ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
March 1, 2017
1:34 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Mia Costello
Senator Kevin Meyer
Senator Pete Kelly
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 54
"An Act relating to crime and criminal law; relating to violation of condition of release; relating to sex trafficking; relating to sentencing; relating to probation; relating to the pretrial services program; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 54
SHORT TITLE: CRIME AND SENTENCING
SPONSOR(s): SENATOR(s) COGHILL

02/10/17	(S)	READ THE FIRST TIME - REFERRALS
02/10/17	(S)	JUD, FIN
02/17/17	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/17/17	(S)	Heard & Held
02/17/17	(S)	MINUTE(JUD)
02/24/17	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
02/24/17	(S)	-- MEETING CANCELED --
03/01/17	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

JORDAN SHILLING, Staff

Senator John Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Described the changes between version A and version O of SB 54:

NANCY MEADE, General Counsel
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: Commented on the sections of SB 54, version O, that the Court System was involved in.

DEAN WILLIAMS, Commissioner
Department of Corrections
Anchorage, Alaska
POSITION STATEMENT: Commented on SB 54, version O.

JOHN SKIDMORE, Director
Criminal Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Discussed the policy changes SB 54, version O.

CLINT CAMPION, District Attorney
Criminal Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: In the hearing on SB 54, discussed his observations about the policy calls implemented in Senate Bill 91.

QUINLAN STEINER, Public Defender
Public Defender Agency
Anchorage, Alaska
POSITION STATEMENT: Discussed the policy changes in SB 54, version O.

ACTION NARRATIVE

1:34:47 PM
CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:34 p.m. Present at the call to order were Senators Costello, Meyer and Chair Coghill. Senators Wielechowski and Kelly arrived soon thereafter.

SB 54-CRIME AND SENTENCING

1:35:07 PM
CHAIR COGHILL announced the consideration of SB 54. He noted this is the second hearing and there is a committee substitute (CS) for the committee to consider.

1:35:46 PM
SENATOR COSTELLO moved to adopt the work draft CS for Senate Bill 54, labeled 30-LS0461\O, as the working document.

CHAIR COGHILL objected for an explanation of the changes.

1:36:00 PM
JORDAN SHILLING, Staff to Senator Coghill, described the following changes between version A and version O of SB 54:

Section 5
AS 11.66.150 – Definitions.

Establishes a definition for "compensation" which does not include any payment for reasonably apportioned shared expenses.

MR. SHILLING explained that the sponsor's office solicited a definition from the Department of Law and the Public Defender that both agreed would meet the goals of the Alaska Criminal Justice Commission ("Commission") recommendation. Any use of the term "compensation" in Sections 3 and 4 of the bill has its own definition for the purposes of those sections.

1:37:33 PM
SENATOR WIELECHOWSKI joined the committee.

MR. SHILLING continued to review the changes between version A and version O of SB 54.

Section 6
AS 11.56.757(b) – Sentences of imprisonment for felonies.

Increases the active term of imprisonment that may be imposed for a C-felony that is a first felony conviction from zero to 90 days to zero to 120 days.

CHAIR COGHILL noted this goes beyond the term the Commission recommended which gives judges more latitude.

Section 7
AS 12.55.125 – Sentences of imprisonment for felonies.

Establishes minimum probation term lengths for felony sex offenses. 15 years for an unclassified felony; 10 years for an A or B felony; and 5 years for a C felony.

MR. SHILLING reminded the members that while the Commission recommended some supervision for felony sex offenders, it did not specify the minimums. The sponsor's office solicited opinions from the Department of Law and the Public Defender about appropriate minimums and the sponsor decided to go with the higher numbers suggested by the Department of Law.

The maximum probation for felony sex offenses is 15 years. The minimum probation for an unclassified felony sex offense is 15 years so the term of probation is set at 15 years. The minimum probation for a class A or class B felony sex offense is 10 years, which creates a range of 10-15 years. The minimum probation for a class C felony sex offense is 5 years, which creates a range of 5-15 years.

1:40:23 PM
SENATOR KELLY joined the committee.

Section 8
AS 12.55.135 – Sentences of imprisonment for misdemeanors.

Increases the maximum sentence of imprisonment for distributing an explicit image of a minor to an Internet website that is accessible to the public.

MR. SHILLING explained that last year Senate Bill 91 was amended on the House floor to enhance the penalty for the class B misdemeanor offense of distributing an explicit image of a minor to one other person. However, the amendment failed to enhance the penalty for the class A misdemeanor offense of posting an explicit image on an internet website that is accessible to the public. This eliminates that disparity by increasing the maximum term of imprisonment for the conduct. This is a Commission recommendation.

Section 10
AS 12.55.135(l) – Sentences of imprisonment for misdemeanors.

Revises language relating to Theft in the 4th Degree (and similar offenses) to comport with the Alaska Criminal Justice Commission's recommendations that probation term lengths be clarified and 3rd and subsequent offenses be punishable by up to 10 days in prison.

MR. SHILLING described this as a technical change to comport with the Commission's recommendation.

Section 11
AS 12.55.135(p) – Sentences of imprisonment for misdemeanors.

Conforming change that requires notice to the opposing party if the state seeks to establish the new aggravating factor for A misdemeanors.

MR. SHILLING noted that this comports with the Commission recommendation.

Section 12
AS 12.55.145(a) – Prior convictions.

Establishes a 5-year lookback period for the purposes of establishing aggravating factors for A misdemeanors that are based on prior convictions. Unclassified and class A felonies are excluded from the lookback period.

MR. SHILLING explained that there is already a 5-year lookback for domestic violence assault in the fourth degree and it made sense to extend that lookback to all class A misdemeanors. He noted that the felony sentencing framework has a 10-year lookback, but unclassified and class A felonies are excluded.

1:46:45 PM

Section 15
AS 28.15.011 – Drivers must be licensed.

Reduces the crime of No Valid Operator's License to an infraction.

MR. SHILLING explained that this corrects a disparity created by Senate Bill 91 that reduced driving with a suspended license (for reasons other than a DUI) to an infraction, but did not similarly reduce the crime of driving with no valid operator's license to an infraction. This was a Commission recommendation.

Section 17
AS 33.07.010 – Pretrial services program; establishment.

Technical changes to clarify the requirement to conduct pretrial risk assessments on defendants.

MR. SHILLING explained that this relates to the Commission recommendation to eliminate the requirement for risk assessment for individuals who are cited rather than arrested and individuals who are released on the bail schedule. Version A used the legal term "brought into custody" and that created some confusion about what it meant. On the advice of the Court System, the language was changed to "detained in custody in a correctional facility following arrest".

Section 18
AS 33.07.030 – Duties of pretrial services officers.

Requires the Department of Corrections to present the results of the pretrial risk assessment to the prosecution and the defense, in addition to the court.

MR. SHILLING advised that the Department of Corrections (DOC) has concerns with this section. The question centers on who should be responsible for presenting the results and there is some thought that the Court System might be more appropriate.

CHAIR COGHILL said the bill identified DOC because they administer the risk assessment.

MR. SHILLING said those are all the changes between version A and version O of SB 54.

1:49:57 PM
CHAIR COGHILL removed his objection. Finding no further objection, he announced that version O is before the committee. He listed the invited testimony.

1:52:30 PM
NANCY MEADE, General Counsel, Alaska Court System, Anchorage, Alaska, noted the Court System's zero fiscal note. She said she was prepared to answer any questions but would address just the sections of version O that the Court System was most involved in.

She turned to Sections 1 and 2 that relate to violating conditions of release (VCOR). Senate Bill 91 changed VCOR from a crime to a violation, which means there can be no jail time, but it is an arrestable offense. This created some confusion when individuals were taken to the holding facility about whether they could be held. "If this was a non-jailable offense, how really can we hold the person to have something more happen with their underlying bail conditions?" The presiding judges' solution was to amend the bail form by adding a sentence that says a person who violates any of the conditions of release shall be held for another bail review hearing. She acknowledged that this may or may not be working, but it was an Alaska Criminal Justice Commission ("Commission") recommendation to change VCOR back to a crime to ensure that people arrested for this conduct could be held for a short period.

She said the corresponding punishment for Sections 1 and 2 is found in Section 9 on page 5, line 4. It specifies that VCOR is a class B misdemeanor, and the maximum time a person can be held is 5 days. During that time the person would have another bail hearing on the underlying charge. She reiterated that changing VCOR back to a crime was a Commission recommendation.

1:56:13 PM
MS. MEADE turned to Section 8 that relates to the terms of imprisonment permissible for class A misdemeanors. She directed attention to the new paragraph (2) that has the enhanced penalty of 60 days imprisonment for a person's second class A misdemeanor if it is similar in nature to the first one. Judges brought it to her attention that this penalty is slightly anomalous, especially in the context of a second DUI. A second DUI is a class A misdemeanor and the DUI statute provides 20 days minimum imprisonment and 30 days maximum imprisonment. If SB 54 were to pass, the permissible range for a second DUI would be 20 days up to 60 days. She suggested that clarifying what happens the second time would be helpful for practitioners and judges.

She directed attention to page 4, lines 8-9, and highlighted that the language in Senate Bill 91 said imprisonment would be one year if the defendant has "past criminal convictions." That generated a lot of discussion about whether you needed two or more convictions or whether it really meant a past conviction. She said at least one judge decided you needed two or more because it is plural, but both practitioners and judges thought it was quite vague.

She reminded members that Section 9 has the five-day penalty for violating conditions of release.

1:59:32 PM
MS. MEADE turned to Section 10 that addresses the penalty provision for class B misdemeanor theft offenses of items valued under $250. The question that came up was whether any probation could be ordered. She noted that Mr. Shilling explained that judges and lawyers have rules for statutory interpretation that led some to believe that if it wasn't specified that probation could be ordered, then probation wasn't permitted. She said it was the sponsor's intent that probation ought to be an option for low level theft offenders, so that addition was clarifying.

She described Section 11 that relates to the procedure of putting aggravating factors into practice as something that is non-controversial but helpful to the Court System. It says that the court will determine whether to put the class A misdemeanant into the category of a possible higher jail term.

MS. MEADE turned to Section 15. She explained that Senate Bill 91 changed the penalty for driving with a license either suspended or revoked (unrelated to DUI) to an infraction and the maximum penalty is $300. However, it left intact the law with a higher penalty for driving without ever having gotten a license. That is a misdemeanor punishable by up to 90 days in jail. This new subsection is intended to resolve that discrepancy.

She said that Section 16 addresses what is referred to as the Section 113 problem in Senate Bill 91. That bill said that municipalities cannot have penalties that are more severe than the state penalties, but it overlooked the fact that municipalities and the state have fines for the same offenses and the municipal fines are sometimes higher. Section 16 changes the term "offense" to "crime" which clarifies that minor offenses such as traffic tickets are not included in that provision.

MS. MEADE turned to Section 18 that relates to the duties of pretrial services officers. She said one issue that arose during implementation meetings is how the pretrial report will be disseminated. Senate Bill 91 said the pretrial risk assessment would be presented to the court, but it did not address how the parties would get it. She said she understands that the Department of Correction might not like this change, but it does seem that the prosecution and defense attorneys need to receive the report before the hearing.

She explained that when someone is arrested late in the evening and will be arraigned by 9:00 a.m. the next morning, the pretrial services office is tasked with conducting an assessment, creating a report, and getting it to the appropriate people before the arraignment. The change in Section 18 would have the pretrial services office issue the report not only to the court, but also the prosecution and the public defender or defense attorney. She said she didn't view this as controversial, but that may or may not be the case.

CHAIR COGHILL said it's appropriate and the question relates to implementation.

MS. MEADE said she could talk with the pretrial implementation group about whether the court should distribute the reports, but that might not be the most efficient since the attorneys may need that document even before the court needs it.

2:07:51 PM
SENATOR MEYER referred to Section 10 and summarized his understanding that the penalty would not include jail time for someone who steals items worth less than $250 two times.

MS. MEADE agreed there is no active jail time but pointed out that SB 54 adds a term of probation of six months.

SENATOR MEYER commented on the frustration related to small thefts and asked if there is a lookback for these crimes.

MS. MEADE directed attention to the language in Section 12 on page 8, starting on line 6. Version O of SB 54 adds what is generally a five-year lookback for those misdemeanors.

CHAIR COGHILL said he believes that relates primarily to class A misdemeanors, but he'd double check and discuss it with the Department of Law.

MS. MEADE said she may have misspoken.

SENATOR MEYER asked if a penalty that has a mandatory minimum of 20 days in jail actually means that term or if it could be less for good time.

MS. MEADE suggested he ask the Department of Corrections, but she believes that a good time deduction applies for a 20-day jail term.

CHAIR COGHILL welcomed Commissioner Williams and expressed interest in receiving his comments on the fiscal note after hearing from both the Department of Law and the Public Defender Agency.

2:13:05 PM
DEAN WILLIAMS, Commissioner, Department of Corrections, said the department needs to analyze the provisions in version O, but he understands that the proposed changes are a policy call. His perspective is that anything that increases incarcerations will impact the department because the budget is already set. The forthcoming fiscal note will help clarify what the different policy calls will cost.

He highlighted areas of concern for DOC in version O. First is how DOC will deliver the risk assessment tool to multiple parties, not just the court. His understanding is that attorneys frequently aren't appointed until the arraignment, so it seems logical that the court would distribute the report to the appropriate parties at that time. A second concern relates to how the partners involved in the risk assessment will be affected by this change.

CHAIR COGHILL asked him to discuss the pretrial working group and who is involved. He acknowledged that the department and the working group might have better ideas.

COMMISSIONER WILLIAMS explained that the pretrial director has everyone at the table who is even remotely involved in standing up the pretrial unit. He said he would appreciate the opportunity for the workgroup to continue to formulate the plan including figuring out how to get it to the relevant parties. "If we find that there is a glaring glitch at the end of that, I guess I'd feel better about addressing it in statute."

CHAIR COGHILL said point well taken.

2:19:06 PM
JOHN SKIDMORE, Director, Criminal Division, Department of Law, thanked the sponsor and committee for addressing what the Department of Law considers to be very few tweaks to Senate Bill 91. He said he asked Mr. Campion to join him today to talk about the front-line view of three policy areas of Senate Bill 91. He would follow Mr. Campion and talk about the changes that SB 54 makes in those policy areas.

2:20:15 PM
CLINT CAMPION, District Attorney, Criminal Division, Department of Law, Anchorage, Alaska, said he would talk about his observations in the areas of violating conditions of release (VCOR), class C felonies, and theft in the fourth degree.

He explained that his observations about theft in the fourth degree in the Municipality of Anchorage are anecdotal because the municipality generally prosecutes those cases. Police officers are telling him that suspected thieves are telling officers to issue a citation and let them go because the officers can't take them to jail. This has caused frustration.

Regarding VCOR, he agreed with Ms. Meade that there has been confusion within the DA's office, with judges, and law enforcement about what to do when someone is suspected of having violated their conditions of release. If a judicial officer is unable or unwilling to remand someone on a violation of conditions of release and the officer is confused about what to do, the recourse is for his office to ask the court to schedule a bail hearing. He noted that because his office doesn't typically prosecute violations, there is a possibility there won't be a record upon which the pretrial services unit can evaluate future risk assessments

Regarding class C felonies, he said the committee should be aware that many offenders who are charged with a class C felony may sit in jail 30-60 days consuming DOC resources, but won't get any jail time once their case is tried or resolved. This is an unintended consequence of Senate Bill 91. He also cited the dramatic increase in vehicle thefts over the last two years and highlighted how difficult it is to explain to a victim that a defendant who stole their car will get a presumptive probationary sentence and no jail time.

2:24:30 PM
MR. SKIDMORE reviewed the instructions to the Alaska Criminal Justice Commission to reduce both recidivism and the number of

people incarcerated in jails at any given time across the state. He said jails are not intended to be a dumping ground for people with substance abuse issues and/or mental illness, but some of these people commit offenses that have serious impacts on society. In those circumstances it is appropriate to impose some amount of jail time, but there should be both discretion and balance. The courts need to have the discretion to look at both the offense and the offender and decide if the person should be put on probation or sent to jail.

He said that one of the problems the Department of Law ran into when Senate Bill 91 was enacted is that it did not give judges sentencing discretion for class C felony offenses. That is despite the fact that discretion and balance is rooted in the laws, the constitution, and cases. He cited art. I, sec. 12, Constitution of the State of Alaska, AS 12.55.005, and quotes from the U.S. Supreme Court in Lancaster. The question, he said, is how much discretion will you return to the Court System regarding class C felonies?

MR. SKIDMORE related that [in 2017] the Commission looked at the penalty for class C felonies, debated a recommendation from the Department of Law, and ultimately recommended a sentencing framework from 0 to 90 days. SB 54, version O, increases the upper limit to 120 days. He said that it is a policy call for the committee to make, while keeping in mind the constitution, the statutes, and the case law that call for discretion and balance.

MR. SKIDMORE said the Department of Law also saw it as a concern that no active jail time is initially imposed for a second offense of theft in the fourth degree - stealing property valued under $250. He highlighted that Senate Bill 91 also revoked the recidivist statute under theft in the third degree. That statute said a third conviction of theft in the fourth degree within five years elevates the offense to a class A misdemeanor. The Department of Public Safety and the Department of Law together proposed not changing what happens the first or second time because these are the lowest level offenders and they ought to be given a chance. "Many will change their ways just with probation." What we suggested was trying to have some other sanction when you get to that third offense, he said. While DOL and DPS recommended reinstating the recidivist provision, the Commission recommended leaving the third offense a class B misdemeanor and allowing the maximum term of imprisonment for that level, which is 10 days.

For class C felonies and theft in the fourth degree, the Department of Law is not proposing absolutely no jail time. Rather, they are proposing that the courts have the discretion to respond to the particular circumstance.

He said Ms. Meade and Mr. Campion both spoke on the topic of violating conditions of release (VCOR), so the committee already understands why the Department of Law believes it would be appropriate to return that offense to a misdemeanor.

MR. SKIDMORE endorsed the policy call in SB 54 about mandatory probation for sex offenders. He called it a solid concept and a critical component for addressing sex offenders in the state. He noted his intention to work with the sponsor's office on a minor issue regarding language placement.

Referring to Senator Meyer's question about a lookback, he said nothing in current law talks about how far to look back when determining whether a third offense of theft in the fourth degree would be subject to a maximum of 10 days active imprisonment. The lookback in the current version of SB 54 only applies to sentencing for class A misdemeanors. Referring to a second question Senator Meyer asked, he said a mandatory minimum sentence cannot be reduced.

He noted that SB 54 also has a provision on sex trafficking that closes the loophole that was created by Senate Bill 91 when language from a separate bill was used to modify the sex offense statutes. That was not a recommendation of the Commission.

CHAIR COGHILL thanked Commissioner Monegan for waiting online to offer testimony and asked if he could return on Friday. Commissioner Monegan agreed.

2:34:18 PM
SENATOR WIELECHOWSKI reviewed the three areas of concern that SB 54 addresses. First, the bill proposes a presumptive term of zero to 18 months for first time class C felonies.

MR. SKIDMORE clarified that version O proposes zero to 120 days of active imprisonment with the possibility of suspending the additional time for a total of 18 months. The Department of Law originally looked at zero to 18 months but now believes that zero to 12 months is more reasonable. He added that it is a policy call for the legislature to make.

SENATOR WIELECHOWSKI said he understands it's a policy call, but he's basing his policy decision of Mr. Skidmore's expertise. "Are we keeping the public safer if we go with your recommendation to make it zero to 12 months for first time class C felonies?" He said he also understands that the Department of Law recommended reenacting AS 11.41.140(a)(3) to allow recidivist thefts to be prosecuted at a higher level; and making violating conditions of release a class B misdemeanor with a maximum of 10 days in jail. He asked, "What do we need to do to keep the public safe?"

MR. SKIDMORE replied DOL recommended the presumptive range of zero to one year for first-time class C felonies because that is consistent with the Commission's recommendation and original intent to adjust presumptive sentencing. He explained that prior to 2005 all felonies were subject to presumptive terms, but after the Blakely decision ranges were created which resulted in increased sentencing. He recapped saying, "A year feels right in terms of looking at all those types of offenses and types of conduct that is classified for class C felonies."

He explained that the Department of Law's proposal for theft in the fourth degree was to have some sanction for repeated offenses. By the third time it's clear the person hasn't gotten the message and some other sanction is needed, he said. Whether that message is what is in SB 54 or what the Department of Law originally recommended isn't the significant point. "The significant point is that there is some other sanction or penalty available."

MR. SKIDMORE endorsed the provisions in SB 54 relating to violations of conditions of release. They are closely aligned with what the Department of Law originally recommended.

CHAIR COGHILL thanked Mr. Skidmore and Mr. Campion, and asked Mr. Steiner to offer the public defender perspective.

2:40:42 PM
QUINLAN STEINER, Public Defender, Public Defender Agency, stated that he has been a member of the Alaska Criminal Justice Commission since it began, and he participated in the discussions for Senate Bill 91, the 2017 recommendations, and SB 54. He said his intention today is to discuss the policies and answer questions. He identified the recommendations related to class C felonies as the biggest policy change.

He reported that the clear basis of the class C felony policy drove the Commission's work, with two things being paramount. The first was that jail time for certain individuals actually increases recidivism. The second was the concept that the actual conviction for a felony further reduces the ability for an individual to rehabilitate him/herself. That has barrier consequences for employment and housing.

MR. STEINER pointed out that the 2017 recommendations from the Commission were not based on any assessment that the original recommendations had failed, had compromised public safety, or didn't achieve their goals. Rather, it was a more complicated discussion about refining the policy based on input from the public as well as a contemplation of the merit of how even the scheme really was. The discussion included rolling back but that appeared to be a repudiation of the policy. He offered his perspective that what drove the debate was how to mitigate the likelihood that somebody is going to be in a situation where they will plead to jail time for a felony when they could otherwise negotiate an agreement either without jail time or to an aggravated misdemeanor where they could participate in treatment and potentially not suffer the consequences of that. He said he supported 90 days because he didn't think it had pressure to compel pleas without the associated benefits of the treatment and rehabilitation.

He explained that the policy about theft in the fourth degree was a discussion that resulted from an inaccurate perception that a person could never go to jail for a low-level theft. That was never the case. An individual could not go to jail the first two times and the third time there was a suspended sentence. The fourth time the individual could go to jail for revocation of their prior. But in a discussion about evening the scheme, the talk was whether it was appropriate to elevate the offense to the higher-level misdemeanor. He noted that he supported that change as well as the misdemeanor aggravator. He summarized saying that "for a second similar would allow a more aggravated sentence rather than imposing an aggravator where you jump all the way up to a year." He emphasized that it was an effort to refine the policy not change it based on an assessment that it had failed. A valuable part of the discussion was getting the right mix so that the policies are effective and accommodate the concern about community condemnation.

MR. STEINER said the policy debate he did not support was changing the violating conditions of release. He offered his perspective that the discussion was administrative. There were

fixes in place that could have accomplished the original intent without making it a crime. What did mitigate the concern was the cap on the jail time. It is not limited to a period that was necessary to effectuate the goal of being able to arrest somebody for violating conditions of release and then having a bail hearing. That was always possible and with the fix that was put in place by the court that remained possible. But it was not given a chance to work and become part of the daily practice and culture.

2:46:20 PM
MR. STEINER said the Commission recommended that some probationary period be imposed for individuals convicted of sex offenses, but it was never discussed what that would be. It was left to the legislature. The discussion was for a similar percentage to the prior policy so that it left some discretion for the judges to impose an appropriate period of probation.

CHAIR COGHILL asked if the provision in SB 54 is appropriate.

MR. STEINER replied it leaves no discretion. The maximum and minimum are the same so it's a definite term. The judge has no discretion to decide what is appropriate under the circumstance. His suggestion was to do a similar percentage to the prior law so there was some movement.

CHAIR COGHILL pointed out that the change to the good time credit had a significant impact.

MR. STEINER agreed that including earned compliance credit furthered the rehabilitative goals.

CHAIR COGHILL asked his perspective of 90 and 120 days for class C felonies.

MR. STEINER said that from his perspective there isn't much difference, but the discretion of up to one year would have created a problem. The Commission was concerned about sentences increasing over time when ranges were available. That's what happened. Judges had the discretion to ramp up sentences in the old school idea that more jail time was likely to produce the desired effect. But the data shows that isn't true. More jail time doesn't produce a better outcome or more motivation for rehabilitation. That's why he supported 90 days and he didn't think 120 days wouldn't undermine his reasoning.

SENATOR WIELECHOWSKI said he'd like to look at the research on how 90 days, 120 days and one year in prison affects recidivism and the public safety impacts for those different terms. He also expressed interest in looking at what other states do.

MR. STEINER confirmed that was all documented by the Commission.

CHAIR COGHILL said that information is probably on the Commission's website, but he could also provide the documents to the committee.

SENATOR WIELECHOWSKI said he'd appreciated that.

CHAIR COGHILL reminded the members that the Commission said their [2017] recommendations were based on community condemnation and public safety concerns, not data. He noted that the current data says that less jail time results in less recidivism, but the public isn't satisfied with that right now.

He asked Commissioner Williams to discuss how the department will approach the fiscal note.

2:54:32 PM
COMMISSIONER WILLIAMS explained that the fiscal note cost drivers will be based on reintroducing jail time after Senate Bill 91 removed it for certain offenses. He pointed out that everyone that returns to prison returns with health care issues that are cause for concern, even for those who are returned to prison for 15-20 days. He said a piece of justice reform that hasn't been discussed is whether the state is putting enough into treatment opportunities. This should be contemplated because treatment options need to be in place before people can be diverted from $150 per day prison beds. The opioid crisis and attendant crime issues brings this more clearly into focus. Addressing that is part of the policy call. He expressed hope that that wouldn't be lost in the discussion.

2:57:38 PM
CHAIR COGHILL noted that Representative Reinbold was in the audience.

He reviewed the agenda for Friday and stated he would hold SB 54 in committee for further consideration.

2:59:52 PM

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 2:59 p.m.