HOUSE FINANCE COMMITTEE
April 18, 2019
9:00 a.m.

9:00:07 AM

CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 9:00 a.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Tammie Wilson, Co-Chair
Representative Jennifer Johnston, Vice-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Andy Josephson
Representative Gary Knopp
Representative Bart LeBon
Representative Kelly Merrick
Representative Colleen Sullivan-Leonard
Representative Cathy Tilton

MEMBERS ABSENT

None

ALSO PRESENT

Nancy Meade, General Counsel, Alaska Court System; Jen Winkleman, Director, Probation, Parole, and Pretrial Division, Department of Corrections; Kelly Goode, Deputy Commissioner, Department of Corrections; Kelly Howell, Special Assistant, Department of Public Safety.

PRESENT VIA TELECONFERENCE

John Skidmore, Director, Criminal Division, Department of Law

SUMMARY

PRESENTATION: CRIMINAL JUSTICE REVIEW: THE STORY OF OFFENDER JOE

Co-Chair Wilson reviewed the meeting agenda. She detailed that the committee would review the criminal justice system since the passage of SB 91 - OMNIBUS CRIM LAW & PROCEDURE; CORRECTIONS [CHAPTER 36 SLA 16 - 07/11/2016].

^PRESENTATION: CRIMINAL JUSTICE REVIEW: THE STORY OF OFFENDER JOE

9:01:27 AM

NANCY MEADEE, GENERAL COUNSEL, ALASKA COURT SYSTEM, presented a neutral explanation of the recent changes to Alaska's criminal law with the implementation of SB 91 in 2016 and issues that transpired since its passage. She detailed that the approximately 110 pages in SB 91 addressed substantial amounts of complex criminal law. She provided a brief overview of her presentation. She would review the major categories in the following order: pretrial, sentencing, controlled substances, probation, and parole.

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Ms. Meade listed the other major provisions contained in the bill that she would only address upon request relating to: driving with a suspended license, failure to appear, suspended entry of judgement, revisions to the Alcohol Safety Action Program (ASAP), victims access to information, first offense sentencing for Driving Under the Influence (DUI), limited licenses for felony DUIs, theft threshold between felonies and misdemeanors, reinvestment in Community Residential Centers (CRC), and crimes downgraded to violations.

Co-Chair Wilson relayed that the items that would not be heard during the meeting would be heard the following week.

Representative Carpenter asked if the PowerPoint presentation was Ms. Meade's. Ms. Meade replied in the negative. She did not have a PowerPoint.

Ms. Meade clarified that the Court System remained completely neutral on any past or future changes to criminal laws. She began with pretrial changes that were implemented in SB 91 in 2016. She elucidated that the provisions in SB 91 were phased-in. Most of the pretrial provisions had a delayed effective date of 2018. The

Pretrial Enforcement Division (PED) created in SB 91 had currently only been intact for a little over one year. She reported that the first pretrial revision related to the "time for first appearance" between a defendant and a judicial officer after arrest was changed from 48 to 24 hours. She elaborated that the provision had little effect on many court system procedures because the court had routinely scheduled first appearance or arraignment within 24 hours. The statute previously allowed a felon to be held for 48 hours to allow prosecutors time to prepare for a bail hearing. The amount of time had been a subject of much discussion and the bill excluded many Class C felonies, since many Class C felonies' penalties did not include incarceration. Subsequently, the time provision was revised in SB 54 - Crimes; Sentencing; Probation; Parole [Chapter 1 4SSLA 17 - 11/26/2017], which expanded the circumstances when the 48 hour time period could be granted. Subsequently, the time for first appearance was fully reversed in HB 312 - Crimes/Crim Pro; Controlled Substances; Bail [CHAPTER 22 SLA 18 - 06/14/2018], which was expanded to any felony or misdemeanor defendant with out of state convictions. She added that district attorney's (DA) rarely request the 48 hour time period.

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Co-Chair Wilson asked how difficult it was to find out- of-state convictions. She asked whether it depended on the state. Ms. Meade replied that finding the information was under the purview of the Department of Law (DOL), that had access to data bases. She noted that the issue was discussed during bail hearings. She deferred further questioning to the department.

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW (via teleconference), replied that the Alaska Public Safety Information Network (APSIN) database was also connected to an FBI database that provided information about out-of-state convictions. He noted that the database was unclear about whether a conviction had occurred, and the department attempted to contact law enforcement in other states to confirm information in the database. He indicated that the database was not comprehensive and only included criminal history that was reported to the FBI by another state.

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Ms. Meade addressed a defendants first appearance in court. She expounded that the primary change stemmed from the fact that SB 91 established a new division, the Pretrial Enforcement Division (PED)(previously the Pretrial Enforcement Section) within the Department of Corrections (DOC) to deal with pretrial. The division's two main jobs described in AS 33.07 were to perform risk assessments and exercise supervisory functions over defendants in pretrial. She explained that risk assessment was required within 24 hours of arrest and determined the assessment score and categorization that the PED officer transmitted to the court. She related that a substantial effort went into creating the risk assessment "tool" (referred to as "the tool") that determined whether the defendant would appear for court hearings and/or if a threat to public safety existed; considered a risk for "new criminal arrest." She explained that the defendant received two scores: the risk of failure to appear and the new criminal arrest (NCA) scores. The test employed the rankings low, moderate, or high risk. The court received the rankings at the bail hearing in an electronic report that listed an out-of-state history, if applicable, and a list of statutory recommendations that pretrial believed was appropriate for the offender.

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Ms. Meade continued that the court applied the report to the bail statute; AS 12.30.011, which delineated what the ramifications were according to the score. She interjected that due to the complexity of the statute, many judicial officers developed a "matrix" to decipher the statute according to a charge and ranking. The categories created some controversy and opposition when SB 91 had passed due to some charges and rankings requiring mandatory "allowable release on own recognizance" (OR). She relayed that mandatory OR was authorized for misdemeanors or Class C felonies related to drugs, theft, and weapons charges that were not a crime against a person, related to domestic violence (DV), a sex crime, or DUI, and assessed at low or moderate. The rest of the categories in statute were presumed unless clear and convincing evidence existed that bail or jail was necessary for public safety or to assure appearance in court. Other unclassified categories carried no assumptions and the court determined the outcome upon the preponderance of evidence.

Co-Chair Wilson remembered that the pretrial assessment statute in SB 91 had subsequently been changed. Ms. Meade answered in the affirmative.

Representative Carpenter referred to "the tool" and asked who applied the tool and determined the scores. Ms. Meade replied that the risk assessment was determined by the PED officers under DOC.

Representative Carpenter repeated his question.

JEN WINKLEMAN, DIRECTOR, PROBATION, PAROLE, AND PRETRIAL DIVISION, DEPARTMENT OF CORRECTIONS, answered that the pretrial services officers conducted the assessment prior to the defendant's arraignment. The department referred to the risks as the "Alaska two scales;" failure to appear and new criminal activity.

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Representative Sullivan-Leonard referred to the list of crimes under the Class C felons released on OR and asked for a reiteration of the list. Ms. Meade emphasized that the list under SB 91 was no longer the law and subsequently changed. She reiterated that mandatory OR had applied to all Class C felonies except for crimes against persons, failure to appear, violating conditions of release, DUI, refusals, sex crimes, and DV crimes.

Representative Josephson asked whether the AS.11.61 (1161) crimes had been treated less severely than other violent crimes in SB 91.

Co-Chair Wilson advised caution during the discussion regarding SB 91. She wanted to engage in a neutral examination of the effects and focus on the remaining current law and what had been changed.

Ms. Meade answered that she was not certain about the conduct related to weapons Representative Josephson was referencing. Representative Josephson recounted that the Court System had promulgated a new bail schedule in advance of SB 91. He inquired whether the new schedule was implemented in anticipation of the bill or would have been revised regardless. Ms. Meade answered that the presiding judge had revised the bail schedule in 2016, which had been changed three or four times since then. She believed that

the bail schedule was changed in order to develop a statewide unified bail schedule.

Co-Chair Wilson asked how the bail schedule fit under pretrial.

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Ms. Meade answered that the bail schedule was not affected by the pretrial changes. She explained that the bail schedule applied to certain misdemeanors that allowed for release via bail at the jail or for certain other misdemeanors with a set of established bail or OR that did not relate to domestic violence or stalking. However, other misdemeanors were not subject to release under the bail schedule.

Co-Chair Wilson asked for verification that the previously mentioned misdemeanors were not included in pretrial statistics because the defendant was released prior to pretrial. Ms. Meade replied in the affirmative. She elaborated that SB 54 - CRIMES;SENTENCING;PROBATION;PAROLE [CHAPTER 1 4SSLA 17 - 11/26/2017] clarified that pretrial assessment did not apply to out of custody defendants who would be arraigned later. Co-Chair Wilson asked how many individuals fell into the out of custody defendant's category. Ms. Meade answered that the number was unknown due to the difficulty of finding the data related to misdemeanants released under the bail schedule.

Vice-Chair Ortiz asked for a summary of the arguments for the development of the risk assessment tool and the issues that caused a change in risk assessment.

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Ms. Meade answered that many jurisdictions around the country had been looking at "smart justice:" a reform of the criminal justice system with an emphasis on recidivism. She explained that social scientists had determined that one improvement was to grant the judge more discretion in the pretrial process by providing more information via a risk assessment tool. She explained that SB 91 mandated that DOC would create the tool. The department took advantage of free outside expertise provided by specific organizations. The experts gathered data from Alaska case files from DOC, the Department of Public Safety (DPS), and

Judiciary and evaluated offenders' propensity to recidivate and developed the tool specific to Alaska from the data. The tool had not changed since implementation, but some of the public outcry concerned mandatory OR for crimes like vehicle theft (Class C felony). She offered that HB 312 was in response to mandatory OR and the mandatory release provisions were removed under the bill. She added that all the mandatory OR categories were changed to presumption of OR unless clear and convincing evidence that conditions were necessary to protect public safety and ensure court appearances. The provisions were effective in June 2018. She mentioned that the OR provisions under SB 91 were quickly adjusted by the legislature and were only in effect from January 1, 2018 through June 15, 2018.

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Vice-Chair Ortiz asked about the OR adjustments that came about as a result of concerns. He asked whether it was a matter of perception that the law "was a bad thing." He surmised that not enough time had passed to determine whether data backed up the concerns. Ms. Meade was uncertain why the legislature made the rapid change to the law. She pointed to a couple of high profile cases where defendants had been released OR and the legislature determined that mandatory release was not appropriate and "general" opposition by some members of the public.

Co-Chair Wilson asked if a risk tool had already existed. Ms. Meade answered that the risk tool had been invented for Alaska based on Alaska data. The state could have used off the shelf tools or tools from other states. The risk tool was validated upon Alaskan populations to try to avoid cultural disparities.

Representative Carpenter declared that judges had been placed in their position to discern and seek justice. He asked how the PED officers were making the decision to discern the two risks measured by the tool. He believed that the tool was "tying the judges" hands through the matrix. Ms. Meade responded that the tool did not call for any discretionary decision making by the officers. She exemplified one question that asked whether the defendant had any arrests prior to the age of 21 and if the data indicated a positive answer, points were added to the score. Representative Carpenter asked if the tool was solely data based. Ms. Meade replied in the affirmative.

Representative Josephson asked what the presumption for OR release had been prior to SB 91. Ms. Meade replied that AS 12.30.011(a) provided for OR but subsection (b) specified that if more was needed to protect public safety and ensure court appearances the court could impose monetary bail or other conditions. The clear and convincing evidence standards were not included.

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Vice-Chair Johnston wondered whether the state continued to use the tool even though major revision were made to the law limiting mandatory release. Ms. Meade answered that SB 91 mandated use of the tool for everyone in custody. HB 312 did not change that requirement but altered the conditions regarding mandatory releases. She was concerned about continued data collection. She asked for verification that data continued to be collected. Ms. Meade indicated that SB 91 mandated that the Criminal Justice Commission, staffed by the Judicial Council, collect data on all aspects of criminal justice reforms in SB 91. Since the law had been in effect for 1.3 years some data had been collected, but not enough to form a full picture to determine its effectiveness.

Co-Chair Wilson cited that currently 45 percent of criminals were unsentenced and asked who would not qualify for pretrial. Ms. Meade replied that some defendants could not meet the conditions of release or make bail. She reminded Co-Chair Wilson if there was a presumption a person would be released OR, a judge could make a different determination to keep the individual in jail. The determination could be made for any charge if the judge made the finding.

Co-Chair Wilson thought that pretrial assessment would determine who was at high risk of causing harm and that non-violent more minor defendants would not be assessed solely based on ability to pay bail. She believed that 45 percent represented a huge number of individuals in pretrial. She wondered how most of the 45 percent of incarcerated pretrial defendants would be categorized. Ms. Meade agreed that the goal of smart justice was to better identify people who needed to be in jail versus others who did not present a threat to the public and incarceration was unnecessary. She deduced that in general, if assessed correctly, the more violent individuals with higher risk

scores would be detained in jail and those representing no threat to the public would be released OR. Co-Chair Wilson asked whether the individuals in pretrial could be imposed conditions of supervision or ankle monitoring.

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Ms. Meade answered that the Pretrial Enforcement Division also had authority to supervise individuals released during pretrial. She provided the example that a judge could order pretrial release on the condition of drug treatment under the oversight of PED officers. She reported that the judge, under the new bail statute in SB 91 were able to release many more individuals without monetary bail requirements but placed conditions to ensure the individual was not a threat to the community.

Co-Chair Wilson asked if the individuals received credit for pretrial time served. Ms. Meade answered that they could receive credit only on electronic monitoring (EM). Co-Chair Wilson asked whether the defendant received credit for time served under conditions of supervision. Ms. Meade answered in the negative. She detailed that a person would accumulate credit for pretrial time served if constraints were in place. A person could get pretrial credit for time spent on EM under imposed conditions or for time spent in certain treatment facilities. Co-Chair Wilson surmised that a person could also be on EM but would not get time served. Ms. Meade answered in the affirmative.

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Co-Chair Wilson thought that there was a misperception that individuals all received time served on EM and was unaware of the parameters placed on gaining time served.

Representative Josephson guessed that more people were currently being released under OR conditions because the standard was still higher than what it was prior to SB 91. Ms. Meade understood the assumption but did not have the data to support his hypothesis. Representative Josephson asked why the data did not exist. Ms. Meade replied that no entity was set up to be a central data collection entity. The Court System's case management system had not been designed to draw conclusions. She added that the Judicial Council was trying hard to get the data by piecing together any relative data from all involved agencies.

Representative Josephson surmised that if more people were released there would be fewer plea bargains and potentially more trials, which could impact Judiciary. He recalled from personal experience as an attorney that often individuals opted for plea bargains because they could not afford jail regardless of innocence or guilt. He pondered how criminal justice reform "played out" in the real world in terms of cost to agencies, case work, and "overall" justice.

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Ms. Meade responded that she had not seen information proving Representative Josephson's premise. She did not know of any evidence to prove that people released OR were pleading guilty at a lower rate than those retained in jail. She understood the scenario of forcing a person into a plea or remain in jail. She did not know what it meant for criminal justice and had not seen an increase in trials because people had been released OR.

Ms. Meade wrapped up her section on pretrial. She reported that many individuals released OR had supervision (approximately 50 percent) by PED officers, which only happened under SB 91. She observed that supervised OR release had been viewed as beneficial to those released pretrial and for public safety.

Representative Carpenter relayed that he heard much criticism about the assessment tool. He asked how threat was defined: physical or threat to recidivate. Ms. Meade answered that she had meant risk, not threat. She clarified the tool used data to measure the risk of a defendant committing a crime and face new criminal arrest if released or fail to appear in court. Representative Carpenter was interested in the data point. He wanted to know what the data was that was used to identify a potential threat or failure to appear. Ms. Meade deferred the question and related that the specific questions about the tool were included in a presentation that would be heard later in the meeting. Representative Carpenter asked about a case where the judge could discern to rule differently than the tool's ranking. Ms. Meade replied that DOC determined the assessment score that was provided to the judge. She provided an example of a defendant with a moderate score in court charged with a crime against a person, at arraignment the judge could determine that bail or other conditions were warranted even if the matrix presumed an OR would be

appropriate. The judge had discretion to find clear and convincing evidence that a person would be a risk and rule contrary to the assessment score.

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Representative Carpenter asked whether the options afforded by the tool were the only options if the tool did not exist. Ms. Meade communicated that the conditions imposed by the judge was not established by the tool - the tool simply conveys what subsection of the bail statute was applicable. A person could be presumed OR by a charge, but the attorneys in the room may try to provide evidence to show the person was a danger. A judge may rule that clear and convincing evidence demonstrated that pretrial incarceration was necessary.

Co-Chair Wilson asked the same question of DOL. She wondered whether the risk assessment was the overriding factor at arraignments.

Mr. Skidmore replied that the answer was mixed. The tool set the presumptions that the court must apply in a case. The presumptions were different and more difficult to keep someone in jail than prior to SB 91 pretrial. Subsequently, with the adoption of HB 312 in 2018, the presumptions provided the court the ability to look for evidence and set other conditions if necessary. He relayed that DOL prosecutors felt that the results of working with the tool was varied. A prosecutor working on a drug case recounted one defendant who was released OR before arraignment who had been released 10 to 12 times prior to the current charge; the defendant committed one crime and was brought back for offending numerous times but was still released. He emphasized that it was not statistical evidence and he could not comment on how frequently it occurred. He offered that similar instances were reported to him by other prosecutors. He stated that DOL continued to experience issues that were cause for concern.

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Co-Chair Wilson asked for clarification about whether the attorneys brought evidence forward to the judge, or did the judge find the information about the defendant. Mr. Skidmore answered that in a bail hearing the prosecution

and defense both presented information and the judge ultimately decided.

Representative Carpenter understood that a presumption of innocence was implied, and a judge must make decisions based on data in a matrix. He stressed that the "pain" his constituents were feeling was due to the picture presented by Mr. Skidmore. He believed that "justice was not being served" and that defendants were being released and were immediately committing crimes again. He was trying to determine why the person with the responsibility to discern whether a person should be behind bars or released was relying on a matrix he believed was flawed. He opined that the tool was "tying judges' hands." He surmised there was either an issue with judgement or there was a problem with the tool. He felt the tool was the "fundamental problem".

Co-Chair Wilson noted that the questions being asked were relevant. She contended that prior to SB 91 "the tool was the judge." She reiterated that subsequently, the legislature had changed the law to a limited extent to allow judges more discretion but not full discretion. She deduced that unless a prosecutor had convincing evidence to the contrary, a judge would automatically use the matrix and possibly release the defendant. She concluded that if the tool was allowing people to reoffend, the tool needed statutory revision.

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Representative Carpenter believed that there was a larger problem that needed to be fixed and "could not hold a tool accountable." He asserted that a process existed that could hold a judge accountable and stated that he was not implying all judges were "bad" or lacking perspicacity.

Co-Chair Wilson countered that the legislature created the statute requiring the use of the tool "overriding the judge." She believed that the legislature was at fault for creating the statutes dictating what comprised the tool. Neither the judge nor the tool could be blamed. She questioned whether the statues governing the tool needed to be changed or whether to return full discretion to judges.

Vice-Chair Johnston asked what the legislature did in HB 312. She remembered that more discretion was returned to

the judges but was not sure of the full extent. She voiced that before the legislature attempted to remediate more issues, she wanted to know why the results were not as expected.

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Ms. Meade indicated that the changes in HB 312 fully eliminated the mandatory release category, which granted the judge more discretion in some cases. The legislation also provided the judge the ability to consider the person's out-of-state history when setting conditions of release, which were not considered in the tool. The judge was granted more discretion but not complete discretion in HB 312.

Vice-Chair Ortiz remembered that the risk assessment tool was developed out of national reform efforts. He asked who recommended the tool. Ms. Meade answered that the tool was required by SB 91 and PED had the job of establishing the tool. The Judicial Council was involved in staffing the group that examined the state's data and developed the tool. Vice-Chair Ortiz asked if any evidence existed that the tool created problems for judges. Ms. Meade relayed that some judges liked the tool and others did not believe it was helpful. Whether a judge liked the tool or not, they applied it because of the statutory requirement.

Co-Chair Wilson asked who had approved the specific tool currently in use. Ms. Meade answered that the statute stated that the DOC commissioner "shall adopt a tool." She recounted that the tool's development took much time and effort. Subsequently, a group under DOC "unveiled" the tool and it had been adopted later by the Criminal Justice Commission, created by the legislature in 2015. Co-Chair Wilson surmised that the tool was untested and had been implemented by DOC. She deduced that the Criminal Justice Commission and DOC had likely never developed a similar tool. She recognized the good intent of the group despite its inexperience. She noted that data was so far, insufficient to determine the efficacy of the tool.

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Ms. Meade amended Co-Chair Wilson statement regarding DOC lacking the expertise to develop the tool. She informed the committee that DOC had employed experienced professional

social scientists to look at data and come up with a tool that would work for Alaska. She countered that the tool had been created by people who knew what they were doing. She added that before the tool had been unveiled, they had performed testing to protect against regional and cultural disparities. Currently, retesting was underway by the University of Alaska to see if modifications would be advisable.

Co-Chair Wilson asked if any of the individuals involved had ever made a tool in the past. Ms. Meade pointed to one participant named Dr. Kristen Bechtel [Director of Criminal Justice Research, Arnold Ventures] had created a tool for other jurisdictions. Co-Chair Wilson opined that "a tool that let people out of jail 10 times had problems."

Representative Josephson understood that under SB 91 the judge could not act on that person's criminal activity in another state. Currently, under HB 312 it was possible. He asked if judges could go a step further under HB 312 and hold the person in jail or could they only "enhance or toughen up release conditions." Ms. Meade confirmed that the "out-of-state criminal history was not accounted for in the risk score itself." She noted that the reason had to do with access to FBI data. She outlined that when the tool was being developed the FBI refused to release certain information necessary for the validation process. She elaborated that a defendant was quired regarding convictions in the past five years but, the tool did not score for out-of-state convictions. However, the judge was presented with additional information on the bottom of the PED report at the arraignment and DOL could offer more information concerning a person's out-of-state criminal history. If the judge determined that clear and convincing evidence was presented, a person could be held in jail. In addition, if the court released a defendant OR the judge could examine the out-of-state convictions and impose conditions of release.

10:15:12 AM

Co-Chair Wilson requested to begin the PowerPoint presentation.

Ms. Winkleman provided a PowerPoint presentation titled "Criminal Justice Review: The Story of Offender Joe" (copy

on file). She began on slide 1 of the presentation titled " Offender Joe's First Offense:"

> Arrested for Misconduct Involving Controlled Substance II
>
> Upon arrest, Pretrial Officer completes the risk assessment tool and forwards to the courts
>
> The risk assessment tool is used to determine a defendant's risk of re-offending and failure to appear
>
> Offender Joe scores a 4, so the Judge releases to Pretrial Enforcement Supervision

Ms. Winkleman informed the committee that the risk assessment tool was "static" and did not require an interview with the defendant. In addition, PED utilized data bases to gather available out-of-state information. She indicated that the tool was developed with the Crime and Justice Institute, using their research and analysis. She explained that the institute examined data from approximately 20,000 cases statewide and used its experience with risk assessment tools elsewhere in the country. She confirmed that the University of Alaska was currently examining the risk assessment tool to determine whether adjustment was necessary.

Co-Chair Wilson wondered what the chances were of releasing a newcomer to the state, who offended within days of arriving, with a dangerous out-of-state record because the system was moving so quickly. Ms. Winkleman replied that the scenario depended on whether the out-of-state information was available in the databases DOC could access. Co-Chair Wilson surmised that it was possible a dangerous person could be released. Ms. Winkleman answered in the affirmative.

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Ms. Winkleman moved to slide 2 titled "New Criminal Arrest Scale" and addressed the scale on the slide. She explained that the pretrial risk assessment was referred to as the

"AK2S." The chart illustrated the scale from one to ten that weighed six risk factors. The scale was used to determine a score of one to ten.

Co-Chair Wilson asked whether the probation officer entered the data. Ms. Winkleman answered that a "pretrial services officer" was an officer of the court, which meant that they had authority in district court for misdemeanants versus a probation officer. A pretrial services officer, "otherwise known as a "probation officer" via statute, performed the risk assessment and provided it to court and was the same officer who would also perform pretrial supervision.

Vice-Chair Johnston referenced how a person's out-of-state record was reported in Alaska. She asked if it was up to DOL to follow up for the judge.

Ms. Winkleman deferred to Ms. Meade and Mr. Skidmore.

Ms. Meade concurred with Mr. Skidmore and reiterated that the arraignment was an "adversarial proceeding" and the judge would view the DOC report and the prosecutor would bring forward more information regarding out-of-state criminal history. The defense could argue the prosecutors point with its own information.

10:26:47 AM

Representative Carpenter looked at the last bullet on slide 1 related to offender Joe scoring a 4, which released him to the PED. He asked if it meant the judge determined that releasing him to PED was appropriate or because the tool prescribed the action due to the score. Ms. Winkleman replied that the score is merely a tool DOC provided to the court and was only one factor a judge took into consideration. Representative Carpenter felt his question was not answered and reiterated his question. Ms. Winkleman responded that the score reflected whether a person was a low, moderate, or high risk. The judge looked at the bail schedule corresponding to the score and determined what factors she would consider.

Representative Carpenter wanted more clarity. He asked whether a judge had the authority to disregard the tool to do what he thought was best for the individual. Ms. Meade replied in the negative. She stated that the statute mandated that the judge had to take the tool's score into

account in his decision making. She clarified that the statute, AS.12.30.011 held the judge to the action dictated by a level 4 score, which was OR unless clear and convincing evidence was offered that the judge should rule otherwise. She emphasized that the conditions were set via statute and not by the tool nor the judge's discernment. She expanded that what was considered clear and convincing evidence was affected by the judge's decisions, which lead to arguments regarding whether more sentencing was prudent. She declared that "the tool cannot be disregarded because of the statute that said the tool drives the decision making."

10:30:17 AM

Representative Carpenter thought he better understood the problem now.

Co-Chair Wilson inquired that if no one in the court room could counter the score with more evidence, the judge had to release the person according to the matrix. Ms. Meade answered that it was not a "must" but was a presumption that required clear and convincing evidence to overcome the presumption. Co-Chair Wilson surmised that the tool was a "must." She declared that unless other circumstances were brought up the judge's hands were tied. Ms. Meade conceded that she agreed to Co-Chair Wilson's statement in "some respects" but maintained that clear and convincing evidence had to be provided to the judge to overcome the assessment.

Representative Carpenter offered that the individual sitting on the bench had the responsibility to make a judgement. He opined that by removing their discretion, the state was paying judges to do less because they were only authorized to follow a matrix.

Representative Josephson remarked that the same increased presumption was created in discretionary parole and more evidence was necessary. He agreed with Representative Carpenter. However, he did not agree that the former criminal justice system was a good one and that two million people should be incarcerated in the United States (US). He believed that "the preponderance standard was more robust than we realized."

Vice-Chair Ortiz relayed that he had not voted for SB 91, but the decision making process had been complicated and he

was still uncertain about his vote. He spoke to the goal of making a better criminal justice system. He didn't believe the data existed to justify changing the law. He noted that SB 91 was only in effect a very short time and was adjusted again with HB 312 and was concerned that the legislature was currently considering further adjustments. He acknowledged the concerns of citizens but expressed frustration with enacting changes without data as justification. He referenced Vice-Chair Johnston's earlier comments that the state currently lacked updated data. He reminded the committee that the reforms were partially enacted to create savings due to significant costs. He indicated that the fiscal concerns remained a reality. He felt the legislature was trying to develop a more perfect system, but he did not believe it would ever happen. He pointed out that people were still incarcerated for first and second time drug offences and it was probably not the best solution. He found the current situation extremely frustrating. He thought the efforts were almost pointless.

10:37:03 AM

Co-Chair Wilson understood his concerns and stated that she had voted for SB 91 and believed that the data was a huge missing piece of the problem. She offered that her main concern was not the costs but addressing the high recidivism rate of 67 percent. She had discerned that the state was not getting results by continuing in the same manner. She discussed that the course was making revisions without the data, but the legislature had been told the data did not exist yet. She suggested that regardless of insufficient data, constituents' concerns about crime reflected the "real world" experiences. The question became how to take the real world data and make applicable corrections into law. She emphasized that the prudent matter was how to measure the effect of the revisions the legislature had enacted.

Vice-Chair Ortiz agreed if the effects could be accurately measured; however, there were myriad of social and other factors existing related to an increase in crime rate. He would like to believe that the reason was SB 91, but he did not believe the conclusion was real. He suggested waiting for the data and stressed that the legislature was attempting to enact significant changes without the facts. He conceded that his suggested course of action did not satisfy constituents.

10:40:38 AM

Vice-Chair Johnston observed that currently data was more easily collected and was hopeful to receive more criminal justice data, although costly. She referenced concern related to judges' discretion and noted that some discretion had been returned to judges through an adversarial process in courts. She discussed providing the tools needed by DOL and the Department of Administration (DOA) [Public Defender Agency] to provide the judge enough information to make the decisions. She noted that Alaska had incarcerated a large population and believed that it was larger than necessary. She emphasized that the criminal justice issues were a significant financial problem.

Co-Chair Wilson asked Mr. Skidmore to contribute to the discussion.

Co-Chair Wilson asked whether Mr. Skidmore believed that currently the data existed for the legislature to drive its decision making process. She asked Mr. Skidmore to relay his personal experiences with how the tool was working in court.

10:43:34 AM

Mr. Skidmore heard the frustration expressed by the committee related to current data. He added that he was aware of the publics' frustration based on its perception of how the criminal justice system was operating. He also heard from prosecutors around the state about their frustrations with the pretrial process. He reiterated that he did not have all the specific statistics the legislature was seeking but took as evidence the shared frustrations he heard from multiple parties: the public, law enforcement, and prosecutors who spoke about the same issues. He considered that what had changed was the law and whether there were measures available to alleviate the frustrations within the law. He was uncertain whether specific data could address all the concerns voiced by the committee. Co-Chair Wilson asked if Mr. Skidmore believed the pretrial system was better than the prior system. Mr. Skidmore replied in the negative. Co-Chair Wilson asked if Mr. Skidmore would eliminate the current pretrial system. Mr. Skidmore answered that he would make modifications. He did not believe the current system was superior to the past system. He would consider what would replace the process if

the current system was removed. He believed there were some changes needed that had not been sorted out yet. He believed more study was necessary on the pretrial assessment tool and did not believe it was working well. He questioned how to do further study without turning Alaska's pretrial process into an experiment.

10:47:06 AM

Co-Chair Wilson reported the committee would take several more questions on pretrial. She subsequently wanted to hear from Mr. Skidmore on what a superior system would look like.

Representative Josephson deduced that if the pretrial assessment tool was eliminated, he believed that the hiring of 60 additional PED officers was a positive result. He was pondering how that outcome could be viewed negatively.

Co-Chair Wilson requested the answer be deferred until Mr. Skidmore responds. She wished to return to the presentation and finish the slides related to pretrial.

10:48:54 AM

Ms. Winkleman moved to slide 3 and addressed a graph titled "NCA Rate by Total Score." [New Criminal Arrest (NCA)] She asked Mr. Skidmore to comment. Mr. Skidmore clarified that a risk assessment score of 4 was not considered moderate. He relayed the scale:1-5 was low, 6-9 was moderate, and 10 was high. He pointed to the graph on slide 3 and noted that the X axis score of zero represented a 14 percent risk level and on the Y axis up to a 58.1 percent risk level with a score of 10. He related that when SB 91 was written the three risk assessment categories were chosen without data. Subsequent data had determined that there were 5 categories; very low, low, moderate, moderately high, and high. He expounded that since only 3 categories were created via statute the 5 categories had to be collapsed into three. He illustrated that a score of 14 percent to 36 percent risk corresponded to a score of 5 and was considered low, moderate was represented by a score of 6 at 43.1 percent, and a score of 9 at 53.5 percent risk was high. He cited slide 2 that contained the NCA scale and ascertained that the first factor: if the person was not arrested before the age of 21, would never score high on the scale regardless of other factors. He indicated that

the assessment tool set the standard by which the court started from - the presumption the court used to decide release factors. He believed that relative to the risk factor and weights the scores posed the "fundamental issue" for prosecutors and not a risk assessment tool itself. He believed a risk assessment tool could bring consistency to the process and was sensible. He countered that when considering the current scale, the risk assessment tool was a concern.

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Representative Josephson asked for verification that if a person did not become an offender until the age of 21, they could never be considered a highly ranked risk offender on the scale. Mr. Skidmore responded in the affirmative. He explained that the highest the person could be ranked was a 9 in the scenario.

Ms. Winkleman turned to slide 5 titled "Failure to Appear Scale." She reviewed the six risk factors indicated on the chart.

> Age at first arrest in DPS history
> Total number of prior FTA warrants ever
> Total number of prior FTA warrants in the past 3 years
> Current IFTA charge (or violation)
> At least one property charge on current arrest/case
> At least one motor vehicle charge on current arrest/ case (non - DUI)

Ms. Winkleman explained that the 6 factors were considered for the second part of the scale (Failure to Appear) regarding new criminal activity.

Representative Josephson asked what a property or motor vehicle charge had to do with failure to appear. Ms. Winkleman deferred to Mr. Skidmore.

Mr. Skidmore clarified that he had not been part of a group that set up the risk assessment, he had been part of a group that reviewed it. He answered that the property charge was under AS.11.46. Representative Josephson did not understand the answer.

Co-Chair Wilson clarified Representative Josephson's question. Mr. Skidmore elaborated that the charge had to be a crime under AS.11.46.

Representative Josephson was trying to determine why a property charge was relevant to whether a person would appear in court and relevant to having committee other crimes. Mr. Skidmore was unable to answer the question. He elaborated that according to Alaska criminal history data, one of the common denominators for failure to appear was when a person had prior property crime charges.

Co-Chair Wilson surmised that the scale's creators "obviously had data."

10:58:47 AM

Representative Carpenter believed that the data was "cherry picked." He felt that what passed the commonsense test was that a factor that considered alcohol or drug convictions. Mr. Skidmore replied that the data examined was related to convictions and alcohol or drug issues were not necessarily reflected in the convictions themselves. He expounded that convictions did not specify whether a person also had alcohol or drug issues. He remarked that DUI convictions or misconduct involving a controlled substance might be indicative of substance abuse. He added that most of the property or violent crimes convictions did not consider substance abuse issues and was unable to be factored into the risk assessment tool. He concluded that the issue posed the question of how the assessment tool should be utilized. Representative Carpenter restated his concern that the judge's hands were tied if they concluded that an alcohol or drug issue was involved. Mr. Skidmore answered that a judge was able to consider substance abuse, but it had to amount to clear and convincing evidence that the person would not appear in court or commit a new crime. He elaborated that previously a judge could weigh a preponderance of evidence to justify his concern versus the current condition of clear and convincing evidence on a case by case basis.

Co-Chair Wilson deduced that the data at the time the scale was developed was only analyzing individuals released pretrial and did not include those incarcerated pretrial. She thought that aspect skewed the data.

11:03:03 AM

Mr. Skidmore believed her statement was accurate. He agreed that the researchers could only analyze the data for defendants who were released pretrial because a person in custody would not give an accurate assessment of how they would perform during release. He contemplated how the risk assessment currently worked since larger numbers of defendants were released pretrial.

Ms. Winkleman moved to slide 6 and reviewed a chart titled "FTA Rate by Total Score." She returned to slide 5 and explained that regarding the failure to appear risk, the property and motor vehicle charges were charges on the current offense and not a part of the defendant's history. She concurred that the researcher had found higher risks for a defendant with property or motor vehicle charges; therefore, was included in the scale.

Mr. Skidmore interjected that the same issue existed with the FTA scale as with the NCA scale with four categories instead of five. He pointed to the four categories on slide 7 titled "FTA Rate by Total Score Ranges." He expanded that decisions regarding how to reduce four categories into three had to be made in advance of 2018 to follow the law.

Representative Merrick asked what elements comprised a motor vehicle charge. Mr. Skidmore replied that it applied to vehicle theft. He listed examples of property crimes: theft, forgery, criminal mischief. He summarized that stealing or causing damage to property was the type of conduct encompassed under property crimes.

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Ms. Winkleman moved to slide 8 [no title]:

> Several weeks later, while out on pretrial supervision, Offender Joe is arrested on another Misconduct Involving a Controlled Substance II charge and Violating Conditions of Release.
>
> - Pretrial Officer completes risk assessment tool (score remains a 4) and provides the report to the Court

- Offender Joe still scored low (4) and the Judge releases him on Pretrial Supervision again

- This may repeat until Joe does not commit a new crime or the judge sets conditions that cause Offender Joe to remain in custody

Ms. Winkleman expounded that PED had two functions: performing risk assessment and providing supervision to pretrial defendants. The supervision was dictated by the risk score and the judge's conditions. She commented on the third bullet point; the first two steps were steps repeated with any new crimes until Joe stopped committing new crimes or the judge set conditions that prohibited Joe from being released from custody. She added that an individual can be placed on pretrial supervision on multiple cases.

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Co-Chair Wilson wondered why the tool did not make a distinction between the first offense and multiple offenses. She would never have guessed a person could reoffend on the same charge and be released pretrial multiple times. She asked what the point was. Ms. Winkleman offered that she had not been part of writing the risk assessment. She explained that the risk assessment was a static tool and did not address the issue.

Co-Chair Wilson believed that statue did not specifically mandate the use of the current tool over others and wondered if she was correct. Ms. Meade replied in the affirmative. Co-Chair Wilson asked what statute prohibited DOC from correcting the assessment tool. She thought that allowing pretrial release multiple times was "insane." She had heard of the scenario for domestic violence charges and not only regarding property crimes. She inquired whether DOC was attempting to correct the tool.

KELLY GOODE, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, affirmed that the department shared her concerns. She reported that the risk assessment tool was being addressed in the governor's other crime bills.

Co-Chair Wilson believed that legislation was not necessary for DOC to enact changes. She asked why DOC would not make corrections to the tool. Ms. Goode replied that DOC was

talking to DOL about the issue. She agreed the issue needed to be addressed. She indicated that considering what constituted the right fix was currently under discussion. The department wanted to fix the tool if it was not going to be eliminated. Co-Chair Wilson thought the entire committee believed that multiple pretrial release was wrong. She emphasized that the departments were the experts, not the legislature and she found it remarkable that tool was not currently corrected. She concluded that the problem was known and did not require a statute change to address it, yet the administration was looking to the legislature to fix the problem. She expressed exasperation over the issue.

11:15:24 AM

Representative Carpenter asked for verification that DOC owned the tool. Ms. Goode answered in the affirmative. Representative Carpenter asked if DOC could change the tool. Ms. Goode replied in the affirmative. Representative Carpenter asked why the department was waiting to change the tool. Ms. Goode replied that prior legislation had proposed to eliminate the tool. The department was waiting to see the outcome.

Co-Chair Wilson asked Mr. Skidmore when DOL began to observed issues involving multiple release. Mr. Skidmore replied that prosecutors had experienced the issue shortly after the reforms were implemented 2018. He noted that the department was still evaluating the changes subsequent to SB 91's rollout. He pointed to Section 117 of SB 91 that discussed AS 33.07.020 subsection 5 and reported that the statute authorized approval of a risk assessment instrument that was "objective, standardized, and developed based on analysis of empirical data and risk factors relevant to pretrial failure." He underlined that in order to change the tool, the statute required a whole new process to change the tool. He posed the question of whether the legislature wanted to follow the process in statute to change the tool or find another solution regarding DOCs management of the tool. He voiced that DOC currently had to follow the statute enacted in SB 91.

Representative Carpenter was trying to identify who had "personal responsibility for the failure of the tool." He wondered whether someone from DOC "understood what a measure of effectiveness was." He inquired whether the

correct data was collected or if the issue was being ignored until another process was put in place. Ms. Goode related that that was the reason the University of Alaska Anchorage (UAA) was trying to validate the tool. In addition, DOC reached out to the experts who created the tool. Representative Carpenter suspected the department had the expertise and knew the criminals in the system to start collecting the data to evaluate the tool. He pondered how UAA could understand the problems better than DOC. He wanted DOC to figure out a way of collecting the data to formulate a solution. He wondered whether the data was being collected. He deduced that it would be difficult to know whether the tool was effective if there was no measure of effectiveness.

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Co-Chair Wilson asked whether DOC had the statutory ability to alter one portion of the tool rather than the entire risk assessment system. Mr. Skidmore responded that the department was required to revise the entire system. He cited the remainder of AS.33.07.020:

> Sec. 33.07.020. Duties of commissioner; pretrial services.
> The commissioner shall
> (1) appoint and make available to the superior court and district court qualified pretrial services officers;
> (2) fix pretrial services officers' salaries;
> (3) assign pretrial services officers to each judicial district;
> (4) provide for the necessary supervision, training, expenses, including clerical services, and travel of pretrial services officers;
> (5) approve a risk assessment instrument that is objective, standardized, and developed based on analysis of empirical data and risk factors relevant to pretrial failure, that evaluates the likelihood of failure to appear in court and the likelihood of rearrest during the pretrial period, and that is validated on the state's pretrial population; …

Mr. Skidmore emphasized the words "validated on the state's pretrial population." He delineated that the data had to be collected from the entire pre-trial system, which DOC was

doing. The university was involved in order to validate the state's pretrial population, which entailed collecting criminal histories from DOC and other entities outside of the department. The validation process was a social science and statistical process from a broad perspective versus looking at everyone currently in the system. The process had to address the entire system; therefore, data collection would have to include all the population. He furthered that the only way to address risk assessment case by case was for the system to provide the judge parameters to make decisions and lessen the influence of the tool, which were dictated by statute.

Vice-Chair Johnston referred to slide 8 and noted that Joe had a low score of 4 since only 2 points were awarded for prior arrests in 5 years and 2 points for prior arrests in 3 years. She asked whether her statement was correct. Ms. Winkleman responded in the affirmative. Vice-Chair Johnston deduced that no matter how many arrests the offender only received 2 points if no probation or incarceration took place, which kept the score static. She asked whether her statement was correct. Ms. Winkleman responded affirmatively.

Vice-Chair Johnston asked whether a judge had the option of detaining a repeat offender if the district attorney had adversarial information. Ms. Meade answered in the affirmative. She reiterated that to overcome the presumption of OR, clear and convincing evidence was necessary.

11:26:48 AM

Vice-Chair Johnston believed that "there were some answers available" regarding the issue, albeit not answers the committee may want. She approved that the agencies were studying the data. She referenced the national organization Americans for Prosperity that championed criminal justice reform due to the high cost of incarceration. She added that all sides of the political spectrum had identified the high cost of incarceration as one factor in driving the reform discussion. She pointed out that particularly in Alaska, reform was a financial discussion.

Representative Josephson maintained that the concern with SB 91 was that the economy and the public bore the costs of crime. He respected the work of the University but opined

that it was on the side of criminal justice reform. He voiced concerns about the University independently doing the data analysis. He believed the University was broadly supportive of the principles of SB 91. He wondered whether UAA's bias would drive the results of further analysis.

Co-Chair Wilson surmised that the committee should hear from the University.

Ms. Meade informed the committee that Dr. Myrstol [Brad A. Myrstol, Ph.D., Associate Professor, UAA] from the UAA Justice Center had testified before the committee. She noted that Mr. Mistral was well respected, and she had not heard of any implications of bias.

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Co-Chair Wilson asked Mr. Skidmore for concluding remarks regarding pretrial issues and remedies that the legislature could consider.

Mr. Skidmore encouraged the committee to think about whether it wanted the state to utilize an assessment tool. He thought it was beneficial to bring uniformity in evaluating certain types of convictions, but he cautioned against "stripping discretion from judges." He agreed that a judge was placed on the bench to make decisions and use the discretion built into the system at "every level." He recognized the importance of providing some statutory guidance but asserted that taking a judge's discretion away did fundamental harm to the system. He delineated that statutes were static, and the system was designed to rely on discretion due to the nuances related to crimes; how the crime was committed, the criminal's background, criminal history, and substance abuse issues. He contended that it was impossible to legislate every decision necessary to allow judges to consider and weigh all the factors. He described the system as an adversarial system, where the prosecutor and defender presented varied points of view and the judge decided. He reiterated that the more the state tried to remove a judge's discretion, the further the system moved away from its design. He favored adding additional officers and options for the courts to consider related to conditions of release. The more tools the legislature could provide to the courts increased the likelihood the appropriate tool would be available.

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Co-Chair Wilson announced the next section that Ms. Meade addressed was sentencing.

Ms. Meade addressed sentencing changes under SB 91. She reported that sex crime sentencing was not altered under SB 91. She elaborated that the presumptive ranges were increased for Murder I and Murder II. She instructed the committee that all crimes were categorized by a class. Felony classification was as follows from the worst type: Unclassified, Class A, Class B, and Class C. Offenses that decreased in severity and impact was Classified as a misdemeanor having two classes A and B. The remainder were considered violations that were either traffic infractions or minor offenses. She indicated that SB 91 did not affect violations. She continued that the presumptive range for Murder I was increased from 20 to 30 up to 99 years. Murder in the second degree was increased from 10 to 15 up to 99 years. The sentencing changes in SB 91 had been in effect since July 2016. She explained that the maximum presumptive ranges for all felonies did not change with SB 91. The maximum was: Class A - 20 years, Class B - 10 years, and Class C- 5 years. However, felony presumptive ranges had been decreased by SB 91, mostly by 2 years. She exemplified that the presumption for a first time Class A felony had changed from 5 to 8 years to 3 to 6 years.

Co-Chair Wilson asked for a definition of presumptive. Ms. Meade complied. She explained that a judge would sentence someone to the presumed amount of time unless certain mitigating or aggravating factors existed. The judge could lower the presumed sentence by mitigators or raise the presumed sentence through aggravators.

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Representative Merrick asked whether the presumptive range had been decreased by two years for cost saving purposes. Ms. Meade replied that the change had been made for a variety of reasons. She elaborated that studies demonstrated that long jail sentences did not lead to

rehabilitation and could lead to increased recidivism by the increased exposure to criminal elements.

Ms. Meade continued to address sentencing. She shared that "the issue that had raised the most consternation was the Class C felony" provision with the presumption of probation only and suspended time of up to 18 months. A first time C felon could not go to jail. She added that vehicle theft was a class C felony. The public raised concerns that sentencing for first time vehicle theft did not include incarceration. The law had subsequently been changed by SB 54 - Crimes; Sentencing; Probation; Parole [Chapter 1 4SSLA 17 - 11/29/2017] that increased one time vehicle theft from zero to two years, one to four years for a second offense, and increased certain sentences within Class A felony offenses. She summarized that SB 54 reversed many of the SB 91 changes for the crimes she listed.

Co-Chair Wilson asked for verification that the level of sentencing for vehicle theft was at present what it had been prior to SB 91. Ms. Meade agreed that was the case for a first offense. Co-Chair Wilson asked what the range was for a second offense. Ms. Meade replied that the presumed sentence for a second offense C felony vehicle theft was 2 to 4 years and was currently 1 to 3 years.

Representative Merrick asked about the zero to two years for a first time felony. She asked whether the zero included a mandatory sentence. Ms. Meade replied in the negative and added that zero years was a possible outcome for a first time felony. Representative Merrick inquired what the circumstance for a zero year sentence was. Ms. Meade deferred to Mr. Skidmore.

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Mr. Skidmore responded that there were many Class C felonies that the provisions applied to. He could provide complete information in writing. He elaborated that some were: assault in the third degree, vehicle theft, theft in the second degree, and criminal mischief. He exemplified that an assault in the third degree could involve causing fear (e.g. pointing a gun at a person or threatening someone with a bat) or physical assault. There was a wide range of conduct under the category. The presumptive range was elevated when there was a prior felony offense, but the zero to two years was the presumptive range regardless of

the person's criminal history. He detailed that a judge had to consider the totality of circumstances when sentencing. He exemplified that if a person committed a theft because of hunger and trying to feed their children it was illegal but more understandable than someone aiming to gain a profit or harming another person.

11:58:05 AM

Representative Merrick stated that previously under SB 91 a person could commit a first time vehicle theft and receive probation. She asked whether currently a judge could sentence zero jail time for the crime. Mr. Skidmore answered in the affirmative. SB 54 had given a judge discretion to impose jail time or probation only. He added that under SB 91 the judge was unable to impose incarceration.

Ms. Meade added that it was extremely rare for a person to receive no jail time for a Class C felony.

Vice-Chair Johnston discussed that SB 54 changed the Class C felony sentencing. She noted that sentencing for Class B felonies had not been changed under SB 54. Ms. Meade replied in the affirmative and added that the first time Class B felony presumption was also zero to two years. She relayed that there had been discussion about the constitutionality and proportionality between the sentencing for both crimes.

Representative Carpenter asked about the prior Class B felony sentencing range. Ms. Meade answered that it had been one to three years.

Representative Josephson asked for verification that prior to SB 91 a person could receive no jail time for a Class C felony. Ms. Meade agreed. Representative Josephson stated that case law and statutory law properly restrained a judge's discretion within ranges to achieve parity. Ms. Meade replied in the affirmative. She elucidated that within presumptions, sentencing factors were considered because proportionality and equality was needed with respect to other crimes and sentencing.

Ms. Meade addressed misdemeanor sentences; Class A and B. She explicated that Class A sentences were changed to a maximum of 30 days in jail, with numerous exceptions.

Previously the sentence had been a one year maximum. The sentence was still a maximum of one year if the crime was the most serious type of its classification and if it was the second time for a similar offense. The 30 day sentence typically applied to first offenders with similar crimes. She added that certain crimes were prescribed a sentence of up to one year i.e. assault IV, which was a common type of assault with domestic violence, commonly called a "fear assault." She listed other crimes that could receive a sentence of up to one year: sexual assault IV, sexual abuse of a minor IV, indecent exposure of a person under the age of 16, harassment I, and sending explicit images of a minor over the internet.

12:05:19 PM

Representative Josephson asked why assault IV was considered a fear assault. Ms. Meade clarified that it was her understanding that the primary assault IV was considered a fear assault because it was the most common charge in domestic violence cases. She was uncertain her answer was correct. Representative Josephson thought that she was incorrect. He noted that a person who hit their spouse was also charged with an assault IV.

Mr. Skidmore answered that assault IV had three subsections. He confirmed that fear assault was one type of Assault IV and causing physical injury was also classified under Assault IV. Representative Josephson stated that one of his greatest concerns about SB 91 related to the current discussion. He indicated that AS 18.66 contained the definition of domestic violence. He related that the exceptions to the 30-day cap only related to assault IV. He exemplified that if a husband took a bat and destroyed property during an altercation, he believed that the action was a crime of domestic violence and was fear inducing. He asked whether the scenario would be capped by 30 days, even though another person was not actually physically injured, but was a crime of domestic violence. Mr. Skidmore agreed it was a crime of domestic violence; it would be capped at a sentence of 30 days.

12:08:30 PM

Ms. Meade relayed that the final change made to Class A misdemeanor under BSB 91 was increasing maximum fines from $10 thousand to $25 thousand. Co-Chair Wilson asked how

many offenders paid the fine. Ms. Meade was uncertain. She remarked that many people did not pay the fine. Co-Chair Wilson remarked that an unpaid fine was not much of a penalty. She asked whether a judge could impose community service or another condition that had an impact. Ms. Meade answered that community work service was not available in all parts of the state. She offered to research whether fines could be converted to community work service under SB 91. Co-Chair Wilson asked whether data was collected on fine collection. Ms. Meade was uncertain regarding data but acknowledged that DOA collected court fines through collection efforts.

12:10:42 PM

Representative LeBon noted that collection efforts impacted an offender's credit record.

Representative Carpenter asked if failing to pay a fine was a crime. Ms. Meade did not believe it was a crime.

Mr. Skidmore replied in the negative and added that not paying a fine was not a crime but could be considered a violation of probation. He furthered that if non-payment was willful and the offender could pay, the person could potentially serve some time.

Co-Chair Wilson thought Mr. Skidmore described a double standard. She provided a scenario where a person who had a low paying job would have to pay the fine whereas a person without a job did not have to pay. Mr. Skidmore answered it was not a double standard and all types of factors had to be taken under consideration with willful non-payment.

12:13:41 PM

Representative LeBon observed from personal experience that child support enforcement was vigorously pursued by the state.

Representative Carpenter noted that the constitution specified that criminal policies were supposed to deter crime. He reasoned that imposing a fine that never got paid did not seem to meet the intention of deterring crime. He thought the statute needed revision.

Ms. Meade referenced Representative Josephson's earlier comment about discretion. She reported that it would be rare for a judge to impose a $10 thousand fine for a Class A misdemeanor. The judge would weigh the circumstances and try not to do harm to someone with no ability to pay.

Representative Carpenter observed that according to CourtView many people were not paying their fines. Ms. Meade agreed that there were many unpaid fines.

Co-Chair Wilson remarked that CourtView would not show the circumstance for non-payment. Ms. Meade agreed with the statement.

Representative Carpenter wondered why multiple misdemeanors under different categories were treated individually. Ms. Meade thought he was referencing her statement regarding "an enhancer," that provided a sentence of up to one year for certain A misdemeanors with past convictions for conduct similar in nature but if not similar, the offender was sentenced individually. She recounted that the deliberation focused on what the appropriate jail time for misdemeanants was. The default sentence was chosen at 30 days unless it was a second offense for a similar crime, which was accorded a tougher sentence.

12:18:03 PM

Representative Carpenter wanted to know whether the judge had the discretion to protect the public by putting an offender in jail instead of continuing to cause problems. He felt that the unrelated misdemeanors should be considered in totality. He reasoned that the public's safety was in jeopardy if a pattern could not be detected by the judge.

Co-Chair Wilson asked if there was a certain number of misdemeanors that made someone a felony. Ms. Meade answered there were some misdemeanors that aggregated charges to a felony. She exemplified, DUIs and theft. She noted there may be other instances.

Ms. Meade moved to address B misdemeanor sentencing. She reported that B misdemeanor offenses were the lowest level of crime. The jail time was capped at 10 days under SB 91 lowered from 90 days except for crimes related to sending explicit photographs online and online harassment. The

misdemeanor statute in SB 91 had many specific exceptions relating to theft, certain drug possessions, disorderly conduct, and violating conditions of release. She shared that the Theft I (theft of $250 or less) sentences that eliminated jail time caused significant public concern and had been changed under SB 54. She reviewed the jail time for the offense. The Theft I offense was sentenced to 5 days for the first offense, 10 days for the second, and 15 days for the third with the fourth offense aggregating to an A misdemeanor.

12:22:32 PM

Ms. Meade referenced drug possession in amounts that were indicative of non-intention to distribute; misconduct involving controlled substances in the fourth and fifth degree were treated as misdemeanors except for the date rape drug. She specified that under SB 91 the first two offenses were sentenced to suspended jail time and probation. In addition, disorderly conduct had a set maximum of 24 hours and violations of conditions of release had a set maximum of 5 days.

Representative Josephson asked for verification that the administration had determined that no active jail time for misconduct involving controlled substances IV and V was a healthcare crisis and could not leverage any penalty until the third conviction. He asked for verification that "the administration wanted to vigorously work on the situation." Mr. Skidmore answered that currently drug possession did not carry any "significant penalties." He had observed a dramatic decrease in referrals and filings related to drug crimes had occurred. The department found it very concerning because it meant there were numerous individuals not receiving some sort of intervention that they were previously receiving.

Co-Chair Wilson cautioned that currently the committee did not have crime legislation to consider and the purpose of the meeting was to understand the current status of crime legislation and its ramifications.

12:26:52 PM

Representative Josephson asked whether a person was found to be "visibly doing heroin" the penalty would be a misdemeanor but with no jail time if it was a first

offense. Mr. Skidmore answered in the affirmative. Representative Josephson asked if there would be no jail time if charged for the same offense again. Mr. Skidmore answered in the affirmative. Representative Josephson inquired whether it was the administration's position that an offender with a heroin problem may not get treatment unless sentencing was toughened to include jail time, forcing the person into an option. Mr. Skidmore responded in the affirmative. He expounded that the department's view was that without a negative consequence to incentivize changing the person's behavior it would not change. He added that addiction required incentives to reverse the behavior. He reported that the state experienced a 68 percent decrease in drug related felony filings between 2016 and 2018, which amounted to 679 fewer cases. He expected the felony drug charges to drop to misdemeanors but found a 61 percent decrease in drug filings for misdemeanors as well. He deduced that "the bottom had dropped out of all drug prosecutions in the state of Alaska." He warned that the data was cause for concern.

Co-Chair Wilson asked if the individuals were not being arrested. Mr. Skidmore did not know the answer. He believed the answer was no, but he did not have arrest statistics in front of him. He did not know whether the exact percentages applied to arrests. Co-Chair Wilson surmised that if the individuals were not arrested, they could not be counted. She wondered whether DPS had the data.

12:30:56 PM

KELLY HOWELL, SPECIAL ASSISTANT, DEPARTMENT OF PUBLIC SAFETY, could only speculate and offered to provide an answer in writing.

Representative Carpenter voiced that the pretrial tool did not account for the cycle of crime related to drug use. He expressed a desire to remedy the problem. Co-Chair Wilson agreed.

Co-Chair Wilson reiterated the discussion would resume the following Monday afternoon.

#
ADJOURNMENT

12:34:31 PM

The meeting was adjourned at 12:34 p.m.