

SENATE FINANCE COMMITTEE  
April 19, 2018  
9:05 a.m.

9:05:55 AM

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 9:05 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair  
Senator Anna MacKinnon, Co-Chair  
Senator Click Bishop, Vice-Chair  
Senator Peter Micciche  
Senator Donny Olson  
Senator Gary Stevens  
Senator Natasha von Imhof

MEMBERS ABSENT

None

ALSO PRESENT

Senator Mia Costello, Sponsor; Joshua Walton, Staff,  
Senator Mia Costello; Dean Williams, Commissioner,  
Department of Corrections; Representative Justin Parish;  
Representative Lora Reinbold; Nancy Meade, General Counsel,  
Alaska Court System; Representative Charisse Millett;  
Quinlan Steiner, Public Defender, Public Defender Agency;  
Representative Saddler; Jahna Lindemuth, Attorney General,  
Department of Law; John Skidmore, Director, Criminal  
Division, Department of Law.

PRESENT VIA TELECONFERENCE

Aaron Lautaret, President, Building Owners and Managers,  
Anchorage; Walt Monegan, Commissioner, Department of Public  
Safety, Anchorage.

SUMMARY

SB 127      CRIMINAL LAW; PAROLE; PROBATION; SENTENCING

SB 127 was HEARD and HELD in committee for further consideration.

#sb127

SENATE BILL NO. 127

"An Act relating to criminal law and procedure; relating to controlled substances; relating to victims of criminal offenses; relating to probation; relating to sentencing; relating to treatment program credit for time spent toward service of a sentence of imprisonment; relating to the Violent Crimes Compensation Board; relating to permanent fund dividends; relating to electronic monitoring; relating to penalties for violating municipal ordinances; relating to parole; relating to community work service; relating to revocation, termination, suspension, cancellation, or restoration of a driver's license; relating to the duties of the commissioner of corrections; relating to the duties of the Department of Health and Social Services; relating to civil in rem forfeiture actions; providing for an effective date by repealing sec. 193, ch. 36, SLA 2016, sec. 79, ch. 1, 4SSLA 2017, sec. 81, ch. 1, 4SSLA 2017, and sec. 83, ch. 1, 4SSLA 2017; and providing for an effective date."

[9:07:56 AM](#)

SENATOR MIA COSTELLO, SPONSOR, introduced herself. She thanked the committee for hearing the bill. She stated that Alaskans were speaking out on crime. She felt that the committee was taking the issue seriously by taking a day to hear the bill. She explained the legislation. She shared personal stories. She shared a story of Kimberly. She remarked that she was a cosponsor of the legislation that she is looking to amend the legislation known as the criminal prosecution reform bill from the previous Legislature known as SB 91.

Co-Chair MacKinnon remarked that there were multiple changes that had already replaced different portions of statutes in response to community outcry about the passage of criminal justice reform package known as SB 91. She wanted to draw attention to any issues that had already been addressed in statute or other legislation.

Senator von Imhof wondered whether the sectional analysis would reference SB 91 or a brand new bill with different ideas on each section.

[9:15:06 AM](#)

JOSHUA WALTON, STAFF, SENATOR MIA COSTELLO, replied that the Sectional Analysis was for SB 127. He remarked that the concept of SB 127 would return to the status quo ante before SB 91 was passed into law.

Co-Chair MacKinnon surmised that the bill would undo fixes that were put in place by SB 91.

Mr. Walton agreed.

Senator von Imhof wondered whether there would be reasonings for how returning to before SB 91 would reduce crime.

Co-Chair MacKinnon replied that the structure would be discussed.

[9:18:22 AM](#)

Mr. Walton discussed the Sectional Analysis (copy on file):

Section 1: deletes language allowing restrictions on purchasing alcoholic beverages as a condition of probation or parole "for any other crime."

Sections 2-3: changes references to AS 11.71.021 and 11.71.030.

Sections 4-11: removes inflation adjustment language in theft crimes.

Co-Chair MacKinnon stated that the thought behind the repeal would be that it was creating too high a barrier, so the prosecution was not happening, because the felony was increasing. Mr. Walton replied that as the threshold was adjusted for inflation, it would take a higher bar to clear to a felony theft. He stated that the justification for most of the sections was that Section 91 was passed as an omnibus legislation, so the challenge was addressing every issue.

Co-Chair MacKinnon stressed that she had respect for Senator Costello and all the people who had contacted the offices to look at the issue from a holistic perspective. She sensed that there was not support for a total repeal. She remarked that there was already an effort to replace some problems in SB 91.

Senator von Imhof wondered whether it was understood how the sections would interact with one another. Mr. Walton replied that he could not speak to how the sections interact with one another. He stressed that it was a challenge to anticipate how a multitude of changes would interact with each other. The intent of the bill was to return to a time when the system was understood and to limit the unintended consequences.

[9:25:30 AM](#)

Mr. Walton continued with the Sectional Analysis:

Section 12: adds a reference to AS 11.46.40(a)(4) or prior convictions.

Section 13: removes inflation adjustment language in vehicle theft crime.

Section 14: amends arson in the third degree statute to change "public" to "state or municipal" land and removes the element of the crime if a person intentionally damages a motor vehicle by starting a fire or causing an explosion while a vehicle is on private property.

Section 15: changes the crime of disregard of a highway obstruction from a violation to a class B misdemeanor.

Sections 16-21: removes inflation adjustment language in criminal mischief and other crimes.

Section 24: amends violation of condition of release to make the crime either a class A or B misdemeanor.

Section 25: adds language that a person convicted of disorderly conduct shall receive a sentence of not more than 10 days imprisonment.

Section 26: makes promoting exhibition of fighting animals a class B misdemeanor for the second offense instead of a violation.

Sections 27-28: makes obstruction of highways a class B misdemeanor.

Section 29: removes language from sex trafficking in the first degree that requires inducing another person to engage in prostitution.

Section 30: requires intent to promote prostitution for sex trafficking in the third degree.

Section 31: deletes language requiring a person to receive compensation for prostitution services rendered by another in order to commit sex trafficking in the fourth degree.

Section 32: makes gambling a class B misdemeanor for the second and subsequent offenses.

Section 33: creates the crime of misconduct involving a controlled substance in the second degree, which punishes crime involving methamphetamines and precursors of methamphetamines.

Section 34: changes second degree misconduct involving a controlled substance to third degree. Adds a manufacturing and delivery crime for schedule IIA or IIIA controlled substances.

Section 35: makes third degree punishable as a class B felony.

Section 36: changes third degree misconduct involving a controlled substance to fourth degree. Adds various possession crimes.

[9:31:19 AM](#)

Mr. Walton continued to discuss the Sectional Analysis:

Section 37: makes fourth degree punishable as a class C felony.

Mr. Walton stated that the bill drafter was available for questions.

Co-Chair MacKinnon looked at Section 34, and wondered whether the crime had been decreased. She asked whether a second degree carry harsher penalties than a third degree crime. She stated that it could be discussed later.

Senator Micciche stated that there were several instances where there was a "softening" of the sentencing.

Co-Chair MacKinnon stressed that it was a conversation about a general repeal, so the general public had an opportunity to participate in the discussion. She remarked that there should be an examination of how the penalties interacted with the current law, to note that the previous law was not necessarily appropriate.

[9:35:06 AM](#)

Senator von Imhof noted that there was a year after the passage of SB 91 to identify which areas would be repealed, and SB 54 "really toughened up crime in many areas." She felt that repealing all of SB 91 would return to more lenient conditions.

Co-Chair MacKinnon noted that the issue of a class C felony would be discussed at a later date.

Mr. Walton continued with the Sectional Analysis:

Section 38: changes fourth degree misconduct involving a controlled substance to fifth degree. Adds various possession crimes.

Vice-Chair Bishop wondered what that section would address, and asked whether it was actually a class C felony. Mr. Walton replied a higher level crime was inserted, so misconduct involving a controlled substance moved all the other felonies down. He stressed that there was not a desire to decrease the crimes for those felonies.

Vice-Chair Bishop wondered whether it was a felony. Mr. Walton responded that misconduct involving a controlled substance in the fourth degree was currently not a felony, but the change would move it from a misdemeanor to a class C felony.

Mr. Walton continued with the Sectional Analysis:

Section 38: changes fourth degree misconduct involving a controlled substance to fifth degree. Adds various possession crimes.

Section 39: changes fifth degree misconduct involving controlled substances to sixth degree.

Section 40: updates a reference to AS 11. 71.050.

[9:40:38 AM](#)

Senator Micciche shared that he had cosponsored SB 91, because it removed obstacles that were in place for those who wanted to find success in life. He also felt that the lower level drug crimes did not make sense. He stressed that bad people should be in prison with violent criminals. He wondered whether there was research around the section related to the lower level drug crimes. He asked whether they should be in jail. He remarked that SB 54 pushed those offenders toward treatment. Senator Costello replied that the bill was to gain the public trust again. She stated that the public had not been heard.

Co-Chair MacKinnon stated that there would be public testimony on the bill.

[9:46:45 AM](#)

Mr. Walton continued with the Sectional Analysis:

Section 41: requires a person arrested to be taken before a judge or magistrate within 48 hours and removes language relating to pretrial services officers.

Section 42: removes class C felonies from the list of crimes that an officer may issue a citation for instead of arresting.

Section 43: removes violation of conditions of release and failure to appear from the crimes where the presumption is arrest as opposed to citation.

Section 44: requires the time specified in the notice to appear to be at least five days after issuance of a citation.

Section 45: allows a person charged with a felony to be detained for up to 48 hours to allow the prosecutor to demonstrate release would not ensure the appearance of a person or protect the victim, other persons, or the community.

Section 46: deletes language that requires a judicial officer to revise conditions of release that have prevented a defendant from being released.

Section 47: states that "new information" for a bail hearing does not include a person's inability to post bail and deletes language that allows only one bail review hearing solely for inability to pay.

Section 48: deletes language referring to a pretrial services officer.

Section 49: reverts AS 12.30.011, regarding bail procedures, to how it read prior to passage of ch. 36, SLA 2016.

Sections 50-51: removes references to pretrial services.

Section 52: for a person charged with manufacture of methamphetamines, if the person has previously been convicted of a similar crime, the judicial officer shall require posting of a minimum of \$250,000 cash bond before the person may be released.

Section 53: removes a reference to pretrial supervision under AS 33.07. Removes other conditions related to appointment of a third-party custodian.

Section 54: prevents a person from being appointed a third-party custodian if the person may be called as a witness in the prosecution.

Section 55: removes a reference to technical violations of probation.

[9:51:22 AM](#)

Mr. Walton continued with the Sectional Analysis:

Section 56: provides credit towards a sentence of imprisonment for time spent on electronic monitoring only as provided in AS 12.55.027.

Section 57: repeals and reenacts AS 12.55.027(b) to set out the requirements for a defendant to get credit for time spent in a treatment facility.

Section 58: repeals and reenacts AS 12.55.027(c) relating to requirements for a treatment facility in order for a defendant to get credit for time spent in that facility credited against a sentence of imprisonment.

Section 59: removes references to AS 12.55.110 in AS 12.55.051(a).

Section 60: removes a reference to suspended entry of judgment.

Section 61: provides that community work in lieu of a fine is to be paid at \$3 per hour instead of the state's minimum wage.

Section 62: amends AS 12.55.090(b) to allow a court to revoke or modify a condition of probation, or change the period of probation, but removes the ability of the court to terminate probation and discharge the defendant from probation.

Mr. Walton continued with the Sectional Analysis:

Section 63: sets the maximum period of probation for a felony sex offense at 25 years, and 10 years for any other offense.

Section 64: removes limitations on the type of proceeding where a defendant and prosecutor can agree to a reduction of the period of probation.

Section 65: raises the presumptive sentence ranges for class A felonies.

Section 66: raises the presumptive sentence ranges for class B felonies.

Section 67: changes the presumptive sentence ranges for class C felonies.

[9:55:59 AM](#)

Vice-Chair Bishop surmised that he would be penalized for trespassing.

Co-Chair MacKinnon queried the section number that was discussed currently. Mr. Walton replied that he was on Section 68. He continued with the Sectional Analysis:

Section 68: adds language to AS 12.55.125(q) stating that a defendant sentenced under AS 12.55.125(i) cannot have the period of probation set out in this section suspended or reduced.

Section 69: sets the punishment for a class A misdemeanor of up to one year.

Section 70: sets the punishment for a class B misdemeanor of up to 90 days.

Section 71: adds new language that a person may not receive a sentence of imprisonment or suspended imprisonment for possession of marijuana in violation of AS 11.71.060 if the possession was for personal use in the defendant's residence and the defendant has no previous marijuana possession convictions.

Section 72: requires a prosecutor to confer with a victim of a crime involving domestic violence, as opposed to a victim of any crime, before entering into a plea agreement.

Section 73: removes language that prevents an employer from penalizing a victim of a crime if the victim reports an offense or participates in the investigation of an offense. Adds a definition for "penalize."

Co-Chair MacKinnon wondered whether the section was an old or new definition. Mr. Walton replied that it was an old definition prior to SB 91.

Senator Micciche stressed that there were so many sections that reduced what could be very effective. He explained that there was a requirement to confer with the victim of any crime before a plea agreement. He noted the problems with a "wholesale repeal."

[10:01:22 AM](#)

Co-Chair MacKinnon noted that the meeting may go longer than normal to fully discuss the legislation.

Mr. Walton continued with the Sectional Analysis:

Section 74: updates a reference to AS 11.66.130(a).

Section 75: allows a person to be held for up to 48 hours following an arrest before being taken before a judge or magistrate.

Section 76: removes physician assistant or advanced nurse practitioner from the list of options for the physician seat on the violent crimes compensation board.

Section 77: updates a reference to AS 11.66.130(a).

Section 78: removes language requiring a person to surrender a license if the person has been ordered to refrain from consuming alcoholic beverages as a condition of probation or parole for any crime. The section now applies to conviction under AS 28.35.030 or AS 28.35.032, or a similar municipal ordinance.

Sections 79-80: makes driving with license canceled, suspended, or revoked a class A misdemeanor and sets out the sentence for committing the crime.

Section 81: removes language that allows a court to reduce a person's fine or license revocation based on compliance with a treatment plan.

Section 82: makes changes to where imprisonment can be served under AS 28.35.010(k).

Adds community residential center as a place where imprisonment can be spent. Removes language requiring

imprisonment to be spent at a private residence if electronic monitoring is not available.

Section 83: removes language that requires regulations to include the cost associated with electronic monitoring.

Section 84: removes language relating to restoration of a license for a person with limited license privileges under AS 28.15.201(g).

Section 85: makes changes to where imprisonment can be served under AS 28.35.032(o).

Adds community residential center as a place where imprisonment can be spent. Removes language requiring imprisonment to be spent at a private residence if electronic monitoring is not available.

Sections 86-87: removes a reference to AS 29.25.070(g), which is repealed in sec. 123.

[10:06:01 AM](#)

Mr. Walton continued with the Sectional Analysis:

Section 88: removes references to the administrative sanctions and incentives program for probation officers. Removes language requiring a probation officer to recommend early termination from probation.

Section 89: removes a reference to special medical parole. Previously, a prisoner who is not eligible for special medical parole was to be released on discretionary parole after a certain period of time.

Section 90: removes a requirement that the parole board consider suitability for discretionary parole at least 30 days before the prisoner's first date of eligibility.

Section 91: Removes language requiring a person to be released on discretionary parole if the prisoner is at least 60 years old, has served at least 10 years, and has not been convicted of an unclassified or sexual felony.

Section 92: expands the list of crimes that are eligible for release on discretionary parole.

Section 93: removes language that limits discretionary parole only to those convicted of an unclassified felony.

Section 94: removes a reference to pre-parole reports.

Section 95: authorizes the parole board, if the board denies discretionary parole, to make a prisoner ineligible for further consideration of discretionary parole or require additional time be served before the prisoner can be considered for discretionary parole.

Section 96: removes a reference to a parole plan. Removes prisoner information that was prevented from being shared with the victim of a crime.

Senator von Imhof stressed that repealing the sections would result in victims losing the ability to allow victims to request that they confer with prosecutors concerning a proposed plea agreement; allowing sex assault victims to be notified of impending parole board hearings to review or consider prisoners' parole; victims may no longer request a copy of the defendant's parole plan; victims would not longer be notified of parolee discharge; and the court did not need to provide victims information about potential release of the defendant. She felt that repealing those items would deny so many rights and provisions to victims. She felt it would be a travesty.

[10:10:15 AM](#)

Mr. Walton continued with the Sectional Analysis:

Section 97: removes a reference to AS 33.16.090, so that the parole board does not have to notify a victim if a prisoner is released under AS 33.16.090.

Section 98: removes victims of sexual assault from the people required to be informed by the board in advance of a hearing considering discretionary parole.

Section 99: repeals and reenacts AS 33.16.130, relating to applications for discretionary parole.

Section 100: removes a reference to AS 33.30.011(a)(10), which is repealed in sec. 108.

Section 101: removes various duties from the commissioner of corrections, including establishing an administrative sanctions and incentives program for parolees.

Section 102: increases the period of time required to be served on parole before unconditional discharge from one year to two years.

Section 103: requires a person to serve at least two years on mandatory parole before unconditional discharge.

Section 104: removes a reference to technical violations of parole.

Section 105: removes a reference to preliminary parole hearings.

Section 106: removes language requiring tolling of the period of probation for a person who has absconded and provides that the parole board cannot extend the period of parole beyond a person's original maximum release date.

Senator Micciche felt that there would be an opportunity to address the good things in the bill. He stressed that there may not be support for some of the sections in the bill that would be problematic for victims.

[10:14:03 AM](#)

Mr. Walton continued with the Sectional Analysis:

Section 107: provides that a prisoner may not be awarded a good time deduction for any time spent in a treatment program, in a private residence, or while under electronic monitoring.

Section 108: removes duties from the commissioner of corrections, including requirements of a written case plan for prisoners, establishing a reentry program for

prisoners, and establishing minimum standards for electronic monitoring.

Vice-Chair Bishop felt that Section 107 was a good reflection Senator Micciche's concerns.

Mr. Walton continued with the Sectional Analysis:

Section 109: removes a requirement that the commissioner of corrections notify the victim if the offender is discharged from parole under AS 33.16.

Section 110: removes a reference to private electronic monitoring contractors.

Section 111: removes certain requirements and standards for correctional restitution centers.

Section 112: updates a reference to the misconduct involving a controlled substance statutes in light of the changes in secs. 33 -39.

Section 113: updates a reference to the sex trafficking in the third degree statute in light of the changes in sec. 30.

Section 114: removes a requirement that the Alaska Criminal Justice Commission make annual recommendations to the governor and legislature on how savings from the criminal justice reforms should be reinvested to reduce recidivism.

Section 115: removes certain requirements from the annual report filed by the Alaska Criminal Justice Commission.

Section 116: sunsets the Alaska Criminal Justice Commission on June 30, 2018.

Section 117: updates references to the misconduct involving a controlled substance statutes in light of the changes in secs. 33 -39.

Section 118: changes the types of crimes that can be referred to the alcohol safety action program.

Section 119: makes changes related to the alcohol substance abuse monitoring program and removes the requirement that the department of corrections contract for the program.

Section 120: changes the recidivism reduction program to only apply to transitional re-entry programs.

Section 121: changes the requirements of transitional re-entry programs.

Section 122: amends the repeal date for AS 22.20.210 to June 30, 2018. AS 22.20.210 is a statute requiring the judicial council to provide staff and administrative support to the Alaska Criminal Justice Commission.

Section 123: repeals various statutes.

Section 124: repeals a court rule change from ch. 36, SLA 2016. Repeals conditional effect sections from ch. 1, 4SSLA 2017.

Section 125: provides the applicability provisions for the bill.

Section 126: repeals effective date provisions from ch. 36, SLA 2016 and ch. 1, 4SSLA 2017.

Section 127: provides for an immediate effective date.

Co-Chair MacKinnon queried any closing thoughts to the portion of the conversation. Senator Costello replied that she was extremely thankful for examining the important issue to her constituents.

[10:20:44 AM](#)

Co-Chair MacKinnon noted that SB 91 passed the legislature because there was a problem. She stated that the next step in the meeting's conversation would be to address the problem within SB 91. She stressed that there were many people who felt that there was more to be done to address safety in Alaskans' homes.

Senator Costello noted that work had been done with drafters to replace bills. She shared that she was open to

introduction of the legislation about victims' rights. She hoped that the bill would begin a conversation.

Senator von Imhof noted that the sponsor statement said that there should be a continued thoughtful, focused dialog. She interpreted "focused dialog" was not a broad repeal. She read it as a more intricate dialog around the issue and current bills. She stressed that the dialog had been ongoing for three years, because there were current bills that dealt with specific aspects of crime.

Co-Chair MacKinnon wondered whether Senator Costello would like to respond. Senator Costello replied in the negative.

[10:24:23 AM](#)

Senator Micciche understood and appreciated the efforts behind the bill.

Senator Costello thanked Senator Micciche.

Senator Olson applauded the effort. He disagreed that there would be a "right" move, but felt that there were steps taken to protect society. He remarked that his constituents would sometimes leave the house armed, because there was no Village Public Safety Officer (VPSO) in his district. Senator Costello replied that she was listening to her constituents' concerns.

[10:29:09 AM](#)

Co-Chair MacKinnon announced that the legislators were elected to represent the public. She remarked that there was a foundation that the majority of the legislature supported. She thought that there were many things in SB 91 that had been subsequently corrected. She noted that there was a survey posted online.

Co-Chair MacKinnon noted that there was a 187 page document from change.org (copy on file). She stated that there were predominantly Alaskan signatures and some commenters from outside of Alaska. She wanted to know what was asked in that document.

Mr. Walton did not have the precise wording of the petition in front of him, but had seen the change.org petition. He

stated that the wording straightforwardly asked for the repeal of SB 91.

Co-Chair MacKinnon requested Mr. Walton to provide the exact wording that accompanied petition, and whether there was an underlying document explaining SB 91.

Mr. Walton replied that he did not believe that there was an underlying document. He agreed to provide further information.

Co-Chair MacKinnon was curious about the percentage of Alaskans versus out-of-state residents that signed the petition.

[10:34:28 AM](#)

AARON LAUTARET, PRESIDENT, BUILDING OWNERS AND MANAGERS, ANCHORAGE (via teleconference), spoke in support of the bill. He stated that his members had experienced multiple break-ins and vandalisms.

Co-Chair MacKinnon wondered whether there was an issue of the arraignment tool. Mr. Lautaret observed that the perpetrators were all release with bail under \$500. He felt that the lesser punishments resulted in higher repeat of crimes.

Co-Chair MacKinnon asked whether the judge was using the assessment tool within SB 91. Mr. Lautaret replied in the affirmative.

Co-Chair MacKinnon wondered whether the bail amount was too small. Mr. Lautaret replied in the affirmative. He felt that the bail would allow the criminals to recommit crimes.

[10:39:45 AM](#)

Senator Micciche shared that the Kenai had experienced an uptick in crime due to the increase in opioid usage. He remarked that the increase was substantial that what occurred in the early 2000s. He wondered whether there was a frustration with repeat offenders previously to SB 91. Mr. Lautaret replied that the uptick had coincided with the opioid problem. He stressed that there was a violent crime every night in Anchorage.

Senator Micciche shared that Kenai did not have a high violent crime rate, but had high property crime. He wondered whether there should be an adequate analysis of the issues. Mr. Lautaret agreed. He did not want to take away victims' rights.

Senator von Imhof thanked the testifier for focusing on the arraignment issue.

[10:45:05 AM](#)

AT EASE

[10:45:48 AM](#)

RECONVENED

[10:46:23 AM](#)

Co-Chair MacKinnon remarked that there would be discussions with various representatives from various departments. She stressed that the focus was on public safety.

Senator Micciche recognized that the Kenai soccer team was in the audience.

Co-Chair MacKinnon queried the underlying conversation about SB 91, and any changes in the legislation to alter the foundation.

[10:48:46 AM](#)

DEAN WILLIAMS, COMMISSIONER, DEPARTMENT OF CORRECTIONS, discussed the Department of Corrections (DOC) perspective on the legislation. He remarked that there was an opioid crisis in the state. He stressed that there was a major issue with drugs.

[10:53:04 AM](#)

Co-Chair MacKinnon explained the definition of "recidivism."

Commissioner Williams stressed that the most important piece of the reform effort was in the Pretrial Enforcement Division. He stated that there was approximately 70 people on staff for the division. He shared that people had the right to bail in the country since the formation of the

constitution. He stated that the department had a 37 percent failure rate of people charged with a crime and committing a new crime before their first case was resolved. He stressed that the Pretrial Enforcement was specifically tasked to address that issue. He stated that hired officers supervised those folks and approximately 1100 people who were under current supervision; and 320 who were on tense supervision. Those people had never been supervised before the change.

[11:00:41 AM](#)

Co-Chair MacKinnon felt that the implementation had failed for criminal justice reform. She wondered when there was roll out in the bill. She queried the supervision piece happening. She felt that people could adequately defend themselves. She specifically queried the supervisory piece. Commissioner Williams replied that it was enacted January 1, 2018. He stated that the development took time, because training was required, and lead time was required. He stated that the assessment piece was the most misunderstood piece in the entire effort. He stated that the risk assessment tool could help a judge make a decision at the time of arraignment.

Co-Chair MacKinnon shared that there was feedback that it was not a tool, but a mandate to the courts. She wanted clarification about why there was a belief that the courts interpreted the tool as a mandate.

[11:05:00 AM](#)

Senator von Imhof commented that some people were considering the scoring system as a "score and release." She felt that the low and medium, from the public's perspective, was too generous. She queried more information on the scoring system, and whether it was a tool or a mandate. Commissioner Williams responded that there was an unexpected opening about what would be fixed in the data, and stressed that there were issues that should be addressed.

Senator von Imhof noted that SB 91 and subsequent fixes gave hard prison time for violating conditions of release. She wanted to understand the pretrial and arraignment. She understood that there may be a misalignment of sentencing. She remarked that there may be a nuance related to someone

who might have petty offenses of \$1000, and continual property crime behavior. Commissioner Williams replied that the Department of Law (LAW) or Alaska Court System (COURT) might be better equipped to answer the question. He furthered that the assessment scoring looked at different factors in a criminal history.

[11:12:26 AM](#)

Co-Chair MacKinnon queried the efforts to address a 65 percent recidivism rate, and how it compared on a national level. Commissioner Williams replied that Alaska was worse than some states and approximately the same as others. He felt that the statistics were difficult to evaluate, because Alaska was a unified state. The recidivism rates were counted the same between someone with a short sentence and long sentence.

Co-Chair MacKinnon queried closing comments on a repeal of SB 91. Commissioner Williams stressed that it was a difficult issue, and he wanted to make the right decisions. He felt that changing midstream would be difficult for Department of Corrections (DOC). He understood that there were nuances within the bill, but he wanted to improve public safety.

[11:18:28 AM](#)

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, stated that there were certain times when the risk assessment score provided that the individual must mandatorily be released on their own in their own community. She remarked that the judge can release people with certain conditions.

Co-Chair MacKinnon queried the certain charges that would allow for the release. She understood that there was a cost associated and a right to bail. Ms. Meade replied that Section 59 of SB 91 rewrote the bail statute. The courts would get the two scores. She stated that most use a matrix of the prose, which was a chart of low, moderate, and high risk on one side and the crime the person was being charged on the top of the chart. She stated that it would be determined what decision making authority or provision that the judge must apply. She explained that there were certain crimes that had no presumption that the person should be released on their own, such as the most serious crimes. She stated that the lower risk had a presumption that the

person should be released. That presumption could be overcome if the judge makes a finding based on clear and convincing evidence that something more was needed in monetary bail to detain the person; protect the safety of community; and ensure that the person would appear in the court.

Senator Stevens wondered whether the tool was considered a rule. Ms. Meade replied in the affirmative, because the court must look at those scores.

[11:25:44 AM](#)

Senator von Imhof asked for a copy of Ms. Meade's prepared notes. Ms. Meade shared that the notes were prepared for the judges and were considered attorney-client privileged. She, however, agreed to provide to the committee. She stressed that it was her interpretation of the statute.

Senator von Imhof wondered whether the tool was working. Ms. Meade replied that COURT did not take a position on policy issues. She remarked that there should be an examination of what was meant by "working."

Senator von Imhof felt that the lens and impetus was about whether it was working to protect Alaskans from crime. She stressed that crime could be defined as assault, burglary, property crime, etc. She understood that it might be too early to evaluate its effectiveness. She remarked that the previous 12 to 18 months showed that crime had increased. She hoped that COURT was examining whether that assessment tool was working properly. Ms. Meade replied that the tool was only used for just under three months. The Court System was not in a position to amend the tool, other than apply the bail statute and use the scores that were provided by the pretrial enforcement.

[11:30:34 AM](#)

Co-Chair MacKinnon wondered whether there was a current bill to address the repeat offender portion of the assessment tool. Ms. Meade replied that the only bill that she was aware of that would affect the tool was alluded to earlier, which stated that if an individual had out-of-state criminal history then they would not qualify for release.

Co-Chair MacKinnon recalled that there was an issue on catch and release for property crime. She stated that there was an accumulation to assess a different kind of penalty. She thought that state statute had been changed to address that issue, so when people were released and reoffending. She wondered why those two offenses were not combined within the assessment tool. Ms. Meade replied that SB 54 changed what SB 91 had done with the very low level thefts, or items under \$250. Those low level thefts, under SB 91, did not have a chance for active jail time. She stated that the thefts had probation and suspended time that could be imposed. She explained that SB 54 allowed for active jail time for those level thefts.

11:34:20 AM

Co-Chair MacKinnon remarked that there had been a recommendation for a bail schedule change. She felt that there was convoluted conversation about the SB 91 repeal effort. She wondered what occurred with the implementation of the bail schedule change. She also asked whether there was a change after the initial implementation, because it intersected with criminal justice reform. She noted that the reason that an assessment tool was examined was due to subjectivity. She remarked that judges were expected to be fair and distribute the law in a just and fair manner. She stressed that the assessment tool was created as a "yard stick" for a judge to create a fair playing field. She remarked that there was testimony by the sponsor of SB 91 that was supported by various organizations. It was noted that there was a higher proportion of minorities that were staying in the pretrial component and arraignment section. Ms. Meade replied that with respect to the bail schedule, it should not be confused with the bail statute. The COURT had a bail schedule for decades, since the 1960s. The bail schedule was a document that allows release or assigns a certain dollar amount to certain offenses for some circumstances. She stressed that it only applied to misdemeanors, and never felonies. She announced that it would not never apply for domestic violence crimes. She explained that a person with certain offenses could be immediately released immediately if someone pays the bail. She stressed that if law enforcement or judge feels that there should be a deviation from the bail schedule. She stated that the judges did a statewide bail schedule at the same time as SB 91, and certain things were deemed

inappropriate such as a high blood alcohol content. She stated that SB 54 added a provision for DOC tests everybody that would be released under the bail schedule to ensure that the blood alcohol content was below 0.08 percent. She remarked that she had not heard any issues with the bail schedule in the recent months. She stressed that there would be a reaction and adjust to law enforcement and enhance public safety.

[11:40:11 AM](#)

Co-Chair MacKinnon noted a testimony from someone that considered the \$500 as too low a bail amount. She remarked that some minority populations might be held longer, because of a financial reason versus a risk reason. Ms. Meade replied that the issue of the dollar amount of bail was an important issue for judges and public safety. She agreed that judges could use discretion to set a bail that they believe was appropriate for that individual. She stated that one of the drivers for pretrial reform was a sense that money and the inability to pay was keeping people inappropriately.

Co-Chair MacKinnon announced that there would be a break to prepare for the public hearing in the afternoon.

WALT MONEGAN, COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY, ANCHORAGE (via teleconference), shared that law enforcement's function was to enforce the laws that were mandated by the state. He stated that there was some resistance by a number of law enforcement after the passage of SB 91. He remarked that the vast majority had understood the reason behind the changes. He stressed that there was more of a process than a project. He felt that a massive overhaul would result in some underestimations.

[11:45:47 AM](#)

Co-Chair MacKinnon shared that there were families who were victimized by individuals who disregarded their property and livelihoods. She wondered whether a repeal of SB 91 would improve public safety. Commissioner Monegan responded that there would probably be no difference, because the individuals who currently commit the crimes were driven by their addictions primarily. He felt that they needed to address the addiction.

Co-Chair MacKinnon queried the vacancy rate in the department. Commissioner Monegan responded that it was slightly over 10 percent, with 45 vacancies in the State Troopers. He shared that there was work to fill those positions.

Co-Chair MacKinnon queried the time of the next academy to address the vacancies. Commissioner Monegan replied that there was one that could be in the fall with 20 participants. The following spring would see a slightly higher number.

[11:49:17 AM](#)

Vice-Chair Bishop appreciated the comments on recruitment and retention. He assumed that there was a multiplier in the recruitment and academy process for those that do not complete the job within the first year, so there could be a fully staffed department.

Co-Chair MacKinnon understood that there was a request for additional public defenders, but asked that the conversation occur at a different time. She requested comments on public safety.

QUINLAN STEINER, PUBLIC DEFENDER, PUBLIC DEFENDER AGENCY, shared that his observations were mostly anecdotal. He remarked that there were some predicted impacts in terms of shifting the focus from incarceration as a remedy to support and treatment to address the underlying issue that drive individuals to come in contact with the criminal justice system. He noted that guaranteed incentives drove people to complete their rehabilitation. He felt that the package of reforms was supportive to drive rehabilitation. He stressed that it began with a release decision. He remarked that bail needed to be put into context. He shared that a judge did not make a decision to release or not release that person, because it was unconstitutional. The judge must set conditions of bail. He shared that one of the conditions could be to pay a bond. He remarked that paying a bond could result in a release. He shared that an unsecured bond was as effective at getting people not to commit a crime in the future and to comply with terms of their release and appear. He remarked that the past system was very much about poverty. He stated that there were currently more options and some restrictions.

11:56:18 AM

Senator von Imhof remarked that the increase in crime was largely associated with opioid use. She wondered how the increase in detox beds would intersect with the bail conditions. Mr. Steiner replied that he could not confirm the added capacity. He stated that the money had been allocated for that effort. He stated that the availability was key to helping someone succeed.

Senator von Imhof wondered why rehab was not offered in jail. Mr. Steiner replied that there should be treatment available to people at every stage. He shared that incarceration was not appropriate for everyone.

12:01:00 PM

Senator Micciche wondered how different the public defender job was from prosecution. Mr. Steiner replied that the state made an allegation. He stated that his job was to review and investigate that case to check the voracity of the statements and allegations.

Senator Micciche felt that defense and prosecution viewed the rights of crime victims differently. He wondered whether eliminating conditions of release "let down" victims, because they might feel like they was not reasonable protection. Mr. Steiner replied that the bail system had more options than have ever been available, including more potential restrictions and direct supervision. He shared that all of the conditions could be applied to anyone. He stressed that there could not be a required monetary bail and a third party custodian, because those things were keeping poverty stricken people in jail.

12:06:47 PM

Co-Chair Hoffman wondered whether there should be an examination of the felony permanent fund dividend (PFD) policy. He wanted to give an incentive to those that commit a felony that living crime free would allow for a PFD. Mr. Steiner replied that nondiscretionary programs were highly effective. He stated that making benefits at the discretionary decision of someone else would be less effective. He felt that it was in line with that principle.

Senator Stevens remarked that DOC had made attempts to supervise and follow up, but there was an implication that it did not work well. Mr. Steiner replied that it worked for some people. He stated that too much supervision could be counterproductive for low-risk individuals. He stated that conditions and supervisions for higher or moderate risk individuals could be effective.

Co-Chair MacKinnon stressed that the intent of the meeting was to understand the basics of the bill.

[12:11:32 PM](#)

JAHNA LINDEMUTH, ATTORNEY GENERAL, DEPARTMENT OF LAW, stated that SB 91 was not perfect, but a full repeal was not warranted. She felt that the approach in SB 127 was ill advised. She remarked that LAW was continuing to monitor and evaluate the impacts of the criminal justice laws. She stated that LAW would bring forward any changes that were needed, which was the impetus behind SB 54 and SB 55.

[12:17:02 PM](#)

Co-Chair MacKinnon stated that she was the former executive director of Standing Together Against Rape (STAR), and prosecution percentages had not adjusted much when discussing the issues.

Attorney General Lindemuth stressed that she was the most concerned with the rise in crime. She felt that, along with the fiscal crisis, it was a high concern in the state. She stated that she had spent more than half of her time on criminal justice.

Senator Micciche shared that there were discussions with law enforcement, judges, prosecutors, defenders, and community people. He stressed that there were people who were "fed up" with the increase in crime. He wondered what was done to catalog the changes in SB 91, the changes that occurred since its passage, and an ongoing plan on a better system. Attorney General Lindemuth replied that all the changes that LAW identified had already be presented to the legislature. She stressed that it was an ongoing process.

Co-Chair MacKinnon remarked that there was a very low number of sexual assault criminals that were actually prosecuted.

12:23:22 PM

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, spoke to the impacts of the department. He stated that the impacts were threefold. He shared that the pretrial enforcement division currently had over 1000 that were currently supervised by DOC. He stated that SB 127 had an immediate effective date, which would cause how those 1000 cases should be altered. He noted that SB 91 was a sweeping reform effort that was phased in over three years. He remarked that the reason for the three years was because it took time to train the judges and practitioners. It also took time to determine how those new laws would be interpreted and impact things. He stressed that making those changes took time to adjust. He felt that the immediate effective date would be extremely problematic.

SB 127 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

12:27:33 PM

The meeting was adjourned at 12:27 p.m.