:09 PM

REPRESENTATIVE EASTMAN remarked that clearly the Alaska Criminal Justice Commission has passionately pursued the goal of reducing the prison population to the extent possible. He asked how the development of this tool has been insulated from that passion, or whether this tool was inspired, at least in part, by that passion.

MS. DiPIETRO reiterated that the tool was developed by Dr. Kristin Bechtel, who does not work for Alaska or for the commission, and she was not paid by Alaskan funds. She reminded the committee that Dr. Bechtel has an extremely good reputation as an ethical researcher, and that her reputation is on the line. She advised that the DOC asked a large pretrial

stakeholder group of 50 - 75 practitioners to come in, with many skeptical people involved in that group. The director advised her that practitioners have thrown down roadblocks, barriers, and challenges to the division, to which she welcomes because the challenges only makes the product better, she offered.

5:12:09 PM

REPRESENTATIVE EASTMAN referred to Amendment 48, page 1, lines 15-20, previously discussed, and said that currently "the judicial officer shall revise conditions of release unless they find on the record there is clear and convincing evidence." He asked that when it comes time to use this tool and someone is scored at high-risk, whether that classification is sufficient to meet the standard of clear and convincing evidence, or whether some type of evidence must be made available in addition to that classification from the tool.

MS. DiPIETRO offered that she was unsure she could answer the question, but to some extent, it will depend on the judge and how the judge analyzes the law. She said that she anticipates that the attorneys, with all access to the pretrial services officer's report, will make arguments to the judge. Under the right circumstances, she said, she imagines that the parties would point to the risk level the tool had assessed the defendant. Except, she pointed out that it is more likely information will be brought in, such as a police report or information from a victim's statement.

5:14:44 PM

REPRESENTATIVE EASTMAN asked whether Ms. DiPietro was able to find any additional information from the State of Kentucky as to where the state started out prior to the implementation of the tool.

MS. DiPIETRO said that she will provide that information to the committee.

5:15:36 PM

REPRESENTATIVE EASTMAN referred to Amendment 48, page 1, lines [15]-20, requiring a judicial officer to find clear and convincing evidence, and asked that when the tool scores someone at high-risk, whether that is sufficient to meet the standard of clear and convincing evidence, or whether additional evidence would be necessary.

MR. SKIDMORE commented that he did not know the answer right now, but as a prosecutor, he would try to find a way to say that the high-risk assessment was an important determination.

Mr. Skidmore offered that he would review the criminal history and make arguments about the criminal history and the nature of the offense, but he would also look at all of the other sorts of arguments and sorts of evidence he would have used previously to make that pitch to persuade the court of the prosecution's position.

5:17:26 PM

REPRESENTATIVE REINBOLD related that she would have liked the opportunity to comment as to Ms. DiPietro's statement about why pharmaceutical research was not appropriate to bring forth. She reiterated that this tool does not seem ready "for prime time," it is in the early phase, and it has not been "used anywhere in the state," or that it works in Alaska. She said she has probably 20 more questions for Mr. Skidmore and is disappointed she is not given time to ask her questions, and hopes this bill receives a full vetting in the House Finance Committee. Victims have the right to be protected, and this tool will create tremendous risk to Alaskans, and Amendment 48 must be passed, she said.

5:20:29 PM

REPRESENTATIVE KOPP pointed out that as everyone knows, risk analysis tools are used in every sector of society, project risk assessments, security risk assessments, and so forth.
This risk assessment tool, by the measure of many well-informed people, is the gold standard out there right now, and it has been validated. In the event something about this tool proves to signal that re-evaluation is needed, then the legislature is here to make adjustments. This committee has heard testimony from Mr. Skidmore, Director of the Criminal Division, Department of Law (DOL) who, Representative Kopp related, is highly motivated to make sure people are not inappropriately released and that an appropriate bail is set addressing the risk factors present. The committee needs to remember, he stressed, that the authority for the right to bail for everyone is comes from the Eighth Amendment. The discussions taking place here, he pointed out, are that the members almost seem to be arguing to take that right away, period, except it is in the constitution and legislators are sworn to uphold that constitution. Therefore,

the members must make sure that the right is advocated for everyone, and used wisely, and the risk assessment tool is there to make sure that every decision to release or what conditions are appropriate to release, are made with the best evidence available, and legislators want evidence to drive this issue. Representative Kopp stated that he does not support Amendment 48 because he firmly believes that Alaska will be headed for a better public safety result as a result of using this tool. Having worked in the system a long time without such a tool, he said that Mr. Skidmore was correct, in the past there would be radically different risk assessments. These assessments, he noted, depending on who provided the information to a prosecutor or a judge, which prosecutor pulled the information together, which legal aid helped with making those risk assessments, and sometimes the disparately could not be reconciled. He said that he is all about consistency in the law, consistent application, a fair and just application, and that he is willing to use a tool that has a lot of promise. He reiterated previous testimony in that this committee will be quick to make adjustments if it finds the tool is not working as expected. For every complex problem there is an answer that is clear, simple, and wrong. This tool and the work that went into it, shows the level of complexity in the thinking that Alaska needed to produce a better public safety result, he said. It does not fit on a bumper sticker, but the tool will help Alaska get to a better public safety result, he stated.

5:24:10 PM

CHAIR CLAMAN offered his belief that Alaska must be tough on crime, smart on spending, and that the legislature can do better for public safety. He said that he has been consistently shown that this pretrial services program, including the assessment tool, does just that and he will not support Amendment 48.

5:24:30 PM

REPRESENTATIVE EASTMAN noted that the Eighth Amendment simply states that "excessive bail shall not be imposed." He said that a person charged with a crime does not have a right to bail under any circumstances because the right to bail is balanced against the interests of the safety of the public. He referred to the tool and commented that rather than dealing with statutory bail authorized for people categorized as high-risk, instead for "DUI refusals, class C felonies misdemeanors," there is a presumption they will be released on their own recognizance (OR). That is concerning, and not because he does not like

concept of bail, but because bail needs to be appropriate and the public safety interests need to be the primary interest when worried about whether or not "to get it right," he said. There is nothing in Amendment 48 that precludes the use of the tool, he offered.

REPRESENTATIVE FANSLER maintained his objection.

5:25:44 PM

A roll call vote was taken. Representatives Eastman, Reinbold, and LeDoux voted in favor of the adoption of Amendment 48. Representatives Kopp, Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, the adoption of Amendment 48 failed by a vote of 3-4.

5:26:33 PM

CHAIR CLAMAN recessed the House Judiciary Standing Committee until 7:30 p.m.

7:34:55 PM

CHAIR CLAMAN called the House Judiciary Standing Committee meeting back to order at 7:34 p.m. Representatives Claman, Fansler, LeDoux, Reinbold, Eastman, and Kopp, were present at the call to order. Representative Kreiss-Tomkins arrived as the meeting was in progress.

CHAIR CLAMAN advised that originally, he had planned to continue moving through the amendments, noting that Amendment 37 had been tabled, but Mr. Piper is now available for testimony.

7:35:56 PM

REPRESENTATIVE EASTMAN moved to take Amendment 37 off of the table. There being no objection, Amendment 37 was before the committee.

7:36:22 PM

TONY PIPER, Program Manager, Alaska Safety Action Program, Boney Memorial Courthouse, said he was available for questions.

MR. PIPER, in response to Chair Claman, advised that he has had a chance to review Amendment 37.

CHAIR CLAMAN asked whether he had reviewed the particular provisions of SB 54, relating to the Alaska Safety Action Program (ASPA).

MR. PIPER answered in the affirmative.

7:37:12 PM

CHAIR CLAMAN asked Mr. Piper to explain the impact on the ASAP if Amendment 37 was adopted, in contrast to the provision in Senate Bill 54.

MR. PIPER responded that it would require the ASAP to accept more referrals from the Alaska Court System having to do with cases that may not be a DUI, thereby giving the ASAP more cases than it is currently accepting. As to the exact amount of cases, he said he does not know at this time.

CHAIR CLAMAN asked whether the ASAP has the capacity to take on those additional cases, in the event this amendment is adopted.

MR. PIPER answered that the way Amendment 37 is written, the ASAP would have the capacity. He reminded the committee that as Mr. Skidmore explained, prior to Senate Bill 91, the courts referred individuals to the ASAP who were not authorized under statute, thereby allowing the ASAP to take on almost anyone. These statutes do not revert back to that [practice]. He said that these statutes simply require the ASAP to take on a few more cases than currently, he noted.

7:38:49 PM

CHAIR CLAMAN surmised that Amendment 37 adds a few cases, but in Mr. Piper's view, not a lot of cases compared to the practice prior to Senate Bill 91.

MR. PIPER answered in the affirmative.

7:39:02 PM

REPRESENTATIVE REINBOLD asked Mr. Piper the current client capacity for the ASAP, and how many individuals are actually moving through the ASAP.

[Due to the audio difficulties, Mr. Piper agreed to locate a landline.}

7:41:33 PM

MS. MEADE noted the confusion and explained that, although, Amendment 37 does bring the language back to the language prior to Senate Bill 91. Except, she pointed out, prior to Senate Bill 91 the language read, as it would with this Amendment 37, "to really allow referrals only with charges or conviction of misdemeanor DUIs." Nonetheless, she said, pre-Senate Bill 91, the courts referred more people to the ASAP and the ASAP gladly took them for all sorts of substance abuse related cases, including assaults or alcohol related cases. Although, Amendment 37 would bring the language back to pre-Senate Bill 91 language, it actually narrows the cases that would go to the ASAP. She explained that SB 54 allows DUIs and DUI refusals, but also simple drug possession cases. Therefore, this may not accomplish exactly what someone may believe it accomplishes, she explained.

7:42:47 PM

REPRESENTATIVE REINBOLD asked whether Ms. Meade knew the statewide capacity for the number if people in the ASAP, noting that she had attended therapeutic court and was able "see some of the graduates" from the ASAP.

MS. MEADE clarified for Representative Reinbold that this does not involve therapeutic courts, these are actually referrals the court can make to the Alcohol Safety Action Program (ASAP). She explained that the ASAP is a subdivision of the Department of Health and Social Services (DHSS), and it has an office in many courthouses, including the Anchorage Courthouse. In Anchorage, she noted, when defendants with DUIs or previous other substance abuse related charges are referred to the ASAP, they walk downstairs, and Mr. Piper and his staff assists those people find evaluation programs and treatment programs. The ASAP staff pilots these people through the system, ensures they are attending treatment, the defendants receive their paperwork showing their successes in those programs, and then reports back to the court, she explained.

REPRESENTATIVE REINBOLD asked what the client capacity is for the ASAP, and it usage currently. She referred to pre-Senate Bill 91 and post-Senate Bill 91 law, and whether the ASAP had seen a decrease or increase in referrals.

MS. MEADE deferred to Tony Piper as she did not know the actual capacity of the ASAP. She opined that the reason for the change

in Senate Bill 91 was to narrow the number of referrals because courts were ordering many people to the ASAP because that was the only place to send misdemeanants with alcohol and substance abuse problems. The Alaska Criminal Justice Commission thought that the ASAP's resources would be better spent focused more narrowly on those with DUIs and DUI refusals who, then, could receive more concentrated help. She said that "SB 54 thought" that possibly the law went too far and added in those people with drug possession charges because there did not appear to be other things to do with those misdemeanants.

CHAIR CLAMAN asked Representative LeDoux to describe her conceptual amendment to Amendment 37.

7:46:05 PM

REPRESENTATIVE LEDOUX moved to adopt Conceptual Amendment 1 to Amendment 37, and explained that Conceptual Amendment 1 deletes the words on page 1, beginning line 7, "a motor vehicle, aircraft, or watercraft, and." Page 1, paragraph (21), lines 6-8, would then read as follows:

> ... in connection with a charge or conviction of a misdemeanor involving alcohol or a controlled substance, referred by a court.

7:47:02 PM

REPRESENTATIVE LEDOUX explained that the purpose of Conceptual Amendment 1 is to bring it back to pre-Senate Bill 91 practice as opposed to the pre-Senate Bill 91 statute. Apparently, she commented, the practice and the statute did not completely align.

REPRESENTATIVE FANSLER objected.

7:47:37 PM

REPRESENTATIVE EASTMAN asked whether it was Representative LeDoux's intent to eliminate the words "the use of?"

REPRESENTATIVE LEDOUX answered that that was not her intention. She clarified that her understanding is that this brings it back to pre-Senate Bill 91 practice, and not to the pre-Senate Bill 91 statute.

MS. MEADE remarked that Representative LeDoux was close, but to get to where she wanted to be, she would want to delete "under AS 28.35.028" because that is the DUI statute, and it would be a modifier that Representative LeDoux would want in there, she opined.

CHAIR CLAMAN surmised that Representative LeDoux keep the words "the use of" on line 7; delete the word "under;" and on line 8, delete "AS 28.35.028."

7:48:41 PM

REPRESENTATIVE LEDOUX noted that she would probably eliminate all of the statute cites.

CHAIR CLAMAN explained that under Amendment 37, all of the statutory references are deleted because they are in brackets.

REPRESENTATIVE LEDOUX agreed with Chair Claman, and she noted that the committee does not have to delete anything.

CHAIR CLAMAN agreed, and he offered that the only statute being deleted is AS 28.35.028. Therefore, paragraph (26), lines 6-10 would read as follows:

> ... in connection with a charge or conviction of a misdemeanor involving the use of alcohol or a controlled substance, referred by a court or referred by an agency of the state ...

REPRESENTATIVE LEDOUX said to eliminate the word "under" also.

CHAIR CLAMAN agreed with Representative LeDoux.

7:49:32 PM

MS. MEADE asked to correct a statement she had made, noting noted that AS 28.35.028 does comport with Representative LeDoux's intent. She clarified that she had said that AS 28.35.028 was the DUI statute, and AS 28.35.028 is actually the therapeutic court statute. Although, she pointed out, that still needs to be eliminated "because that just doesn't happen."

CHAIR CLAMAN stated that the language of Conceptual Amendment 1 to Amendment 37 is before the committee.

7:50:04 PM

REPRESENTATIVE LEDOUX offered her thought that if Senate Bill 91 is an experiment in which one is supposed to eliminate jailtime and substitute alcohol and drug abuse treatment, that the state would want the most expansive reading of the ASAP.

7:51:02 PM

CHAIR CLAMAN asked whether Mr. Piper understands that Conceptual Amendment 1 goes back to pre-Senate Bill 91 practices for the ASAP and referrals.

MR. PIPER answered that he understood.

CHAIR CLAMAN asked whether the ASAP has the capacity today to take on referrals at that level.

MR. PIPER responded that the ASAP would not have the capacity, at this time, to pick up the amount of participation the ASAP would receive from those referrals.

CHAIR CLAMAN asked Mr. Piper to repeat his answer because the phone connection was less than perfect.

MR. PIPER explained that with this amendment, if the ASAP went back to the referral amount it had received prior to Senate Bill 91 and continued to perform the same type of work for the individuals as the ASAP is currently performing, the ASAP would not have the capacity to accept those referrals at this time.

7:52:48 PM

REPRESENTATIVE FANSLER noted the audio difficulties during Mr. Piper's testimony, but it sounded as though the ASAP does not have the capacity to go back to pre-Senate Bill 91. Although, the ASAP has the capacity to operate under SB 54 or Amendment 37 as once written by just limiting the ASAP, but to go back to the all-inclusive ...

7:53:24 PM

REPRESENTATIVE EASTMAN referred to page 1, lines 16-17 of Amendment 37, and asked whether Conceptual Amendment 1 would have an impact on those two lines.

MS. MEADE answered that she has not verified whether the conceptual amendment would have an impact on those two lines, and she would have to review those statutes.

REPRESENTATIVE EASTMAN noted that he supports Conceptual Amendment 1 as it accomplishes his intent.

7:54:17 PM

REPRESENTATIVE REINBOLD asked the client statewide capacity for the ASAP, and what percentage was being utilized currently.

MR. PIPER answered that currently, the ASAP has the capacity for approximately 6,000 people statewide performing the work it currently performs, noting that some of the offices are part-time. He explained that pre-Senate Bill 91, the ASAP had closer to 9,000 people statewide each year, but the workload was different.

7:55:17 PM

REPRESENTATIVE REINBOLD surmised, if she heard Mr. Piper correctly, pre-Senate Bill 91 the program had 9,000 referrals. The ASAP's was 6,000 for referrals and she asked whether the program is at full capacity currently.

MR. PIPER replied that the ASAP is currently at full workload capacity.

7:56:22 PM

REPRESENTATIVE FANSLER referred to SB 54, as it is currently written and without Amendment 37, and asked whether the program expands to include the alcohol crimes and also drug possession. He further asked what the inclusion of drug possession offenders would mean to the ASAP, capacity-wise.

MR. PIPER answered that ASAP would have to see how many people it would include because the ASAP could handle a few more people, but it is pretty much at full capacity.

7:57:18 PM

REPRESENTATIVE KREISS-TOMKINS referred to the question of capacity, noting that everyone wants as many people into treatment as possible, but it is a question of capacity. He offered four different capacity scenarios: (1) pre-Senate Bill

91 practice and not how the law read, which was a caseload of approximately 9,000 individuals per year; (2) pre-Senate Bill 91 law, and the envisioned caseload without Representative LeDoux's Conceptual Amendment 1 to Amendment 37; (3) post-Senate Bill 91, under current law offers a narrow focus, and the ASAP is currently at full capacity with 6,000 cases; and (4) in the event SB 54 passed without amendment 37, that caseload, and if SB 54 passes without Amendment 37, where the resources will come from to handle that slight augmentation of cases.

MR. PIPER referred to the four different scenarios, and advised that with Senate Bill 91, the requirement and time spent with each participant is much longer than the time spent prior to Senate Bill 91 wherein it had the capacity to treat 9,000 people per year. At this point, the ASAP is performing a risk needs assessment for screenings on every participant and then monitors those people closer at the higher risk level, which is what it was tasked to perform. In the event ASAP was to perform that same workload with an increased population, it would require more [employees], and he reiterated that the ASAP is at full capacity with its current workload. The other scenario is that if the law goes back to pre-Senate Bill 91, to not have the pre-Senate Bill 91 workload. Or, he commented to build more capacity to be able to perform its current workload with the pre-Senate Bill 91 amount of people. He said that he does not know exactly how many people that would be, which may be a question for the courts.

8:01:22 PM

REPRESENTATIVE EASTMAN noted that other states have similar programs and if they do have a spike in misdemeanors and end up with an unexpectedly high number of referrals, a shortage of resources, and they tend to have people on waiting list until additional resources can be found. He asked whether that is something that has been considered because it would be nice to always have resources lined up in advance for any unanticipated situations, but Alaska's fiscal situation would not allow that system currently. He further asked that, should the state ever reach that type of situation, whether Mr. Piper is able to identify weight listing, and if so, how he might go about doing that.

MR. PIPER answered that at one-time the ASAP did have a waiting list when there were "higher referrals," and it tries to eliminate that as much as possible because that would cause the ASAP to lose some people. He related that the ASAP could

operate in that mode if it was forced to do so, but that would raise the possibility of people not coming to the ASAP at all for treatment.

8:03:01 PM

CHAIR CLAMAN advised that the committee had not yet voted on whether to adopt Conceptual Amendment 1, and the discussion has been about the bill as though the amendment had been adopted.

REPRESENTATIVE KREISS-TOMKINS surmised that if the ASAP goes beyond 6,000 cases currently, there would be a risk assessment to triage who receives treatment and who does not receive treatment.

MS. MEADE clarified that the statutory cite on Amendment 37, page 1, line 17, AS 47.37.130(h)(3), prompted "this." Lines 16-17 of Amendment 37 would add AS 47.37.130(h)(3) to the list of repealed items out of Senate Bill 91. Those are the repealors, and what Senate Bill 91 added in the 47.37.130(h)(3) was a requirement that the ASAP adopt regulations relating to its screening of individuals for risks and then monitoring those individuals. She explained that Mr. Piper had said that Senate Bill 91 effectively narrowed the individuals they would treat, those will DUIs or DUI refusals, but expand its workload because now they would be performing assessments and much more intensive work with those individuals. She explained that even though Senate Bill 91 narrowed the number of people, it changed it to add more work with those people. In the event Amendment 37 is adopted, which brings the wording back to what it was pre-Senate Bill 91, then the literal wording of the statute, were it to be adopted, would very much narrow the people sent to ASAP because it would solely allow referrals under AS 28.35.028, "and that is effectively zero." The reason people were not adhering to the statute, pre-Senate Bill 91 and the practice had expanded, is because it was not written in a manner that it could be workable. She reiterated that AS 28.35.028 is the statute for therapeutic court and therapeutic court individuals are not referred to the ASAP. Therefore, there was a disconnect and the agencies working together more or less filled in the blanks and made it work for as many individuals as possible.

8:06:23 PM

CHAIR CLAMAN noted that Conceptual Amendment 1 does not include AS 28.35.028, but rather the conceptual amendment tries to get

back to pre-Senate Bill 91 practices which is more expansive than the initial language of Amendment 37.

REPRESENTATIVE KREISS-TOMKINS commented that in no scenario does the committee want Amendment 37, absent Conceptual Amendment 1, because it does not make sense. She related that her understanding is that lines 16-17 would remove some of ASAP's workload and perhaps give it additional capacity, but she did not want to speak for Mr. Piper.

8:07:04 PM

REPRESENTATIVE EASTMAN referred to lines 16-17, and noted that within Conceptual Amendment 1, those statutory cites have not been touched. He asked Ms. Meade from she knows of how that language operates will that accomplish the intent of the conceptual amendment.

MS. MEADE explained that it would repeal the requirement that the ASAP screen and monitor individuals and have regulations. [Audio difficulties] was added to ASAP as its caseload would be narrowed, but it would have more intensive monitoring of those individuals, and this eliminates that monitoring.

8:08:14 PM

REPRESENTATIVE LEDOUX advised that she was considering a conceptual amendment to Conceptual Amendment 1 to eliminate lines 16-17 because she wanted to get back to where it was pre-Senate Bill 91 in practice.

CHAIR CLAMAN offered that to get to pre-Senate Bill 91 practice, she would want to keep lines 16-17 because it diminishes the amount of work the ASAP performs per case, which may increase its number of case capacity. He commented that Mr. Piper should answer the question of whether the importance of essentially the greater work per case.

REPRESENTATIVE LEDOUX commented that she wants the ASAP to do both because this is supposed to be about treatment.

CHAIR CLAMAN surmised that Representative LeDoux wanted the more intensive treatment.

REPRESENTATIVE LEDOUX said that she wants the more intensive treatment and the expanded number of cases.

CHAIR CLAMAN advised that if Representative LeDoux wants the more intensive treatment, she should delete lines 16-17.

REPRESENTATIVE LEDOUX asked about lines 13-14.

CHAIR CLAMAN said that he would just deal with lines 16-17.

8:09:49 PM

REPRESENTATIVE LEDOUX moved to amend Conceptual Amendment 1 to Conceptual Amendment 1 to Amendment 37, by also deleting lines 16-17. There being no objection, Conceptual Amendment 1 to Conceptual Amendment 1 to Amendment 37 was amended.

CHAIR CLAMAN explained that under Conceptual Amendment 1, as amended, the number of cases would increase and the work per case would stay as it was under Senate Bill 91, which was more intensive work per case than pre-Senate Bill 91.

REPRESENTATIVE EASTMAN commented that the language in lines 16-17 does not prescribe exactly how the ASAP will go about its workload. Although, it does lay out that the ASAP has a responsibility to create regulations, and so forth. He asked Mr. Piper about any implications this would have on the program.

8:11:02 PM

MR. PIPER clarified that the current practice is not treatment itself, it is a screening of risk needs and assessment with a referral to treatment. This process allows the ASAP to look up an individual's risk for reoffending, and other needs that go along with that. It is the same risk assessment prepared in therapeutic court on [audio difficulties]. It allows the ASAP to see more of what a person needs, their risk, and then allows the ASAP to monitor these people closely to make sure they fulfill the requirements they had and refer them more specifically to their needs for treatment. He emphasized that it is not treatment in and of itself, and without that, the ASAP would just refer people screened for alcohol or drug use, and refer everyone to treatment accordingly, and it would not be able to monitor the higher risk people as closely as it does currently because it would have so many more people to look after.

CHAIR CLAMAN explained to Representative Eastman that the committee is under discussion on Conceptual Amendment 1, and not under further questions.

8:12:52 PM

REPRESENTATIVE EASTMAN advised that he supports Conceptual Amendment 1, as amended. He commented that it would be helpful to him as a legislator if "we ever do come into a situation where there is a shortage of resources" rather than people simply getting lost in the cracks, it would be helpful to know through a waiting list or some other means what the sources of resources actually is, so the legislature can prioritize that accordingly.

8:13:50 PM

REPRESENTATIVE FANSLER said that he would speak against Conceptual Amendment 1, as amended, not because he does not like the idea behind it because "I love the idea behind it," but the committee has no idea of the fiscal impact. The committee has no idea where that money will come from, and he is loath to start handing out unfunded mandates. He advised that the legislature will expand the program by 3,000 people and [expect the ASAP to] perform the work it was doing with 6,000 people with the same resources. He said that that is not fair, and when it is operating budget time all of sudden the legislature will forget about this Conceptual Amendment 1, as amended. He related that he does not want to throw the proverbial brick to the person swimming really well and all of a sudden decide to "sink the 6,000 that are doing well because we are overloading the program. The committee has heard sterling things about this program and he wants it to be as expanded as possible, but it requires money.

8:15:36 PM

REPRESENTATIVE REINBOLD commented that the ASAP was at 9,000 cases and it went down to 6,000 cases post-Senate Bill 91, and something doesn't add up. She said the resources were supposedly added, and that Senator John Coghill had recently advised that $33 million had been reinvested. Commissioner Williams advised the committee that "there was a bunch of savings," and the intention of Senate Bill 91 was to reinvest that money, and there was not a mandate. She said that this is the people's only hope, maybe there is a flicker of hope in Senate Bill 91 and people will receive treatment, so this is a good amendment.

CHAIR CLAMAN, in reference to Representative Reinbold's comments about "rumors in the hall," advised that the House Finance Committee scheduled a hearing of this bill tomorrow afternoon. Whatever the rumor is, the schedule suggests otherwise, he pointed out.

8:17:55 PM

REPRESENTATIVE KOPP asked that the [conceptual amendment] be clearly drawn out because he has not seen it drawn out exactly on paper.

CHAIR CLAMAN advised that he will re-read Conceptual Amendment 1, as amended, prior to its vote.

8:18:14 PM

REPRESENTATIVE LEDOUX, in response to Representative Fansler's comments about the fiscal note and noted that the bill is next referred to the House Finance Committee and it will consider the fiscal implications. She noted that Senate Bill 91 is supposed to be about saving money from the prisons, applying it into drug and alcohol treatment, and reinvesting the savings. Representative LeDoux asked how the committee could conceivably vote against Conceptual Amendment 1, as amended, of which does just that.

8:19:01 PM

CHAIR CLAMAN noted that Conceptual Amendment 1, as amended, to Amendment 37, page 1, lines 6-11, currently read as follows:

> (21) ... **in connection with a charge or conviction of a misdemeanor involving the use of alcohol or a controlled substance, referred by a court** 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;
>
> lines 16-17 are deleted entirely.

8:19:44 PM

REPRESENTATIVE KOPP pointed out that just because the language bracketed out those items on line 7, the DUI specific and they

are restated on lines 10-11. In other words, he explained, they are referred by agencies with the responsibility for administering motor vehicle laws in connection with driver's license actions involving the use of alcohol or a controlled substance. Therefore, even with this conceptual amendment, they will still go there for the same offenses as it is now "pretty much all inclusive."

CHAIR CLAMAN advised that the difference is that here, the court can refer for any reason, and the only agency that could refer would be a motor vehicle agency.

REPRESENTATIVE FANSLER maintained his objection.

8:20:30 PM

A roll call vote was taken. Representatives LeDoux, Eastman, Reinbold, Kopp, and Kreiss-Tomkins voted in favor of the adoption of Conceptual Amendment 1, as amended, to Amendment 37. Representatives Fansler and Claman voted against it. Therefore, Conceptual Amendment 1, as amended, to Amendment 37 was adopted by a vote of 5-2.

8:21:28 PM

REPRESENTATIVE KREISS-TOMKINS offered two scenarios: one if Amendment 37 was as conceptually amended, and one if it continues with SB 54 as currently proposed. He said there are two scenarios: one is a narrow but highly focused, highly intensive approach; and the other is the much broader approach. He asked whether "this new approach," given that it has been in practice for some period of time, is more effective than the perspective of practitioners or people working day-to-day in the system.

MS. DiPIETRO responded that the commission's recommendation was actually more nuanced than has been discussed. The commission recommended a contraction of the number of cases referred to ASAP because research has shown that it is better to focus resources on the higher risk people rather than spend resources on the lower risk people who will probably be fine without any intervention. However, the commission actually said that in the alternative, if the legislature wished to give more funding to ASAP, that the commission would have supported a continued broad mandate with the addition of the screening for high risk individuals that ended up in Senate Bill 91. Mr. Piper could speak to how the ASAP has been progressing in its work on the

screening process and working more intensively with the higher risk people as opposed to the lower risk people. The program appears to be working fine, but Mr. Piper could speak to the ASAP results.

CHAIR CLAMAN asked Representative Kreiss-Tomkins whether Ms. DiPietro had answered his question to his satisfaction.

8:24:03 PM

REPRESENTATIVE KREISS-TOMKINS asked whether there is any data or evidence that speaks to whether the new approach is more effective than the prior approach.

MR. PIPER answered that the ASAP has not prepared any evaluations at this time because it is still working on adjustments to the program, and it had to spend much more time with people who ordinarily not make it through the program. He offered that with more encouraging and more monitoring he expects to see more of the higher risk people completing their ASAP requirements. Although, he commented, he has not had a chance to prepare an evaluation as to what has been accomplished so far because he is still in the process of refining the program.

8:25:31 PM

REPRESENTATIVE EASTMAN declared a point of order. He referenced that since the committee had deleted lines 16-17, there was no difference between this amendment and SB 54 as to the quality of the program. There is nothing in Amendment 37, as conceptually amended, that will direct the ASAP one way or the other, he offered.

CHAIR CLAMAN stated that the point of order was well taken as it was a good observation in terms of what the program would be doing, and that it is no change.

8:26:12 PM

The committee took a brief at ease from 8:26 p.m. to 8:27 p.m.

8:27:36 PM

CHAIR CLAMAN asked Representative Fansler whether his objection to Amendment 37, as conceptually amended, was maintained.

REPRESENTATIVE FANSLER withdrew his objection.

CHAIR CLAMAN advised that there being no objection, Amendment 37, as conceptually amended, was adopted.

8:28:24 PM

REPRESENTATIVE KOPP offered a note of encouragement and commented that the committee does not like modeling tools but, the UA Justice Center recently advised that these investments in treatment have anywhere between a 4 to 1, to 23 to 1 ratio, in reduced recidivism, reduced victimization costs, and better public safety output. He related that there is a modeling tool supporting what the legislature is doing, and that this was a good call.

8:30:14 PM

REPRESENTATIVE LEDOUX moved to adopt Amendment 20, Version 30-LS0461\N.38, Martin, 10/23/17, which read as follows:

Page 1, line 2:
Delete "**relating to sex trafficking;**"

Page 2, lines 2 - 29:
Delete all material.

Renumber the following bill sections accordingly.

Page 8, line 28, through page 10, line 25:
Delete all material.

Renumber the following bill sections accordingly.

Page 11, lines 28 - 31:
Delete all material.

Renumber the following bill sections accordingly.

Page 15, line 7:
Delete "AS 11.66.130(b), 11.66.135(b);"

Page 15, line 14, following "Act;":
Insert "and"

Page 15, lines 15 - 17:
Delete all material.

Renumber the following paragraph accordingly.

Page 15, line 18:
Delete "sec. 15"
Insert "sec. 10"

Page 15, line 21:
Delete "sec. 6"
Insert "sec. 3"

Page 15, line 22:
Delete "sec. 7"
Insert "sec. 4"

Page 15, line 23:
Delete "sec. 8"
Insert "sec. 5"

Page 15, line 24:
Delete "sec. 9"
Insert "sec. 6"

Page 15, line 25:
Delete "sec. 10"
Insert "sec. 7"

Page 15, line 26:
Delete "sec. 11"
Insert "sec. 8"

Page 15, line 27:
Delete "sec. 12"
Insert "sec. 9"

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 13"

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 13"

Page 15, line 30:
Delete "Section 17"
Insert "Section 12"

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 18"

REPRESENTATIVE FANSLER objected.

8:30:23 PM

REPRESENTATIVE LEDOUX explained that Amendment 20 puts back the language that was in Senate Bill 91, involving sex trafficking. She remarked that Senate Bill 91 simply says that if two prostitutes, two sex workers, share the expenses for a room, food, and so forth, that one of the sex workers cannot be prosecuted for sex trafficking the other sex worker. Attorney General Jahna Lindemuth said that this has caused problems with the prosecution of sex trafficking. The other day when Mr. Skidmore was asked specifically whether the changes from the criminal law that were articulated in Senate Bill 91 had caused the prosecution not to prosecute for things it would have prosecuted previously. Mr. Skidmore said that there were no changes in what they would have prosecuted. She said that she does not understand where the Department of Law (DOL) came up with the idea that Amendment 20, that was put into Senate Bill 91 needs to now be deleted.

REPRESENTATIVE FANSLER opined that this was originally taken out of Senate Bill 91, and his understanding, when reading the Alaska Criminal Justice Commission's report, is that it actually encouraged and recommended fixing this in SB 54. He asked Attorney General Lindemuth to speak to her thoughts as to why the committee would be adding it in SB 54 the language we did, or should the committee be taking this out as this amendment does.

8:33:02 PM

ATTORNEY GENERAL JAHNA LINDEMUTH, Alaska Department of Law, explained that the sex trafficking provisions in Senate Bill 91 did not originate from the Alaska Criminal Justice Commission. They were ideas and concepts introduced at the legislative level, and when Senate Bill 91 passed, the DOL noted that a loophole that had been created in the language that was actually in Senate Bill 91. She said that she recognizes that the intent, as stated by Representative LeDoux, was to allow cooperative arrangements between sex trafficker folks who were working together, except the language went much farther and created a loophole. She described that if sex trafficking was

happening at a place of prostitution with a pimp or a madam, the DOL would not be able to prosecute that pimp or madam if they were also practicing prostitution themselves. The way the language worked out created a much broader scope of persons who would not be prosecuted for sex trafficking, and the DOL did not believe that was the intent or why that language was added. The DOL worked with Quinlan Steiner, the Public Defender, for language that would fix the issue the DOL identified and still maintain the intent of cooperative relationships wherein one sex worker looked out for another sex worker. That issue is still not addressed by this, she offered, but Governor Bill Walker and she feel strongly that sex trafficking, generally, is a bad problem in Alaska, and the administration does not want to create a loophole that does not allow the DOL to prosecute those crimes. Obviously, she pointed out, there are people who are victimized or vulnerable folks who were put into the sex trafficking trade and the DOL wants this tool back. She described it as an oversight and it was something that was not intended by the legislature in creating this loophole. When this issue was brought to the commission the commission voted to recommend this fix to Senate Bill 91, which resulted in the language contained in SB 54.

8:35:53 PM

REPRESENTATIVE LEDOUX asked Mr. Skidmore to identify any cases the attorney general has been unable to prosecute due to the "so-called loophole."

MR. SKIDMORE answered that when that change occurred, those individuals in law enforcement that were investigating these cases stopped investigating because they did not see a way the DOL would be able to prosecute. Therefore, the DOL has not received any referrals for cases at that level, but those cases have been referred at a lower and higher level. The mid-level cases have not been referred because law enforcement doesn't see a way to present the DOL with an investigation and evidence to show that someone had never offered themselves.

8:36:58 PM

REPRESENTATIVE LEDOUX referred to Senate Bill 91, Sec. 39, and paraphrased as follows:

> A person does not act with the intent to promote prostitution under (a) of this section if the person engages in prostitution in violation of "blankety

blank" in a location even if that location is shared with another person. And (2) has not induced or caused another person in that location to engage in prostitution.

REPRESENTATIVE LEDOUX asked why law enforcement would have to stop investigating as a result of section 39. She suggested that possibly they stopped investigating those cases because they do not have the resources to investigate. She said, "I -- I just don't get it. It's very clear that -- that if someone has induced or caused another person in that location to engage in prostitution that there is still a charge of sex trafficking."

MR. SKIDMORE clarified that "if someone induces or causes, that is still available," except he was describing a situation in which, "without having induced or caused anyone," are simply operating place of prostitution and they themselves offer themselves up for prostitution, they cannot be charged with sex trafficking. That was the concern, recognizing what the amendments were attempting to do in Senate Bill 91, the DOL worked with the public defender to craft language that still provided the protections that were added in Senate Bill 91, but that closed this loophole. Therefore, he remarked that it still accomplishes the same goal that was originally set out, it just closes the loophole in the process, and that is all that SB 54 does.

REPRESENTATIVE LEDOUX noted that Mr. Skidmore's explanation does not really answer her question.

8:39:16 PM

REPRESENTATIVE REINBOLD inquired as to the intention that Mr. Skidmore said was being protected.

MR. SKIDMORE responded that the intention was that when two sex workers were working collaboratively and perhaps sharing an apartment, that they would not be charged with sex trafficking for having that apartment as a place of prostitution. As to what sex trafficking was actually aimed at, he suggested thinking of the elicit massage parlor and someone who runs a massage parlor and allows individuals to engage in prostitution at that massage parlor. That, he explained, is operating a place of prostitution without inducing or causing someone to engage in prostitution, which is the sort of thing that sex trafficking in the third degree was designed to go after.

Except, he pointed out, the DOL was unable to do that because the owner of the massage parlor was merely offering themselves. He explained that they don't have to engage in prostitution and "could just say, 'Hey, here's my ad on backpages.com or whatever else it is,' so long as they have made an offer for themselves to engage in prostitution, they cannot be charged with sex trafficking because of the definition of the intent to promote excluded that conduct." It read that that that conduct could not qualify as intending to promote prostitution, which is what created the issue.

8:40:55 PM

REPRESENTATIVE REINBOLD surmised that even though the intention is of protecting two people engaging in prostitution, this law won't do that and there are no protections for them, and it is still illegal. She asked whether she was correct.

MR. SKIDMORE explained that prostitution remain illegal under current law, and it would remain illegal under SB 54.

8:41:21 PM

REPRESENTATIVE REINBOLD noted that someone had mentioned that "it's pretty bad up here," and she asked Attorney General Lindemuth to explain how serious of an issue sex trafficking is "up here."

ATTORNEY GENERAL LINDEMUTH advised that she does not personally know the statistics, but she knows that it is a definite problem and that Alaska has quite a few vulnerable individuals. She offered that she had heard that women and young folks in the villages are brought into Anchorage, or Alaska's hubs. Sex trafficking is a rea issue and there are stories about children or teen-agers at Covenant House being approached about sex trafficking. It is something that is still an issue in Alaska, the state still needs to have sex trafficking laws, but the state does not need to create a loophole allowing sex trafficking to happen in Alaska.

8:42:32 PM

REPRESENTATIVE REINBOLD noted that former House of Representative Ben Nageak had passed a law creating a board. She asked whether that was helping with this issue and it oversees massage shops. She asked Mr. Skidmore whether he was working collaboratively with the regulatory board on this issue.

MR. SKIDMORE answered that he does not specifically work with the board, but he knows that the investigators who investigate these types of crimes felt that a board was a good thing and he imagined they are working collaboratively with that board.

8:43:39 PM

REPRESENTATIVE REINBOLD commented that there have been reports around the city about "things happening" in the massage industry and asked who created this loophole.

MR. SKIDMORE answered that the amendments to sex trafficking were introduced in the House Judiciary Standing Committee.

8:44:23 PM

REPRESENTATIVE EASTMAN noted that the state has family-owned businesses and employee-owned business, and after listening to Mr. Skidmore, surmised that if a number of people decided to form an employee-owned house of prostitution, as long as it was jointly owned, and employee owned, no one would be legally prosecuted for sex trafficking.

MR. SKIDMORE referred to sex trafficking in the third degree, under SB 54, and paraphrased as follows:

> A person commits the crime of sex trafficking in the third degree if that person receives compensation for prostitution services rendered by another,

MR. SKIDMORE explained that it cannot be that a person is merely receiving compensation for the services rendered by them, it has to be that someone else rendered the services and the other person was being compensated for it. He continued paraphrasing as follows:

> With the intent to promote prostitution, a person is managing, supervising, controlling, owning, either alone or in association with others a place of prostitution.

MR. SKIDMORE, in response to Representative Eastman's specific question, answered that it depends on whether compensation was received as the result of that prostitution as to whether or not that person would have committed this crime.

8:46:36 PM

CHAIR CLAMAN advised that he was serving on the House Judiciary Standing Committee at the time this particular amendment passed. The current law that creates this exception was not about an LLC, the purpose of this provision was that the House Judiciary Standing Committee had heard from people in the sex worker industry who related that there were instances for the need to protect sex workers from their customers so there are times in which two sex workers might get an apartment together and share the expenses on that apartment. The concern being that in that shared expense circumstance, they could both be charged with sex trafficking each other because they were essentially sharing expenses. Wherein, each worker is essentially getting money from the other person when they are living together to protect one another. The purpose of that provision was to provide those protections when sex workers are essentially working independently as sex workers but sharing expenses and sharing rooms to provide mutual protection. The purpose of the proposed amendment in SB 54 is to show that the sex workers reasonably shared expenses, and if one person was paying 95 percent of the expenses and the other was not, that would likely be sex trafficking as they were not in a shared expense situation. That is the focus of this change in SB 54 and the specific instances it is targeting, and this is not a bigger business enterprise circumstance. He noted that Attorney General Lindemuth and Mr. Skidmore were nodding in agreement with his statements.

8:49:07 PM

REPRESENTATIVE EASTMAN asked, from the prosecution's standpoint, what is the legal difference between two roommates coming together and using their joint apartment as a house of prostitution, or six people coming together and buying a property jointly and using that as a house of prostitution. He said that he is trying to find the legal difference between why that arrangement could be prosecuted, and that the two sex workers coming together could not be prosecuted.

MR. SKIDMORE responded that that was one of the issue the DOL and the Public Defender's Agency had to wrestle with, and it was resolved by the definition of compensation. He referred to SB 54, page 2, lines 28-29, and advised that compensation is defined to not include any payment for reasonably apportioned shared expenses. He explained that that was designed to address that very issue and wrestle through that [audio difficulties]

concept to continue providing protections, but at the same time close the loophole so the prosecution could address sex trafficking appropriately in Alaska.

8:50:33 PM

REPRESENTATIVE EASTMAN surmised that two people sharing the earnings on the sex trafficking is when the compensation triggers legal liability, but if earnings are not shared then ...

MR. SKIDMORE answered that he wanted to be certain they were saying the same thing when discussing sharing earnings and referred to the previous discussion about sharing expenses and if everyone keeps their own earnings, there is no problem. The problem becomes, he offered, when a person starts to pay someone else to be able to use the place of prostitution, which is what is targeted. He suggested thinking of it as the house's cut in a poker game, wherein the house gets a cut of the bets that night. When there is a place of prostitution, everyone who goes there to engage in that sex work, gives a cut to the house. That would be owning a place of prostitution, but if two people simply have an apartment together, that is not, he advised.

8:51:51 PM

REPRESENTATIVE LEDOUX referred to the language in SB 54 and offered that two people share an apartment together but one of them pays quite a bit more for the apartment and allows the other person to use the apartment. They are not necessarily taking a cut of the earnings, and she "gets it" when a person is taking a cut of the earnings for every trick. She offered the scenario of the apartment belonging to one person who pays $800 per month for the apartment, but they let the other person have the extra bedroom for $200 a month. Both people are sex workers and those are not reasonably apportioned expenses, but at the same time no one is taking a cut of the earnings. While she understands the house cut in a poker game, what if two people are not sharing expenses and one is letting another person use the extra bedroom and not paying anything, she does not understand how this provision does the trick here because it read: "compensation does not include any payment for reasonably apportioned shared expense."

MR. SKIDMORE advised that she needs to read subsection (a)(1) in conjunction with the definition of compensation. He explained that subsection (a)(1) talks about receiving compensation for

prostitution services rendered by another, meaning two people are just splitting the rent, and not receiving compensation for prostitution services.

8:54:45 PM

REPRESENTATIVE LEDOUX noted that Attorney General Lindemuth had mentioned the problems with sex trafficking and girls being brought in from the villages, and so forth. She described that that is actually a situation wherein someone induced another person into prostitution, which confused her. Both Secs. 39 and 40 discuss inducing or causing another person in that location to engage in prostitution, and she asked whether the DOL was saying that the current sex trafficking provision read "that, you couldn't that somebody who is running a brothel had induced or encouraged someone to commit prostitution." She said, "They are bringing them in from the villages," but you couldn't show "just because we have something to protect these gals that says that if you share rooms together that you're not going to be able to prove that there is inducing or causing another person to engage in prostitution."

ATTORNEY GENERAL LINDEMUTH responded that the sex trafficking element is inducing another to provide prostitution, but the exception to that which says, "If a person is prostituting themselves that is not part of sex trafficking." The language the DOL is offering in SB 54 is meant to get to the intent of what "you are" trying to do but not create an exception that follows the rule.

8:57:11 PM

REPRESENTATIVE LEDOUX argued that the language of Secs. 39 or 40 does not carve out an exception, and she paraphrased as follows: "a person does not institute aid or facilitate prostitution if the person engages in prostitution in a location, even if that location is shared with another person, and has not induced or caused another person in that location to engage in prostitution." There is no caveat, no exception there, she pointed out and it specifically read that just because a person is sharing a room does not mean that the person is inducing prostitution. Except, if a person is inducing prostitution, the person is still able to be prosecuted. This is the language. that was vetted in the House Judiciary Standing Committee before Senate Bill 91 went into effect, she advised.

ATTORNEY GENERAL LINDEMUTH answered that operating a place of prostitution is different than inducing another person to commit prostitution. There is still this exception that is following the rule, a problem had been identified, and the DOL is offering a fix to the problem in the form of SB 54. She reiterated that this is language that was worked out with the Public Defender Agency to be as narrowly written and to accomplish what the DOL believes was intended in the language in Senate Bill 91, but it does not create the problem that had been identified.

8:59:00 PM

REPRESENTATIVE LEDOUX asked how the prosecution deals with the people who are sharing accommodations, but the expenses are not reasonably apportioned.

ATTORNEY GENERAL LINDEMUTH advised that with the definition of compensation, first someone has to actually receive compensation for someone else's sex work. In the event they do, that person could then say that that was their reasonable share of expense, and that would take it back out. But, in the first instance, a person has to actually receive compensation, so if compensation is received and it is not for reasonably apportioned expenses, then the person has violated the statute. She explained that that is why the DOL is trying to offer a fix to accomplish what Representative LeDoux is trying to accomplish.

8:59:57 PM

REPRESENTATIVE REINBOLD noted that Attorney General Lindemuth had said that prostitution was rampant, or sex trafficking was rampant in Alaska. She asked whether the DOL is prosecuting this, prosecuting it successfully, and whether good laws are on the books. She further asked whether Senate Bill 91 legalized prostitution in any manner, and if so, does this amendment fix that issue.

ATTORNEY GENERAL LINDEMUTH answered that, as Mr. Skidmore noted earlier, prostitution was and still is illegal, and sex trafficking is a higher offense than prostitution. The department noted a problem with this particular sex trafficking statute, as amended by Senate Bill 91. Therefore, she reiterated, there has not been the type of prosecutions for this level of sex trafficking that would be expected because it had been a problem and those referrals were not been going to the DOL from law enforcement. This is a fix the DOL believes will allow those cases to go forward and be prosecuted, she noted.

9:01:25 PM

REPRESENTATIVE REINBOLD surmised that a couple of years ago in the House Judiciary Standing Committee there was a loophole that helped sex trafficking, and this is reversing that loophole.

CHAIR CLAMAN explained that when the members on the House Judiciary Standing Committee approved those provisions permitting sex trafficking. The committee had been trying to provide reasonable protections to sex workers so that mere prostitutes would not be charged with sex trafficking. After Senate Bill 91 passed, the Department of Law (DOL), having had no objection to the provision when it was discussed in committee, determined that after further study, the DOL had changed its opinion, came back to the legislature, and asked to change this loophole. He said that he wanted to make clear that as a member of the House Judiciary Standing Committee, the suggestion that there was an intention to create a loophole is not what happened.

9:02:27 PM

REPRESENTATIVE REINBOLD said that she was not impugning the motives, she was simply asking whether a loophole was created for sex trafficking and now it is being closed.

ATTORNEY GENERAL LINDEMUTH remarked that that is exactly what the DOL is trying to do with this particular fix in SB 54, and it was proposed by the DOL.

REPRESENTATIVE REINBOLD said "So it is closing the loophole?"

ATTORNEY GENERAL LINDEMUTH said, "Yes."

9:03:06 PM

REPRESENTATIVE EASTMAN opined that some members raised the issue earlier this session about legalizing prostitution. He asked the DOL to speak to the impact this amendment would have on the prosecution of prostitution more generally.

CHAIR CLAMAN said that he is aware of the hour and is trying to keep the committee moving forward. Amendment 20 is about sex trafficking and he wants to focus on sex trafficking and not get into prostitution, generally.

9:03:42 PM

REPRESENTATIVE EASTMAN said he is not prepared to vote until he knows what the impacts will be on prostitution.

CHAIR CLAMAN advised that Representative Eastman could abstain from voting, but he will not allow the question.

9:04:04 PM

REPRESENTATIVE KOPP asked Mr. Skidmore whether the passage of SB 54 will help survivors of sex trafficking.

MR. SKIDMORE responded, "Yes."

9:04:26 PM

REPRESENTATIVE REINBOLD declared a point of order. She said that Chair Claman cannot deny one member what he allows for another member, equality is absolutely the most important thing. Another member was allowed to talk about prostitution and in all fairness, another member should be allowed to be informed.

CHAIR CLAMAN ruled that it is appropriate for the chair to focus the discussion and move the process forward, and the committee will move forward.

REPRESENTATIVE FANSLER maintained his objection.

9:05:18 PM

REPRESENTATIVE KOPP noted that the committee had heard from Mr. Skidmore, director of the state's criminal division, that prosecutors and law enforcement are asking that this loophole be closed, and he confirmed that it will help survivors of sex trafficking, which is known to be a real issue in Alaska. He stated that many non-profits and faith-based ministries who are trying to get people out of sex trafficking identified this as a real issue. He expressed that he is pleased to see the state bring this forward and argue for it, and he supports SB 54 as written.

9:06:05 PM

REPRESENTATIVE LEDOUX commented that she does not believe Amendment 20 is needed and withdrew the amendment.

9:06:35 PM

REPRESENTATIVE LEDOUX moved Amendment 4, Version 30-LS0461\N.50, Glover/Martin, 10/23/17, which read as follows:

Page 11, following line 3:
Insert a new bill section to read:
"*** Sec. 17.** AS 33.05.020(h) is amended to read:

(h) The commissioner shall establish by regulation a program allowing probationers to earn credits for complying with the conditions of probation. The credits earned reduce the period of probation. Nothing in this subsection prohibits the department from recommending to the court the early discharge of the probationer as provided in AS 33.30. At a minimum, the regulations must

(1) require that a probationer earn a credit of **10** [30] days for each 30-day period served in which the defendant complied with the conditions of probation;

(2) include policies and procedures for

(A) calculating and tracking credits earned by probationers;

(B) reducing the probationer's period of probation based on credits earned by the probationer; and

(C) notifying a victim under AS 33.30.013."

Renumber the following bill sections accordingly.

Page 11, following line 21:
Insert a new bill section to read:
"*** Sec. 20.** AS 33.16.270 is amended to read:

Sec. 33.16.270. Earned compliance credits. The commissioner shall establish by regulation a program allowing parolees to earn credits for complying with the conditions of parole. The earned compliance credits reduce the period of parole. Nothing in this section prohibits the department from recommending to the board the early discharge of the parolee as provided in this chapter. At a minimum, the regulations must

(1) require that a parolee earn a credit of **10** [30] days for each 30-day period served in which the parolee complied with the conditions of parole;

(2) include policies and procedures for

(A) calculating and tracking credits earned by parolees;

(B) reducing the parolee's period of parole based on credits earned by the parolee and notifying a victim under AS 33.30.013."

Renumber the following bill sections accordingly.

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

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

Page 15, following line 29:
Insert new subsections to read:
"(d) AS 33.05.020(h), as amended by sec. 17 of this Act, applies to sentences imposed on or after the effective date of sec. 17 of this Act for conduct occurring on or after the effective date of sec. 17 of this Act and to time served on probation on or after the effective date of sec. 17 of this Act.

(e) AS 33.16.270, 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 on or after the effective date of sec. 20 of this Act."

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

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

REPRESENTATIVE FANSLER

9:06:44 PM

REPRESENTATIVE LEDOUX explained that Amendment 4 reduces the ratio of earned credits from 30 days to 10 days for each 30-day period in which the parolee or probationer complied with the conditions of parole or probation.

9:07:35 PM

REPRESENTATIVE FANSLER asked Ms. DiPietro to explain the relevance of the "so-called 30 to 30 provision" in the eyes of the Alaska Criminal Justice Commission, and the distinction of the "10 for 30" provision.

MS. DiPIETRO explained that the reasoning behind the earned compliance credits is to encourage people on probation [to change their behavior]. These are the people who have been convicted, served their time, and are out on release with a felony probation officer supervising their actions. It is known from the research that sanctions can be effective, and credits are even more effective for many people changing their behavior, with the goal to be on the right path rather than the wrong path they had been traveling. The credits are an incentive for people to complete all of the things required by their probation officer, including: paying restitution, going to meetings, taking urinalysis tests, and looking for a job or working at a job. She said that both 10 days of credit or 30 days of credit are good because they both are evidence-based formulas. The reason the commission recommended the current, more aggressive approach of "30 for 30" is that people are most likely to violate their conditions of probation in the first weeks and months of supervision, and a large percentage of people violate their conditions of probation within three months. In the event a person is successful for a sustained period of approximately one-year, the public safety value of continuing to supervise these people is greatly diminished. Probation and parole officers have high caseloads, and this earned compliance credit policy was crafted as a way to thoughtfully reduce their caseloads by focusing more of their time on "those who are messing up" on supervision, and more quickly graduating off of supervision those individuals who have been successful. Studies of policies, such as Alaska's "30 for 30 earned compliance credits" have shown that it can dramatically reduce caseloads without impacting public safety.

9:10:41 PM

REPRESENTATIVE KREISS-TOMKINS asked Commissioner Williams what the fiscal impact of Amendment 4 would be to the Department of Corrections (DOC).

9:11:01 PM

COMMISSIONER WILLIAMS responded that it certainly would have an impact, and that Ms. DiPietro had offered a good explanation as to why this provision is in current law. He said, "We have a lot of sticks in this system" and this provides a needed carrot for people who are doing well [on parole or probation]. In the event someone does well on probation and accomplishes everything expects of them, there should a be a clear plan as to how that person receives credit. This credit, he explained, helps reduce probation counts in a safe and effective manner, and while he realizes it still maintains 10 days for 30 days, he is very much in favor of the original construct of the bill and supports keeping the provision as written in current law.

9:12:09 PM

REPRESENTATIVE KREISS-TOMKINS asked what the cost would be of Amendment 4 to the Department of Correction, at least in an order of magnitude, if it passed.

COMMISSIONER WILLIAMS noted that he has a hard time answering that question because the department's overall budget and position were estimated on a whole picture, and he would have to breakdown what the department expected to receive in terms of reduced caseloads, and what was attributed to this piece. There certainly would be an impact to the department, but he was unsure of the scope at this time.

9:13:25 PM

REPRESENTATIVE EASTMAN commented that if parole officers and probation officers have caseload that are too high, the proper fix is to give them the resources they need to do the job. The proper fix is not to get the people off probation more quickly, although it does "kind of" fix the problem but not in a manner that focuses on the most important issues. In the event this amendment does not pass, the committee is making it that much harder for the public to follow an already confusing process as good time and credits. He suggested making it easier on the public to follow what a sentence actually means because currently a person must almost be an attorney to figure out how many days in jail the person will serve. He offered that Amendment 4 is reasonable.

9:16:06 PM

REPRESENTATIVE REINBOLD surmised that previously it was "30 for 30" and now it is "30 for 10."

CHAIR CLAMAN clarified that current law offered an incentive for those people on probation who are doing well, in that for every 30 days that person does well, they receive 30 days credit against the amount of time they have to stay on probation.

REPRESENTATIVE REINBOLD interjected that it is a 50 percent reduction.

CHAIR CLAMAN said that it would be 50 percent reduction only if the person continued doing well, and if they do not do well they do not earn credits. The person could earn a 50 percent reduction, but they do not receive it right away as it is in a series of 30-day increments. Under Amendment 4, the person would only earn 10 days for every 30 days they performed well.

REPRESENTATIVE REINBOLD noted that she was voting in favor of Amendment 4.

9:17:26 PM

REPRESENTATIVE FANSLER commented that the state needs more probation officers, public safety officers, prosecutors, public defenders, with a robust court system, which requires revenue. He said he does not support Amendment 4 because this is one of cruxes of the entire Senate Bill 91, it is an imperative part of the legislation. The intention is to try to put that carrot out there and the legislature is attempting to transition into the state's criminal justice system, rather than saying "it's a stick, stick, stick."

9:18:35 PM

REPRESENTATIVE LEDOUX argued that every time an amendment is offered, it is said that the amendment will destroy the crux of Senate Bill 91. Amendment 4 eliminates the amount of credit a person would receive, it simply substitutes "10 for 30" days, she offered.

REPRESENTATIVE FANSLER maintained his objection.

9:19:12 PM

A roll call vote was taken. Representatives Eastman, Reinbold, and LeDoux voted in favor of the adoption of Amendment 4. Representatives Fansler, Kopp, Kreiss-Tomkins, and Claman voted

against it. Therefore, Amendment 4 failed to be adopted by a vote of 3-4.

9:20:08 PM

REPRESENTATIVE LEDOUX moved to adopt Amendment 7, Version 30-LS0461\N.40, 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*) Notwithstanding (c) of this section, a pretrial services officer may not assess a person as low risk if the person has been charged with a class C felony under
(1) AS 11.46.310 or 11.46.360;
(2) AS 11.51.100(d)(2) or (f) or 11.51.200;
(3) AS 11.56.320, 11.56.335, 11.56.540, 11.56.590, 11.56.610, 11.56.770, or 11.56.835; or
(4) AS 11.61.123(f)(1), 11.61.140(h), 11.61.200, 11.61.240(b)(3), or 11.61.250."

Renumber the following bill sections accordingly.

Page 11, following line 12:
Insert a new bill section to read:
"*** Sec. 19.** AS 33.07.030, enacted by sec. 117, Ch. 36, SLA 2016, is amended by adding a new subsection to read:
(h) Notwithstanding (c)(2) of this section, a pretrial services officer may not assess a person as low risk if the person has been charged with a class C felony under
(1) AS 11.46.310, 11.46.360;
(2) AS 11.51.100(d)(2) or (f) or 11.51.200,
(3) AS 11.56.320, 11.56.335, 11.56.540, 11.56.590, 11.56.610, 11.56.770, or 11.56.835; or
(4) AS 11.61.123(f)(1), 11.61.140(h), 11.61.200, 11.61.240(b)(3), or 11.61.250."

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. 20"

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

Page 15, line 30:
Delete all material and insert:
"*** Sec. 26.** Sections 6, 18, and 19 of this Act take effect January 1, 2018."

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

REPRESENTATIVE FANSLER objected.

9:20:16 PM

CHAIR CLAMAN noted that Amendment 7 deals with pretrial release and it is similar to discussions on Amendments 35 and 43, and especially Amendment 48 which dealt with changes the manner in which to deal with bail. He asked Representative LeDoux to explain how Amendment 7 differs specifically from Amendment 48 because that will help the committee to focus its discussion on Amendment 7.

9:21:04 PM

The committee took an at-ease from 9:21 p.m. to 9:28 p.m.

9:28:37 PM

REPRESENTATIVE LEDOUX advised that her staffer, Greg Smith, would answer Chair Claman's question and explain the amendment.

9:29:17 PM

GREG SMITH, Staff, Representative Gabrielle LeDoux, Alaska State Legislature, explained that Amendment 7 seeks to prohibit pretrial services officers from assessing a person as low-risk if that person had been charged with certain class C felonies. The amendment does impact the grid the committee had reviewed earlier this evening, but it is considerably different than Amendment 48 because that amendment dealt more with the length of time the prosecutors had to demonstrate probable cause. He explained that currently, for class C felonies that are not crimes against a person, DUIs, DUI refusal, sex offenses, or crimes involving domestic violence, if someone is charged with a class C felony that are not those he just listed, and they are also assessed as low-risk, to then review the grid.

CHAIR CLAMAN asked whether the crimes listed are all offenses against a person.

MR. SMITH answered that they are not all offenses against a person because when the person charged with those crimes has been assessed as low-risk, that triggers that more discretion given to the judge as to whether they can impose bail. Whereas, the crimes listed in the amendment, and there are other crimes of other class C felonies that are not listed in the amendment, is when someone is charged with those crimes and are assessed low-risk, and when this pretrial services program goes into place on January 1, 2018, the [audio difficulties] mandatory own recognizance (OR), and essentially released without bail. Amendment 7, by listing these crimes, would then push them into a different space on the grid where it is now presumptive OR; therefore, more discretion is given to the judge whether to impose bail, he said.

9:31:46 PM

CHAIR CLAMAN surmised that the difference between Amendment 7 and Amendment 48 is that Amendment 7 has a larger number of offenses that could not be assessed as low-risk and is a large number than was in Amendment 48. He asked whether there are any other substantial differences other than the additional charges that would not be able to be assessed as low-risk. [Audio difficulties] other sentences are essentially the same concept, just more offenses, he asked.

MR. SMITH opined that in Amendment 7 there are actually less offenses, but his understanding of Amendment 48 was that it was dealing more with the amount of time a prosecuting attorney had to demonstrate probable cause.

CHAIR CLAMAN commented that it appears there are enough differences in the amendment that the committee could move forward, but he will exercise his discretion to limit questions because most of the issues were previously addressed.

9:33:19 PM

MR. SMITH said that the healthy debate that took place on Amendment 48, will assist in the understanding of what Amendment 7 is trying to accomplish. By prohibiting these pretrial services officers from assessing a person as low-risk, it is essentially requiring that persons charged with these class C felonies are assessed at moderate-risk or high-risk, and then to

review the grid. The goal is to require more discretion by the judge for people that have committed the crimes listed in Amendment 7.

9:34:12 PM

REPRESENTATIVE LEDOUX asked Mr. Smith to articulate some of the crimes, for example: escape in the third degree. She asked why anyone would ever conceivably want to assess someone as low-risk as to whether they will appear at trial if they have already engaged in escaping in the third degree.

CHAIR CLAMAN asked Mr. Smith to tell the committee what AS 11.46.310, 11.46.360 deals with and to go through the list.

MR. SMITH offered to read the crimes, rather than the statute numbers, as follows: beginning at subsection (*1*)(1) is burglary in the second degree, vehicle theft, endangering the welfare of a child in the first degree, endangering the welfare of a vulnerable adult in the first degree, escape in the third degree, unlawful evasion in the first degree, tampering with a witness, jury tampering, evidence tampering, hindering prosecution, failing to register as a sex offender or child kidnapper in the first degree, indecent viewing of photography, cruelty to animals, misconduct involving weapons in the third degree, criminal possession of explosives, and unlawful furnishing of explosives.

9:36:30 PM

REPRESENTATIVE LEDOUX asked Ms. Meade whether there is anything about the amendment that would make the risk assessment tool unworkable.

MS. MEADE responded that she believes it would because Amendment 7, as written, would be fairly impossible to implement. She explained that the tool is an objective tool wherein people receive points and they end up with a score. Sometime people, who are charged with [these crimes] will end up with a score that puts them in the low-risk category. Therefore, to say that these people may not receive that score does not seem sensible because some people will receive that score. She opined that she understands that the goal would be to prevent certain release decisions for those people with those charges who receive the low score, and she thought that in order to accomplish that goal to instead change the release decision-making portion. She said that this is like saying in a

multiple-choice test that the person may not get below 50 percent, and they actually do get below 50 percent. She noted that she could not imagine how that would be implemented as written.

9:38:52 PM

REPRESENTATIVE FANSLER surmised that if Amendment 7 was passed out of committee, that Ms. Meade was not entirely sure how it would be implemented.

MS. MEADE answered that Representative Fansler was correct.

REPRESENTATIVE FANSLER further surmised that it would somewhat destroy the pretrial risk assessment tool.

MS. MEADE offered that she was unsure whether it would destroy the tool because Amendment 7 read that a person could not receive a certain score with the tool, except a person could receive a certain score with the tool. The goal of having certain crimes receive different treatment could be accomplished in some other manner, but to say that "you just can't be assessed as low-risk" does not seem reasonable, she remarked.

9:40:00 PM

REPRESENTATIVE REINBOLD referred to this "bail tool" and asked whether it was possible that a sex offense in any manner could be considered low-risk.

MR. SKIDMORE answered that anyone could be assessed low-risk. The question to ask is where the person falls on the grid to determine the discretions allowed to the court.

9:41:55 PM

REPRESENTATIVE REINBOLD asked whether Mr. Skidmore had heard about a bell curve, or any target as to how many people would potentially be released. She asked "whether they" want to release 90 percent, or only certain individuals that possibly committed a murder, and what he has heard about this grid and the percentage being targeted to release.

MR. SKIDMORE answered that he has been in meetings where the discussion has been, how many people would fall into which category, but he could not recall percentages.

9:42:51 PM

REPRESENTATIVE REINBOLD opined that "we had" a conversation with someone who knows about the tool and the target was 90 percent, roughly, a "goofy bell curve." She reiterated her question as to whether he knows anything about a bell curve or any type of target in which to release a certain number of inmates.

MR. SKIDMORE advised that he is not aware of any targets, and low, medium, and high-risk was determined based upon the scores. He said that he had heard percentages of who fell into which categories, but he could not recall any percentages off the top of his head. He advised that he knows "they have described" things in percentages for each block, but he could not remember what it would look like.

REPRESENTATIVE REINBOLD stated that is inclined to have people, when testifying, swear to tell the truth and nothing but the truth before the committee.

9:44:32 PM

REPRESENTATIVE EASTMAN advised Ms. Meade that he is troubled by her previous testimony wherein she had said that by interjecting Amendment 7 into the process, the tool would potentially become unworkable. If that is the case, he offered, that he is inclined to think the problem is with the tool and not with the amendment. He asked why it would not be possible to simply assign a higher deal of points to certain crimes, such as escape.

MS. MEADE responded that she understands what Representative Eastman is asking, and the confusion is that the risk assessment tool is unrelated to a person's current charge. It does not matter if a person comes in with a charge of murder or a charge of theft, the tool assesses the person on things in the person's criminal history, and things that happened in the past to determine a score for that person. The score is then placed into the statute, and the grid being discussed is merely a visual summary of the bail statute passed in Senate Bill 91. She explained that a pretrial services officer determines the score, which is unrelated to the current charge, transmits it to the court, the court then takes that score and applies the bail statute - that blue chart, the court takes the risk score and looks at the charge, goes down the chart to determine what the statutes say about the release decision, in some cases it must be or it may be. She reiterated that you can say, as this

amendment does, say that "you can't be assessed as low" because a person can be assessed as low. In order to accomplish the goal of the amendment, which is that "these folks ought not be released very easily" the fix could be made in the bail statute. Whereby, people charged with endangering the welfare of a child, type of class C felony, who are assessed at low risk based on their history, have a different release decision. For example, they cannot be released OR, or they have the presumptive OR release, because currently all class C felons have a mandatory OR if they are low-risk.

9:48:21 PM

REPRESENTATIVE EASTMAN asked whether it is correct to say that the legislature created this quagmire wherein someone charged with escape is automatically put into this mandatory OR, no bail, and are back on the street due to Senate Bill 91. He asked whether Senate Bill 91 caused this situation.

MS. MEADE remarked that there is no quagmire because a person who had previously escaped necessarily has a criminal history, and she opined that it could be difficult to end up with a low-risk score because the score takes into account things that had happened in the person's past. According to Senate Bill 91, if someone is a class C felon, and they do not fall under the exclusions of: crimes against a person, sex crimes, domestic violence, DUIs, [audio difficulties] failure to appear, then if they are a low-risk class C felon, there is a mandatory OR release.

9:49:40 PM

REPRESENTATIVE EASTMAN asked why the tool was designed in such a manner that the decision of high-risk or low-risk has nothing to do with the charge.

MS. MEADE responded that many intelligent people developed that tool, such as social science doctors. She stated that the constitution and the current bail statute assumes that people can be released OR, except for two reasons: something more is needed to ensure the person's appearance in court, which is the failure to appear risk score. Unless something more is needed to ensure the safety of community, victims, and other people, which is the risk of committing a new criminal arrest. Those are the two things that people may be held in pretrial for. She described that as a general explanation, but once the court has that score based upon their criminal history of the chances one

of those two things may occur, then the judge can look at the nature of the charge, the effect on the victim when they are setting conditions of release and deciding how much evidence there may be for some money bail if it is a presumptive OR situation.

9:52:20 PM

REPRESENTATIVE EASTMAN opined that "we've gotten lost" in social science by putting the legislature's eggs in that basket. Social science can be helpful and useful to a point because it is one thing to have an expert offer an idea and make it your own and persuade each other of its value. Except, he commented that is not what has taken place in this committee because he has heard "deference to, I don't personally understand, but the expert said, and I trust them, or the expert has these credentials so, you know, we should do their proposal, their recommendation." He opined that the job of legislator is to hear from experts, members of the public, or whoever has wisdom and experience, and to ask questions and articulate the information to constituents. In the event legislators must rely on someone with credentials or degrees, he opined, "legislators are not doing their job." He said that he sees the common sense in Amendment 7, yet someone else is pairing it up against some expert's credentials, but he must go on the side that makes sense to him every time no matter the degrees of the experts. He said that he must be able to articulate this information to the people he serves, and if he cannot do that, something is wrong with the process.

9:55:28 PM

REPRESENTATIVE REINBOLD said that she has heard there is "a tool out there" and she has no idea what it is, but the tool says that sex offenders can be low-risk because this tool disregards charges. She said that people are saying that class C felonies, such as vehicle theft or stealing a firearm, are mandatory OR, and the committee was advised as to "some doctor, she sounds like a quack to me," social science and social engineering, "I don't know," and she has never heard anything so outrageous that says, "the constitution says that we should all be released on our own recognizance if there is a risk of failure to appear or to ensure safety of victims." That is not how she interprets the constitution, and she said she believes the committee is being sold a snake-oil tool and that it will increase risk, it needs to be fully vetted. She claimed that certain witnesses "didn't tell the truth and nothing but the truth," and she was

amazed at the number of times the witnesses had advised that they did not know the answer to a question, and the only research was from the Pew Foundation. Amendment 7 is important, valid, and critical and she supports the amendment.

9:57:33 PM

REPRESENTATIVE KOPP advised that he will not support Amendment 7, "it is a very poor amendment." He explained that "we as a state" have long recognized its need for experts and looking at comparative fiscal systems for oil and gas. The state does not have the capacity to pay for more advice even though it would like to pay as much as possible for more advice. People who are much smarter than the legislators advise the legislature as to how to build a fiscal system that will best provide the state with a long-term future that maximizes its ability to not only fund that natural resource, but to provide a vibrant and healthy economy for decades to come. The state does not look inwardly just to itself with management of fisheries, or on a number of issues. Similarly, with criminal justice reform, the state looks at the best examples "we can find out there" to help make the best risk assessments possible. He stated that he could not imagine the state's corrections, probation, and parole personnel, of which has been stated by several people in the system that these people are as "risk averse a people as we can get," would pursue a decision that would harm any Alaskan intentionally, or otherwise. He offered that just as the legislature extends a little faith and credit in other areas of state government, it important to receive the best advice possible from the best experts when looking at this pretrial services unit. Plus, he said, the fact that the state will now have a uniform standard that will prevent wildly disparate release decisions, and bail decisions based on a person with similar circumstances. In this case, the state will have a tool that will bring those things in line and the state will be better off. In the event the state is not better off, many people will have egg on their faces and they will be back before the legislature to change the plan. He said he would be a no-vote on Amendment 7.

10:00:34 PM

REPRESENTATIVE LEDOUX commented that there is not something wrong with Amendment 7, there is something wrong with the tool when the tool cannot exclude folks from being assessed as low risk when charged with escape in the third degree, burglary in the second degree, or stealing cars, for instance.

REPRESENTATIVE FANSLER maintained his objection.

10:01:50 PM

A roll call vote was taken. Representatives LeDoux, Eastman, and LeDoux voted in favor of the adoption of Amendment 7. Representatives Fansler, Kopp, Kreiss-Tomkins, and Claman voted against it. Therefore, Amendment 7 failed to be adopted by a vote of 3-4.

10:02:18 PM

REPRESENTATIVE LEDOUX moved to adopt Amendment 8, Version 30-LS0461\N.39, Martin, 10/23/17, which read as follows:

Page 2, following line 29:
Insert a new bill section to read:
"*** Sec. 6.** AS 12.30.006(b), as amended by sec. 55, Ch. 36, SLA 2016, is amended to read:

(b) At the first appearance before a judicial officer, a person [WHO IS CHARGED WITH A FELONY, OTHER THAN A CLASS C FELONY AND THE PERSON HAS BEEN ASSESSED AS LOW RISK UNDER AS 12.30.011(c)(1),] may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011 would not reasonably ensure the appearance of the person or will pose a danger to the victim, other persons, or the community**, if the person has been charged with the following crimes:**

(1) an unclassified, class A, or class B felony;

(2) a class C felony under AS 11.41.220, 11.41.260, 11.41.425, AS 11.46.310, 11.46.360, AS 11.51.100(d)(2) or (f), 11.51.200, AS 11.56.320, 11.56.335, 11.56.540, 11.56.590, 11.56.610, 11.56.770, 11.56.835, AS 11.61.123(f)(1), 11.61.127, 11.61.128(d), 11.61.140(h), 11.61.200, 11.61.240(b)(3), or 11.61.250; or

(3) a class C felony, other than a class C felony listed in (2) of this subsection, and the person has been assessed as moderate to high risk under AS 12.30.011(c)(2)."

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 12.30.006(b), as amended 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 all material and insert:
"* Sec. 25. Sections 6 and 18 of this Act take effect January 1, 2018."

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

REPRESENTATIVE FANSLER objected.

CHAIR CLAMAN advised that Amendment 8 has many of the similarities of Amendment 7 and Amendment 48, and he will limit questions to one question and two follow-up questions per legislator.

10:02:44 PM

REPRESENTATIVE LEDOUX noted that Amendment 8 is similar to Amendment 48, and asked Mr. Smith to explain the differences between the two amendments.

MR. SMITH explained that Amendment 8 allows prosecutors up to 48-hours to provide additional information to the court in order to properly assess probable cause and bail for the class C felonies listed in the amendment. The differences between Amendment 8 and Amendment 48 are that Amendment 48 applied to all felonies, and Amendment 8 applies to unclassified felonies, class A felonies and class B felonies and includes the list of class C felonies in Amendment 8, subsection (b)(2), page 1, lines 12-19. He offered that it is the same list of crimes he described during the discussion of Amendment 7, with the addition of: assault in the third degree; stalking in the first degree; and sexual assault in the third degree. Amendment 8 relates to the amount of time prosecution would have to assess probable cause and bail, and it does not have the same exclusion of crimes against a person, and so forth.

CHAIR CLAMAN referred to page 1, beginning line 12 of the assault charges, and asked whether AS 11.41.220, .260, and .445 are all offenses against the person [audio difficulties] under the way the statute has been described in prior testimony, and they would already be excluded by, what had been heard in prior testimony.

MR. SMITH responded that the exclusion discussed in prior testimony is related to the crimes that someone had been charged with, and those exclusions go into the grid. He said that Amendment 8 is solely relating to the amount of time the prosecutors have to provide the information to the courts.

10:05:48 PM

REPRESENTATIVE KOPP noted that Amendment 8 deals with the first appearance of a defendant and its purpose is to give prosecutors more time to assess the public safety concerns of a person to a victim and the community if charged with certain crimes. He asked Mr. Skidmore to offer his thoughts about this amendment and whether it addresses an issue or is a tool the prosecution needs, and how he would see this working in practice.

MR. SKIDMORE answered that prior to criminal justice reform efforts, a statute authorized the prosecution to delay an arraignment up to 48 hours when it needed additional to develop a probable cause statement. That statute changed during the criminal justice reform efforts, AS 12.25.150, which read that the prosecution is required to bring someone to arraignment within 24 hours absent compelling circumstances, which was not defined in that particular statute. Amendment 8 talks about the first appearance, it still has language regarding 48-hours, and it does not alter the compelling circumstances. The amendment further describes the types of crimes "they seem to think would matter." It is not an exact definition of compelling circumstances, but it seems to suggest that these are the types of crimes the statutes would then provide guidance, to which the 48-hours could be applied. He described it as an unclassified felony, class A felony, and class B felony, and it lists specifically these class C felonies. He opined that the crimes are similar to the list of class C felonies discussed in a previous amendment this evening, and it is those same sorts of concepts. He referred to subsection (b)(3), lines 17-19, the class C felony listed in subsection (b)(2), and the person has been assessed as a moderate or high-risk, so that it is also describing other class C felonies not on that list, just at the higher level. In response to whether it is a tool that the prosecution needs, answered that yes, that would be a tool for prosecutor, and that he could not answer how frequently the tool was being used previously but that it was not used extensively.

10:09:08 PM

REPRESENTATIVE KOPP surmised that previously, the prosecution was using an undefined compelling circumstance standard, and "this more defines it?"

MR. SKIDMORE answered, "No." The addition of requiring the compelling circumstances is language that was added within the criminal justice reform efforts, and it was not defined at that time. Amendment 8 appears to provide further guidance as to what might qualify for compelling circumstances by listing the crimes, despite the fact that it doesn't define that term, because when reading the two statutes together that would be a more reasonable interpretation of what is meant.

10:09:54 PM

REPRESENTATIVE KOPP asked whether the Department of Law (DOL) has taken a position on Amendment 8.

MR. SKIDMORE responded, "No."

CHAIR CLAMAN asked for clarification as to whether the DOL has a position on Amendment 8.

MR. SKIDMORE explained that this is not something the DOL requested and it is not something he does not want; therefore, he does not have a position on it one way or the other.

CHAIR CLAMAN asked whether the DOL supports SB 54 in its existing state.

MR. SKIDMORE answered that the DOL does support SB 54 in its existing state.

CHAIR CLAMAN asked whether Amendment 8 would change SB 54.

MR. SKIDMORE answered in the affirmative.

10:10:23 PM

CHAIR CLAMAN asked how the DOL could support SB 54 and also be neutral on Amendment 8.

MR. SKIDMORE explained that the department supports SB 54 as it exists. The department is not seeking this tool, but he could not say that it is not a tool. Therefore, he is not taking a position as he is not asking for it because the department supports SB 54.

10:11:27 PM

REPRESENTATIVE REINBOLD asked whether there had been any instructions in any manner to pass SB 54 with no amendments.

MR. SKIDMORE responded that the position of the Department of Law (DOL) is that SB 54 is an important tool. The tools found in SB 54 as it existed, are the tools the department was seeking, and the department would like to see the bill move as quickly as possible. He noted that SB 54 had previously passed through the Senate and that the bill passing through this body without changes is the cleanest way to see that it is enacted quickly. Be that as it may, he said, the DOL respects this committee and this body in its ability to make its own policy calls and pass the amendments it deems appropriate.

10:12:26 PM

REPRESENTATIVE REINBOLD pointed out that she had asked whether there had been any discussions with Governor Bill Walker, or anyone, wherein the DOL wants this and that is what Mr. Skidmore is here for, to keep SB 54 clean without any amendments.

MR. SKIDMORE answered that he has tried to make clear his position throughout his testimonies in front of this committee. He advised that he represents the Department of Law (DOL) and the administration, and the positions he states in this committee are not his personal positions in that they are the positions of the Department of Law (DOL), as the department has evaluated all of this information. He noted that, of course he has talked with people in the DOL and members of the administration, but he has not been told what he was and was not allowed to say.

10:13:47 PM

CHAIR CLAMAN commented that as to SB 54, he personally had a conversation with Governor Walker before the legislature reconvened its fourth special session, in which Governor Walker advised him that he would like to see SB 54 pass in the same version that it left the Senate. Governor Walker is the chief executive and Chair Claman figured that that was the position of his team, he said.

REPRESENTATIVE REINBOLD commented that "this has kind a been a mockery of questions," because Mr. Skidmore has not answered

most of the questions, he was forgetting things, and not remembering conversations, and he doesn't have the statistics, "bla, bla, bla, bla." She offered disappointment because she was asking simple questions. She asked whether there had been discussions between Mr. Skidmore and Governor Walker, and whether there had been any discussion directing him in any manner, "because someone in room told me there was." She described it is a complete disservice to inter-twine the executive branch. The legislature writes laws, and in this case and in this building with the governor so close, "I feel like this is more the legislative branch has almost been overtaken by the executive branch." She said that it appears to be unconstitutional as to how much the executive branch and judicial branch are inter-twined.

10:15:49 PM

REPRESENTATIVE LEDOUX asked Mr. Skidmore whether there is any reason that he, as a prosecutor, would not want this additional tool.

MR. SKIDMORE related that he could not say there is a reason that he wants the tool or a reason he does not want the tool. He related that it would be a tool that could be utilized in certain circumstances, but that it has not been utilized often. He added that it is not something the DOL is seeking because he does not see a problem that would be solved by Amendment 8.

10:16:46 PM

REPRESENTATIVE EASTMAN commented that he finds it difficult to participate in this "mockery of the legislative process" because he is paid by his constituents and they do not appreciate this charade. He opined that it is fairly clear to his constituents that the members know how the chair of this committee would likely vote and having already decided that the amendment is not important, has created a system in which the chair had decided for him that it is not important for him either. He said that he does not understand why the legislature is in session if the decision had already been made that the legislators could not improve on a bill that was written in March.

10:20:06 PM

REPRESENTATIVE LEDOUX noted that it "speaks a lot" when Mr. Skidmore advised the committee that he supports SB 54 as

currently written, but he would not take a position on Amendment 8.

REPRESENTATIVE FANSLER maintained his objection.

10:20:34 PM

A roll call vote was taken. Representatives LeDoux, Eastman, Reinbold, and Kopp voted in favor of the adoption of Amendment 8. Representatives Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, Amendment 8 was adopted by a vote of 4-3.

10:21:12 PM

The committee took an at-ease from 10:21 p.m. to 10:25 p.m.

10:25:56 PM

CHAIR CLAMAN advised that by a vote of 4-3, Amendment 8 was adopted.

REPRESENTATIVE LEDOUX advised the committee that she was withdrawing Amendments 10-21 because those amendments would clearly be voted down, or they are part of SB 54, or they were previously discussed by the committee.

10:27:38 PM

REPRESENTATIVE LEDOUX moved to adopt Amendment 23, Version 30-LS0461\N.41, Bruce/Martin, 10/24/17, which read as follows:

> Page 2, following line 29:
> Insert a new bill section to read:
> "*** Sec. 6.** AS 12.55.090(g) is amended to read:
> (g) A probation officer shall recommend to the court that probation be terminated, and a defendant be discharged from probation if the defendant
> (1) has completed at least
> (A) **four** [TWO] years on probation if the person was convicted of a class A [OR CLASS B] felony that is not a crime under (5) of this subsection; [OR]
> (B) **three years on probation if the person was convicted of a class B felony that is not a crime under (5) of this subsection; or**
> **(C)** one year on probation if the person was convicted of a crime that is not a crime

(i) under (A) **or (B)** of this paragraph; or

(ii) under (5) of this subsection;

(2) has completed all treatment programs required as a condition of probation;

(3) has not been found in violation of conditions of probation by the court for the period specified in (1) of this subsection;

(4) is currently in compliance with all conditions of probation for all of the cases for which the person is on probation; and

(5) has not been convicted of an unclassified felony offense, a sexual felony as defined in AS 12.55.185, or a crime involving domestic violence as defined in AS 18.66.990."

Renumber the following bill sections 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, following line 27:
Insert a new subsection to read:
"(c) AS 12.55.090(g), 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 subsection accordingly.

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

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

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

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

REPRESENTATIVE FANSLER objected.

10:27:54 PM

REPRESENTATIVE LEDOUX explained that Amendment 23 increases the time for which people can be discharged from probation, if convicted of a class A felony, from 2-years to 4-years; and 3-years for class B felonies.

MR. SMITH repeated Representative LeDoux's statement and advised that the probationer must have completed at least 2-years of their probation. There are exceptions under AS 12.55.090(g)(5), [page 1, lines 22-23 and page 2, line 1], as follows: unclassified felony offenses, a sexual felony as defined in AS 12.55.185, or crimes involving domestic violence. He referred to subsection (g), [page 1, line 4], and paraphrased as follows: "A probation officer shall recommend discharging from probation." It is not just the length of time because the person must have completed all of the treatment programs

required of a condition, have not been in violation of a probation, and are complying with all conditions of probation. He noted that "in some following" subsections," there is substantial victim involvement in terms of giving testimony and submitting comments, and the court shall consider these comments. He opined that it is not that the probation officers make their recommendation and the court automatically "does it" because a number of other conditions must be met. He advised that maximum probation sentences for felonies, that are not a felony sex offense or unclassified felonies is 5-years.

10:31:20 PM

REPRESENTATIVE FANSLER asked Ms. DiPietro to explain why the Alaska Criminal Justice Commission would have suggested this level of probation, and the effect of Amendment 23 to the scheme of the criminal justice reform.

MS. DiPIETRO answered that this recommendation was generated from research in Alaska relating to people violating their conditions of probation or parole, when do those violations typically take place, and how fast they typically take place. She said that it is a little surprising that a large percentage of the people who are going to violate their conditions of probation or parole, do so within the first 3-months and almost all of them, if they are going to violate, have violated within the first year. She explained that the people having trouble complying or having trouble getting their lives on track will let the state know by their behavior because they will not work their plan and; therefore, will not qualify for the compliance credit discussed earlier, and the probation officer will not recommend an early release from probation. Not everyone violates and will "go along quietly" and, she pointed out, that if they have not violated within the first year, the state could be fairly certain they would not be a problem. The question then becomes, why would the busy probation officers keep the people who are not violating and going along quietly, on their caseloads when they really do not need further supervision. Based on these statistics, the question was, why wouldn't the state allow the probation officer, who knows this person best, the ability to recommend to the court to release the defendant from probation early, and that is the basis of the recommendation, she explained.

10:34:19 PM

REPRESENTATIVE FANSLER surmised that when discussing recidivism, the statistics bear out that violations typically occur within the first year, which lead to the commission's recommendation.

MS. DiPIETRO advised that Representative Fansler was exactly correct.

10:34:51 PM

REPRESENTATIVE REINBOLD noted that Ms. DiPietro continued to refer to research, and that Ms. DiPietro never identifies the specific date, time, place, and name of the study. She asked whether this is PEW Foundation research, "her research," or little surveys that she brought to the committee's attention "asking a little survey inside jail."

MS. DiPIETRO reiterated that the research data is from the Alaska Department of Corrections (DOC).

[The audio was unexpectantly disconnected.]

10:36:33 PM

The committee took an at-ease from 10:36 p.m. to 10:39 p.m.

10:39:14 PM

MS. DiPIETRO continued her response to Representative Reinbold as to the research on supervision violation, noting that the research is posted on the Alaska Criminal Justice Commission's website, and that she would send the link if folks were interested. The data, she reiterated, is from the Alaska Department of Corrections (DOC) and analyzed by the PEW Foundation.

REPRESENTATIVE REINBOLD referred to this research and analyzation of data and asked what the involvement was by the Pew Foundation or the PEW Charitable Trust. She asked whether it was just that one piece.

MS. DiPIETRO asked whether she was asking Ms. DiPietro about all of the testimony she has given over the past several hours as to when she had cited research.

10:40:27 PM

REPRESENTATIVE REINBOLD said she wanted anything related to the Alaska Criminal Justice Commission.

MS. DiPIETRO advised that the research she cites comes from a variety of places. When discussing Alaska specific research, she is talking about "our data," and a portion of that data was analyzed by the PEW Foundation, and some of it would have been analyzed by the commission's staff. She explained that national research comes from all over and is published in journals. She offered that almost all of the national studies she had referred to in her testimony can be found noted in the December 2015 Alaska Criminal Justice Commission Report to the legislature.

10:41:26 PM

REPRESENTATIVE REINBOLD asked what involvement the PEW Foundation has had, "who funds PEW," the involvement of the PEW Foundation in the commission, whether there have been any trips by any members, and whether there have been any types of contracts with the PEW Foundation, the commission, or the DOC. She said that people want to know who is influencing the legislature, "we know that PEW weighed in heavily and this justice commission if you read the minutes." She said that she wants to know a "freedom of information" about any money that is coming into the state from the PEW Foundation for criminal justice reform and any influence it has had in any manner over the Alaska Criminal Justice Commission. She remarked that she was asking Ms. DiPietro to provide that information to the committee.

MS. DiPIETRO advised that Representative Reinbold certainly did not need to file a Freedom of Information Act (FOIA) request because she could provide any information Representative Reinbold seeks. She said that no money was given to the commission by the PEW Foundation and the commission's recommendations are the commission's recommendations, "I can assure you of that." She explained that after sitting in all of the meetings and watching the commissioners deliberate, the December 15, 2017 is "very much" the commission's report.

10:43:39 PM

REPRESENTATIVE REINBOLD clarified that she had asked whether "any money involved in any way in regards to the research" because the research analysis was not free. She asked whether there are contracts with the DOC, whether meals were purchased, whether the state paid for any PEW Foundation people to come to

Alaska, or if PEW paid for any of the commission's travel to a meeting possibly in the State of Kentucky. She said that the Southern Law Foundation in California paid for Commissioner Williams to travel to Norway recently, and she wants to know who is influencing this commission, and that she supports Amendment 23.

CHAIR CLAMAN pointed out that Ms. DiPietro had advised that Representative Reinbold could certainly contact her office and ask for any information and Ms. DiPietro would provide the information.

10:45:00 PM

REPRESENTATIVE KOPP commented that for decades it has been well known, and there is nothing new in the research that would suggest, no matter who brought it forward, that most of the people who reoffend, do reoffend in that first year. In the event a defendant acts appropriately while on probation during that first year, it is known that they have a negligible possibility of reoffending/recidivating. Therefore, he asked, why would the state push the discharge date out to three to four years when Alaska has limited supervision resources. The whole idea is to allow the state's officers to focus on those who are the highest risk and most likely to recidivate, and that the state does not have unlimited resources. He pointed out that Amendment 23 takes away from the well-known science, and he would not support the amendment.

10:46:16 PM

REPRESENTATIVE EASTMAN commented that there is a lot he does not know about this amendment so there was not much he could say on the details. Legislators need to do what they can to keep things straight-forward for the legislators' sake in working through these details and future bills, and the sake of giving the public the opportunity to understand what is transpiring in these statutes within the state's criminal justice system. When an inmate, the public, and the victims are told that someone would receive a certain period of time within their sentence on probation or parole, it is important that the words mean what people believe they mean. In the event a judge, parole board, or a process had assigned a sentence to a defendant for a certain amount of time on probation, that it is fair to assume that is what would take place. In the event the focus is on limited supervision resources and a sentence had been applied, to then change it because the state did not have the resources

points to the fact that a mistake was made earlier on in the process in assigning an incorrect amount of time to serve in jail or on parole. Hence, there is a departure there from what the expectations are of the public, not to mention of the inmates themselves. He referred to Senate Bill 91 without this amendment and said that the legislature needs to put its time and resources into creating solutions when that problem begins and not try to use a band-aid on the backend.

10:49:23 PM

REPRESENTATIVE LEDOUX commented that she questions the research because the likelihood of a person violating their probation goes down in the second and third and fourth year because they were still on probation during that second, third, and fourth year. She noted that if the state actually ever had any testing as to what happens when a person is taken off of probation, there probably are not any statistics about that. She remarked that just to say, "Well, the likelihood of them violating the probation in the second -- after the first year, I don't really buy that."

REPRESENTATIVE FANSLER maintained his objection.

10:50:20 PM

A roll call vote was taken. Representatives LeDoux, Eastman, and Reinbold voted in favor of the adoption of Amendment 23. Representatives Kopp, Kreiss-Tomkins, Fansler, and Claman voted against it. Therefore, Amendment 23 failed to be adopted by a vote of 3-4.

10:50:46 PM

CHAIR CLAMAN advised that the consideration of all of the amendments was concluded, and he brought the committee back to the consideration of SB 54, as amended.

10:51:44 PM

REPRESENTATIVE LEDOUX commented that the committee had made some good amendments, but not nearly enough good amendments. She said that she was glad to see that SB 54 would continue on through the process and perhaps some of those amendments, which were not adopted in this committee, could be made as the bill further progresses. She commented that she does not think SB 54, as amended, is enough of a fix for Senate Bill 91, but she

would not object to it leaving this committee because the state would be in worse shape if the legislature did not do anything.

10:52:43 PM

REPRESENTATIVE REINBOLD said that the constitution needs to be upheld, and the legislature, "all is we get to do it is write law and do a budget" holding the purse strings. She related that "the executive branch who spends 95 percent, they get to enforce the policies that we write." This executive branch has been "so unbelievably pushy" with its legislation she advised, and it does not want the legislature to have the opportunity to respect the constitution, so legislators can represent "our people" and make [audio difficulties] laws. That has been frustrating, she noted because the executive branch and the Senate do not want SB 54 amended, and it does not want the opinion of the House of Representatives. If this legislation was so important to Governor Walker, he should not have signed Senate Bill 91 into law and had performed more research. She noted that SB 54 has been in place since March, "I had all these amendments, 15 amendments, I brought forth under, you know, the House floor," and described the legislature as being in "a very un-special session." These amendments could have been dealt with in the House State Affairs Standing Committee, the House Judiciary Standing Committee, and on the floor of the House of Representatives. Except, with the legislature being in an un-special session, the public is concerned about the amount of money that is being spent, and the fact that "our voices" are shut out for the most part because "we don't get to ask" the questions that are needed and to not vet them properly. She reiterated her lack of faith in the Alaska Criminal Judicial Commission because Senate Bill 91 has been a complete disaster. Representative Reinbold referred to Police Chief John Papasodora, the President of the Alaska Association of Chiefs of Police, and she stated that "he basically said Senate Bill 91 isn't working. Serious amendments are needed." She remarked that "we did a few little recommendations" on SB 54 with a few amendments of which she is grateful and commented that she still believes it would be wiser to "repeal the whole thing with three exceptions" and start from scratch because the people deserve better. She advised that she is a yes-vote with the hope for greater success with amendments being passed, and the voices of the public heard to improve this law.

10:56:03 PM

REPRESENTATIVE KOPP noted that he echoes some of the comments of the previous speaker, and that he does believe the legislature is moving in a good strong direction. He referred to SB 54 and highlighted that the House Judiciary Standing Committee directly addressed the issues in the law that have been identified by public safety, prosecutors, and the police as being the problems [with Senate Bill 91]. He pointed out that the committee dealt with the following: violations of conditions of release have been returned to misdemeanor status with active imprisonment; "we've talked" about sex trafficking enough tonight; as to class C felony sentencing, the committee moved first time felony offenders to active imprisonment of up to one-year and "no more just messing around" with suspended time - a person goes straight to jail for stealing cars; class A misdemeanor sentencing was increasing that category; class B misdemeanor sentencing added a recidivist provision, these are jailable misdemeanors for low-level thefts which will help the state's businesses feel validated that the legislature actually cares about their businesses and supports them; pretrial risk assessments are like never before; the ASAP was expanded, and he knows that the judges wanted the expansion to put drug or alcohol related offenders into treatment; the committee increased penalties for disorderly conduct to five-days and making that a tool law enforcement can actually use in carrying out its duties; and the committee added a "sober law" thanks to Representative Millett.

REPRESENTATIVE KOPP pointed out for the committee that SB 54 is supported by the National Federation of Independent Business (NFIB), the Fred Meyer director for Alaska called in support of this bill, even before it was made stronger. Members of this committee also received letters from private businesses offering their support, Chief Peter Mlynarik, a 25-year Alaska State Trooper and a long time Soldotna Chief of Police offered support. He expressed that SB 54 is a good bill and it addresses the problems law enforcement are facing, and known that the Alaska Department of Law, the Alaska Department of Public Safety supports this bill. The best minds are looking at this tool to address what is not working, making it strong and better, and keep the provisions in place that are working. He said he is a strong yes-vote, and he appreciates the good work of this committee with its robust debate.

10:59:01 PM

REPRESENTATIVE KREISS-TOMKINS stated that he supports SB 54 and opined that the fact worth keeping in mind is that prior to

criminal justice reform, Alaska's criminal justice system was not working well by all manner of data and evidence. The legislature changed that system in many promising ways, but certain areas needed to be revisited and improved upon via SB 54. He argued that the intent of the legislative process is working, and that he is looking forward to re-visiting some aspects of this legislation, and the state's criminal justice system in general. He noted his particular interest in the pretrial services aspect, and "looking at how this stuff works" in the field, reviewing recidivism data and data from the Pretrial Enforcement Division, and continue to make tweaks, adjustments, and changes as needed. He remarked that he feels good about this ongoing process as well, and that he is looking forward to supporting this legislation.

11:00:28 PM

REPRESENTATIVE EASTMAN said that having spent the last few days discussing changes to SB 54, or not changing SB 54, he described that his take-away is fear, and that fear is that if the committee changes something in SB 54, that some terrible thing will befall the state, and to not consider any substantive amendments. Whereas, he said, if fairly straight forward common sense is injected that it will completely blow up that tool, and the tool will be unworkable and unusable. In many cases, he commented, that fear may be because the committee did not receive answers to questions that "some of us have put forward." Changes were made to SB 54 approximately seven months ago wherein a decision made, for political reasons it seems, that the legislature would not look at any new information that may have taken place these last seven months, he said, "that that was the gold standard and any deviation was less than perfection." He offered that he had been advised that a homeowner almost killed an 18-year old boy in a car theft situation, and there is reason to believe that similar circumstances will continue to happen while waiting for data and answers. He described that [some members] are unwilling to recognize that some of the social science "we trusted" was not appropriate for Alaska in 2017. Legislators owe it to their constituents to look closely now, and not wait some number of months or years before it can honestly recognize that what was thought would work, did not work, but there still seems to be an unwillingness to [look closely].

11:03:40 PM

REPRESENTATIVE FANSLER thanked the public because it seems like months ago that the committee began the debate on SB 54, even though it was only a couple of day ago. Many passionate folks came out and testified on both side of this issue, and it was good to see that kind of turnout with the public's investment in the public process. He then thanked his fellow committee members for its robust discussion and spending 40 plus hours discussing SB 54 because the members stuck it out to the end. When it comes down to it, he pointed out that that that does not touch on the dozens and dozens and dozens of hours he spent in the background trying to get cued up this, trying to find the facts and knocking door-to-door, noting that all of the members committed their time to the issues. Clearly, SB 54, as amended, is linked to the whole situation with Senate Bill 91 and, he offered that he did not view it as "a fear situation," but rather an optimistic situation. Wherein, Senate Bill 91 is a vision for a better future for Alaska with a vision of not repeating of the cycles, not letting folks rot away in jail cells for the rest of their lives and getting them out of the penal system to start becoming contributing members to society. That is not fear by any means on his part because it is imperative to give these changes time to work, and he pointed out that everyone wants to be able to tweet 140 characters and get things done, which is not how it works in the real world because it takes time to let these processes play out. Senate Bill 91 was not perfect, which was the reason for SB 54, and SB 54 is not perfect, and it will continually change because this is an evolution, a learning experience, something the legislature will tinker with until the end of time, which is what makes "us great Alaskans." While he does not like where this committee ended with SB 54, in the end he will vote for this bill because he appreciates the process. He noted that he will continue to mix it up on the floor of the House of Representatives and the bill will be revisited the in the House Finance Committee, and "we'll keep working as a team together." He stressed that, "By golly, we're going to finish this and we're going to get Alaska back where it needs to be and protect the public, and that's what I want."

11:07:01 PM

CHAIR CLAMAN commented that the public consistently asks the legislature to be tough on crime, smart on spending, and do better for public safety. Criminal justice reform is all about doing better for public safety because the state's previous system has not worked. The state has huge recidivism rates, 37 percent of the people on pretrial release are being arrested on

new charges while awaiting trial, that is not a system that works, and Alaska can do better. He referred to SB 54 and noted that the committee actually all pretty much agreed on some of the amendments with broad support, and some of the amendments need further consideration as the bill moves forward. He related that he is pleased to move SB 54 forward, and when the public asks whether SB 54 is good for Alaska, the answer is that first and foremost it changed the structure on class C felonies, changed the law with regard to repeat theft offenses for low-level thefts, adds a violation of conditions of release as a crime, and the House Judiciary Standing Committee added provisions regarding rehabilitation, which are all critical. He pointed out that this bill received support from business, particularly in Anchorage, the Anchorage Chamber of Commerce came out in strong support of SB 54, and the National Federation of Independent Businesses, and the Alaska Chapter supports this legislation. Each and every day, legislators are asked to try to do their best for Alaska, and Alaskans, and to put their communities first, and Alaska first, he reminded the committee. This committee process has been robust and detailed, he stated. Chair Claman invited anyone who suggested that SB 54 did not receive a full and complete hearing in this committee, to spend 40 hours watching the entire set of proceedings and then explain how the committee process had been less than complete. He then thanked each of the committee members for their courtesy and working with one another in moving forward, and for all those reasons he said that he will be happy to move the bill from committee.

11:09:49 PM

REPRESENTATIVE FANSLER moved to report CS for Senate Bill 54, as amended, Version 30-LS0461\N, out of committee with individual recommendations and forthcoming fiscal notes.

REPRESENTATIVE EASTMAN objected.

11:09:59 PM

A roll call vote was taken. Representatives Reinbold, Kopp, Kreiss-Tomkins, LeDoux, Fansler, and Claman voted in favor to move SB 54, as amended, out of committee. Representative Eastman voted against it. Therefore, CSSB 54(JUD) was reported out of the House Judiciary Standing Committee by a vote of 6-1.

AMENDMENTS

The following amendments to SB 54 were either discussed or adopted during the hearing.

AMENDMENT 45 [30-LS0461\N.15, Bruce/Martin, 10/20/17]

Page 1, following line 5:

Insert new bill sections to read:

"*** Section 1.** AS 11.41.110(a) is amended to read:

(a) A person commits the crime of murder in the second-degree if

(1) with intent to cause serious physical injury to another person or knowing that the conduct is substantially certain to cause death or serious physical injury to another person, the person causes the death of any person;

(2) the person knowingly engages in conduct that results in the death of another person under circumstances manifesting an extreme indifference to the value of human life;

(3) under circumstances not amounting to murder in the first degree under AS 11.41.100(a)(3), while acting either alone or with one or more persons, the person commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, sexual abuse of a minor in the second degree, burglary in the first degree, escape in the first or second degree, robbery in any degree, or misconduct involving a controlled substance under AS 11.71.010(a), **11.71.021(a), 11.71.030(a)(2) or (9)** [11.71.030(a)(1), (2), OR (4) - (8)], or 11.71.040(a)(1) or (2) and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of a person other than one of the participants;

(4) acting with a criminal street gang, the person commits or attempts to commit a crime that is a felony and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of a person other than one of the participants; or

(5) the person with criminal negligence causes the death of a child under the age of 16, and the person has been previously convicted of a crime involving a child under the age of 16 that was

(A) a felony violation of AS 11.41;

(B) in violation of a law or ordinance in another jurisdiction with elements similar to a felony under AS 11.41; or

(C) an attempt, a solicitation, or a conspiracy to commit a crime listed in (A) or (B) of this paragraph.

*** Sec. 2.** AS 11.41.150(a) is amended to read:

(a) A person commits the crime of murder of an unborn child if the person

(1) with intent to cause the death of an unborn child or of another person, causes the death of an unborn child;

(2) with intent to cause serious physical injury to an unborn child or to another person or knowing that the conduct is substantially certain to cause death or serious physical injury to an unborn child or to another person, causes the death of an unborn child;

(3) while acting alone or with one or more persons, commits or attempts to commit arson in the first degree, kidnapping, sexual assault in the first degree, sexual assault in the second degree, sexual abuse of a minor in the first degree, sexual abuse of a minor in the second degree, burglary in the first degree, escape in the first or second degree, robbery in any degree, or misconduct involving a controlled substance under AS 11.71.010(a), **11.71.021(a), 11.71.030(a)(2) or (9)** [11.71.030(a)(1), (2), OR (4) - (8)], or 11.71.040(a)(1) or (2), and, in the course of or in furtherance of that crime or in immediate flight from that crime, any person causes the death of an unborn child;

(4) knowingly engages in conduct that results in the death of an unborn child under circumstances manifesting an extreme indifference to the value of human life; for purposes of this paragraph, a pregnant woman's decision to remain in a relationship in which domestic violence, as defined in AS 18.66.990, has occurred does not constitute conduct manifesting an extreme indifference to the value of human life."

Page 1, line 9:
Delete "**Section 1**"
Insert "**Sec. 3**"

Renumber the following bill sections accordingly.

Page 2, following line 29:

Insert new bill sections to read:

"*** Sec. 8.** AS 11.71 is amended by adding a new section to read:

Sec. 11.71.021. Misconduct involving a controlled substance in the second degree. (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the second degree if the person

(1) manufactures or delivers any amount of a schedule IA controlled substance or possesses any amount of a schedule IA controlled substance with intent to manufacture or deliver;

(2) manufactures any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers; or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(3) possesses an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, with the intent to manufacture any material, compound, mixture, or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers;

(4) possesses a listed chemical with intent to manufacture any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers; or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(5) possesses methamphetamine in an organic solution with intent to extract from it methamphetamine or its salts, isomers, or salts of isomers; or

(6) under circumstances not proscribed under AS 11.71.010(a)(2), delivers

(A) an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, to another person with reckless disregard that the precursor will be used to manufacture any material, compound, mixture, or preparation that contains

methamphetamine, or its salts, isomers, or salts of isomers; or

(B) a listed chemical to another person with reckless disregard that the listed chemical will be used to manufacture any material, compound, mixture, or preparation that contains

(i) methamphetamine, or its salts, isomers, or salts of isomers;

(ii) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers; or

(iii) methamphetamine or its salts, isomers, or salts of isomers in an organic solution.

(b) In a prosecution under (a) of this section, possession of more than six grams of the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals is prima facie evidence that the person intended to use the listed chemicals to manufacture, to aid or abet another person to manufacture, or to deliver to another person who intends to manufacture methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers of methamphetamine or its immediate precursors. The prima facie evidence described in this subsection does not apply to a person who possesses

(1) the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals

(A) and the listed chemical was dispensed to the person under a valid prescription; or

(B) in the ordinary course of a legitimate business, or an employee of a legitimate business, as a

(i) retailer or as a wholesaler;

(ii) wholesale drug distributor licensed by the Board of Pharmacy;

(iii) manufacturer of drug products licensed by the Board of Pharmacy;

(iv) pharmacist licensed by the Board of Pharmacy; or

(v) health care professional licensed by the state; or

(2) less than 24 grams of ephedrine, pseudoephedrine, phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals, kept in a locked storage area on the premises of a

legitimate business or nonprofit organization operating a camp, lodge, school, day care center, treatment center, or other organized group activity, and the location or nature of the activity, or the age of the participants, makes it impractical for the participants in the activity to obtain medicinal products.

(c) In this section, "listed chemical" means a chemical described under AS 11.71.200.

(d) Misconduct involving a controlled substance in the second degree is a class A felony.

*** Sec. 9.** AS 11.71.030(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the **third** [SECOND] degree if the person

(1) manufactures or delivers, or possesses with intent to manufacture or deliver,

(A) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one gram or more containing a schedule IA controlled substance;

(B) 25 or more tablets, ampules, or syrettes containing a schedule IA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of 2.5 grams or more containing a schedule IIA or IIIA controlled substance; or

(D) 50 or more tablets, ampules, or syrettes containing a schedule IIA or IIIA controlled substance;

(2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under 19 years of age who is at least three years younger than the person delivering the substance;

(3) possesses any amount of a schedule IA or IIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center; or

(B) on a school bus;

(4) manufactures any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers; or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(5) possesses an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, with the intent to manufacture any material, compound, mixture, or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers;

(6) possesses a listed chemical with intent to manufacture any material, compound, mixture, or preparation that contains

(A) methamphetamine, or its salts, isomers, or salts of isomers; or

(B) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers;

(7) possesses methamphetamine in an organic solution with intent to extract from it methamphetamine or its salts, isomers, or salts of isomers; [OR]

(8) under circumstances not proscribed under AS 11.71.010(a)(2), delivers

(A) an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine, to another person with reckless disregard that the precursor will be used to manufacture any material, compound, mixture, or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers; or

(B) a listed chemical to another person with reckless disregard that the listed chemical will be used to manufacture any material, compound, mixture, or preparation that contains

(i) methamphetamine, or its salts, isomers, or salts of isomers;

(ii) an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers; or

(iii) methamphetamine or its salts, isomers, or salts of isomers in an organic solution**; or**

(9) under circumstances not proscribed under AS 11.71.021(a)(2) - (6), manufactures or

delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver.

*** Sec. 10.** AS 11.71.030(d) is amended to read:

(d) Misconduct involving a controlled substance in the **third** [SECOND] degree is a class B felony.

*** Sec. 11.** AS 11.71.040(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the **fourth** [THIRD] degree if the person

(1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled substance with intent to manufacture or deliver;

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;

(3) possesses

(A) any amount of a

(i) schedule IA controlled substance [LISTED IN AS 11.71.140(e)];

(ii) IIA controlled substance except a controlled substance listed in AS 11.71.150(e)(11) - (15);

(B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(i) three grams or more containing a schedule IIIA or IVA controlled substance except a controlled substance in a form listed in (ii) of this subparagraph;

(ii) 12 grams or more containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(iii) 500 milligrams or more of a schedule IIA controlled substance listed in AS 11.71.150(e)(11) - (15);

(D) 50 or more tablets, ampules, or syrettes containing a schedule VA controlled substance;

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of six grams or more containing a schedule VA controlled substance;

(F) one or more preparations, compounds, mixtures, or substances of an aggregate weight of four ounces or more containing a schedule VIA controlled substance; or

(G) 25 or more plants of the genus cannabis;

(4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center; or

(B) on a school bus;

(5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for keeping or distributing controlled substances in violation of a felony offense under this chapter or AS 17.30;

(6) makes, delivers, or possesses a punch, die, plate, stone, or other thing that prints, imprints, or reproduces a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of these on a drug, drug container, or labeling so as to render the drug a counterfeit substance;

(7) knowingly uses in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(8) knowingly furnishes false or fraudulent information in or omits material information from any application, report, record, or other document required to be kept or filed under AS 17.30;

(9) obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(10) affixes a false or forged label to a package or other container containing any controlled substance; or

(11) manufactures or delivers, or possesses with the intent to manufacture or deliver,

(A) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one gram containing a schedule IA controlled substance;

(B) less than 25 tablets, ampules, or syrettes containing a schedule IA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than 2.5 grams containing a schedule IIA or IIIA controlled substance; or

(D) less than 50 tablets, ampules, or syrettes containing a schedule IIA or IIIA controlled substance.

*** Sec. 12.** AS 11.71.040(d) is amended to read:

(d) Misconduct involving a controlled substance in the **fourth** [THIRD] degree is a class C felony.

*** Sec. 13.** AS 11.71.050 is amended to read:

Sec. 11.71.050. Misconduct involving a controlled substance in the fifth [FOURTH] degree. (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the **fifth** [FOURTH] degree if the person

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one ounce containing a schedule VIA controlled substance;

(2) [REPEALED]

(3) fails to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under AS 17.30; [OR]

(4) under circumstances not proscribed under AS 11.71.030(a)(3), 11.71.040(a)(3), 11.71.040(a)(4), or 11.71.060(a)(2), possesses any amount of a schedule IA, IIA, IIIA, IVA, VA, or VIA controlled substance**; or**

(5) possesses

(A) less than 25 tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than

(i) three grams containing a schedule IIIA or IVA controlled substance except a controlled substance in a form listed in (ii) of this subparagraph;

(ii) 12 grams but more than six grams containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(iii) 500 milligrams containing a schedule IIA controlled substance listed in AS 11.71.150(e)(11) - (15);

(C) less than 50 tablets, ampules, or syrettes containing a schedule VA controlled substance;

(D) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than six grams containing a schedule VA controlled substance; or

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance.

(b) Misconduct involving a controlled substance in the **fifth** [FOURTH] degree is a class A misdemeanor.

*** Sec. 14.** AS 11.71.060 is amended to read:

Sec. 11.71.060. Misconduct involving a controlled substance in the sixth [FIFTH] degree. (a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the **sixth** [FIFTH] degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance;

(2) possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of

(A) less than one ounce containing a schedule VIA controlled substance;

(B) six grams or less containing a schedule IIIA controlled substance listed in AS 11.71.160(f)(7) - (16) that has been sprayed on or otherwise applied to tobacco, an herb, or another organic material; or

(3) refuses entry into a premise for an inspection authorized under AS 17.30.

(b) Misconduct involving a controlled substance in the **sixth** [FIFTH] degree is a class B misdemeanor.

*** Sec. 15.** AS 11.71.311(a) is amended to read:

(a) A person may not be prosecuted for a violation of AS 11.71.030(a)(3), 11.71.040(a)(3) or (4), **11.71.050(a)(5)** [11.71.050(a)(4)], or 11.71.060(a)(1) or (2) if that person

(1) sought, in good faith, medical or law enforcement assistance for another person who the person reasonably believed was experiencing a drug overdose and

(A) the evidence supporting the prosecution for an offense under AS 11.71.030(a)(3), 11.71.040(a)(3) or (4), **11.71.050(a)(5)** [11.71.050(a)(4)], or 11.71.060(a)(1) or (2) was obtained or discovered as a result of the person seeking medical or law enforcement assistance;

(B) the person remained at the scene with the other person until medical or law enforcement assistance arrived; and

(C) the person cooperated with medical or law enforcement personnel, including by providing identification;

(2) was experiencing a drug overdose and sought medical assistance, and the evidence supporting a prosecution for an offense under AS 11.71.030(a)(3), 11.71.040(a)(3) or (4), **11.71.050(a)(5)** [11.71.050(a)(4)], or 11.71.060(a)(1) or (2) was obtained as a result of the overdose and the need for medical assistance."

Renumber the following bill sections accordingly.

Page 11, following line 27:

Insert a new bill section to read:

"*** Sec. 30.** AS 34.03.360(7) is amended to read:

(7) "illegal activity involving a controlled substance" means a violation of AS 11.71.010(a), **11.71.021(a), 11.71.030(a)(2) or (9)** [11.71.030(a)(1), (2), OR (4) - (8)], or 11.71.040(a)(1), (2), or (5);"

Renumber the following bill sections accordingly.

Page 15, lines 7 - 8:

Delete all material and insert:

"*** Sec. 33.** AS 11.66.130(b), 11.66.135(b); AS 11.71.030(a)(1), 11.71.030(a)(4), 11.71.030(a)(5), 11.71.030(a)(6), 11.71.030(a)(7), 11.71.030(a)(8), 11.71.030(c), 11.71.030(e), 11.71.040(a)(11),

11.71.050(a)(4); AS 12.55.125(e)(4)(B), 12.55.125(e)(4)(C), 12.55.125(e)(4)(D), and 12.55.135(n) are repealed."

Page 15, line 13:
Delete "sec. 1"
Insert "sec. 3"

Page 15, line 14:
Delete "sec. 2"
Insert "sec. 4"

Page 15, line 15:
Delete "sec. 3"
Insert "sec. 5"

Page 15, line 16:
Delete "sec. 4"
Insert "sec. 6"

Page 15, line 17:
Delete "sec. 5"
Insert "sec. 7"
Delete "and"

Page 15, following line 17:
Insert new material to read:
"(6) AS 11.71.021, enacted by sec. 8 of this Act;
(7) AS 11.71.030(a), as amended by sec. 9 of this Act;
(8) AS 11.71.030(d), as amended by sec. 10 of this Act;
(9) AS 11.71.040(a), as amended by sec. 11 of this Act;
(10) AS 11.71.040(d), as amended by sec. 12 of this Act;
(11) AS 11.71.050, as amended by sec. 13 of this Act;
(12) AS 11.71.060, as amended by sec. 14 of this Act; and"

Renumber the following paragraph accordingly.

Page 15, line 18:
Delete "sec. 15"
Insert "sec. 25"

Page 15, line 21:
Delete "sec. 6"
Insert "sec. 16"

Page 15, line 22:
Delete "sec. 7"
Insert "sec. 17"

Page 15, line 23:
Delete "sec. 8"
Insert "sec. 18"

Page 15, line 24:
Delete "sec. 9"
Insert "sec. 19"

Page 15, line 25:
Delete "sec. 10"
Insert "sec. 20"

Page 15, line 26:
Delete "sec. 11"
Insert "sec. 21"

Page 15, line 27:
Delete "sec. 12"
Insert "sec. 22"

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

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 28"

Page 15, line 30:
Delete "Section 17"
Insert "Section 27"

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 35"

AMENDMENT 46 [30-LS0461\n.69, Glover/Martin, 10/24/17]

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].
* 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]

(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 11.46.360(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. 10. 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. 11. 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. 12. 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. 13. 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. 14. 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. 15. 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. 16"

Renumber the following bill sections accordingly.

Page 15, lines 7 - 8:
Delete all material and insert:

"* Sec. 37. 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 11.46.360(a), as amended by sec. 9 of this Act;
(10) AS 11.46.482(a), as amended by sec. 10 of this Act;
(11) AS 11.46.484(a), as amended by sec. 11 of this Act;
(12) AS 11.46.486(a), as amended by sec. 12 of this Act;
(13) AS 11.46.530(b), as amended by sec. 13 of this Act;
(14) AS 11.46.620(d), as amended by sec. 14 of this Act;
(15) AS 11.46.730(c), as amended by sec. 15 of this Act;"

Renumber the following paragraphs accordingly.

Page 15, line 13:
Delete "sec. 1"
Insert "sec. 16"

Page 15, line 14:
Delete "sec. 2"
Insert "sec. 17"

Page 15, line 15:
Delete "sec. 3"
Insert "sec. 18"

Page 15, line 16:
Delete "sec. 4"
Insert "sec. 19"

Page 15, line 17:
Delete "sec. 5"
Insert "sec. 20"

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

Insert "sec. 30"

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

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

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

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

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

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

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

Page 15, line 28:
Delete "sec. 18"
Insert "sec. 33"

Page 15, line 29:
Delete "sec. 18"
Insert "sec. 33"

Page 15, line 30:
Delete "Section 17"
Insert "Section 32"

Page 15, line 31:
Delete "sec. 24"
Insert "sec. 39"

11:11:02 PM

ADJOURNMENT

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