HOUSE FINANCE COMMITTEE
April 22, 2019
4:00 p.m.

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CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 4:00 p.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, Division of Parole and Probation, Department of Corrections.

PRESENT VIA TELECONFERENCE

Dan Traxinger, Classification Supervisor, Department of Corrections; Jeff Edwards, Executive Director, Parole Board, Department of Corrections.

SUMMARY

PRESENTATION: CRIMINAL JUSTICE REFORM UPDATE

Co-Chair Wilson reviewed the meeting agenda.

^PRESENTATION: CRIMINAL JUSTICE REFORM UPDATE

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NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, discussed violations of probation and parole. She explained that the court ordered probation and had nothing to do with parole, which was handled by the Department of Corrections (DOC). A person can simultaneously be on probation and parole. She related that the maximum sentences were changed in SB 91-Omnibus Crim Law & Procedure; Corrections [CHAPTER 36 SLA 16 - 07/11/2016]. She listed the maximums for certain crimes. She specified that the maximum for a felony sex offense was 15 years, an unclassified felony was 10 years, and other felonies were 5 years. The maximum for crimes against a person including assaults, domestic violence and sex crimes that were misdemeanors was 3 years, 2 years for a second Driving Under the Influence (DUI) and 1 year for other misdemeanors. She furthered that there were minimums for sex felonies: unclassified was 15 years, Class A or B felony sex crimes was 10 years, and Class C felony sex crimes was 5 years. The court had some discretion to order probationary terms. She delineated that during a probationary term the law allowed an offender to get off probation earlier than the court ordered. Currently, a probation officer could recommend a termination of probation for the offender who followed all the conditions of probation after serving a certain length of time. The time periods had been adjusted in SB 54-Crimes; Sentencing; Probation; Parole [CHAPTER 1 4SSLA 17 - 11/26/2017]. Presently, a probation officer could recommend a termination of probation after 2 years for Class A and B felonies and one year for Class C felonies. The early termination did not apply to unclassified offenses, sex offences or domestic violence. She noted that SB 54 changed the time from one year to 18 months and SB 91 allowed for credits for time on probation; for each month an offender complied with conditions a month could be shortened off the end of their time period.

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Ms. Mead discussed the many conditions that a court could impose on probation. Some conditions must always be imposed like; obeying all state and federal laws and other conditions depended on the crime committed. Two of the most common conditions were to comply with a probation officer's

orders and the offender must undergo an assessment and follow the recommendation of the assessor. She qualified that one exception was mandatory sex offender treatment.

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Representative Josephson used an example of a six-year sentence with three years suspended. He noted that suspension was different than three years of probation.

Co-Chair Wilson asked if he meant three years' probation or three years' parole.

Ms. Mead interjected that the good time credit an inmate received reduced the length of sentenced incarceration time. The credit was statutorily mandated and termed, "mandatory parole." Mandatory parole was served simultaneously with a probationary period. The individual could be brought to the court under a petition to revoke probation or the parole board to revoke parole depending on the violation. The court or parole board could then impose the suspended time for violating conditions of release. The legislature had added technical conditions of probation in SB 91. She explained that if the violation was not a new crime or failure to meet certain conditions it was considered a technical violation. The first several times a person received a petition to revoke probation was capped at 3, 5, and 10 days and if a fourth violation occurred all the suspended time could be re-imposed.

Co-Chair Wilson asked how many people were currently on probation and parole with technical violations.

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Ms. Mead deferred to the Department of Corrections.

JEN WINKLEMAN, DIRECTOR, DIVISION OF PAROLE AND PROBATION, DEPARTMENT OF CORRECTIONS, would follow up with the information.

Representative Josephson thought that mandatory release was not really something a parole board dealt with; it just meant a person was incarcerated for 3 of their 6 year sentence, as an example.

Ms. Mead replied that was her understanding, but she tried not to answer questions about parole because it was not under the court's purview.

Representative Carpenter asked for clarity regarding technical violations. Ms. Mead replied that SB 91 had included a provision about technical violations of probation. She provided examples of technical violations. The first offense, when a probation officer filed a petition to revoke the probation (PTRP) was statutorily limited to a penalty 3 days, the second time the judge could impose 5 days and then 10 days for a third time and any violations thereafter was subject to the amount of suspended time. She furthered that the exception to technical violations applied to a new crime or if the offender skipped treatment.

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Representative Josephson asked if during the 3, 5, and 10-day technical violation hearings the defendant could prove that the violation did not occur; therefore, was not an automatic imposition. Ms. Mead responded in the affirmative. She relayed that in the case of a three-day maximum penalty the defendant often plead guilty. She reported that the court had experienced very few trials for technical violations. She remembered that another exception to technical violations included sex offenses.

Co-Chair Wilson moved to conclude a prior unfinished presentation.

Ms. Winkleman continued reviewing a PowerPoint presentation [last heard on April 18, 2019] titled "Criminal Justice Review: The Story of Offender Joe" (copy on file). She began on slide 10 titled “Offender Joe’s Transition From An Unsentenced to Sentenced Inmate”;

- Offender Joe pleads guilty or is convicted at trial of 2 counts of
Misconduct Involving Controlled Substance II
- Offender Joe received a sentence of 2 years on each count, with 6 months suspended, 3 years to serve. The court also sentenced Offender Joe to 2 years of probation.

- Because Offender Joe was sentenced to longer than 30 days, he will be evaluated for an Offender Management Plan (OMP)
- Offender Joe will mandatorily release from incarceration after serving 2/3 of the sentence to probation and parole. The Parole Board may authorize early release to discretionary parole prior to the mandated release date.

Ms. Winkleman reiterated that the statutory good time credit was two-thirds [one-third] off for mandatory release. She indicated that with 3 years to serve, Joe would be released in 2 years and would be on mandatory parole for one year.

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Co-Chair Wilson asked for verification the sentence would be two-thirds, not one-third. Ms. Winkleman affirmed and corrected that the one-third off was the mandatory parole time.

Ms. Winkleman moved to slide 11 titled "OMP Guidelines-LSISV Level Service Inventory Screening Version":

All offenders sentenced to 30 days or more, will receive LSISV and Offender Management Plan (OMP)

- All offenders who score medium risk or higher on LSISV (3 or higher) will receive a Level Service Inventory Revised (LSIR)

- OMP is completed with Offender Joe – provided within 90 days of sentencing

- Is a working document while Offender Joe is incarcerated

- The OMP is often referred to as the reentry plan or release plan

Ms. Winkleman explained that the Level Service Inventory Screening Version (LSISV) was an assessment tool used by the Department of Corrections (DOC) and any offenders who scored medium risk or higher would receive a Level Service Inventory Revised (LSIR). The revised assessment was more detailed and contained 54 questions versus 8 questions on

the LSISV. The revised version identified the risk of recidivism. The LSISV was still predictive regarding offender management. She characterized the OMP as a living document.

Co-Chair Wilson asked whether the inmate received a paper copy of the plan. Ms. Winkleman deferred to a colleague.

DAN TRAXINGER, CLASSIFICATION SUPERVISOR, DEPARTMENT OF CORRECTIONS (via teleconference), replied in the affirmative. He viewed the OMP as the inmates "road map through the whole rehabilitation process."

Co-Chair Wilson found his answer "interesting." She shared that she had recently visited a prison and offenders did not have a physical copy of the OMP and did not know exactly what an OMP was. Mr. Traxinger would follow up.

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Co-Chair Wilson provided an example of a person in jail for 9 months and had not yet been sentenced. She asked what an unsentenced offender could do while waiting. Mr. Traxinger answered that what programs were available varied by institution. An unsentenced inmate may participate in a program. Co-Chair Wilson used the Lemon Creek Correctional Center (LCCC)in Juneau as an example. She asked Mr. Traxinger to list the programs available in LCCC for unsentenced individuals and whether the inmates were aware of the programs. Mr. Traxinger asked for clarification. He asked if Co-Chair Wilson was inquiring whether there were programs available for unsentenced inmates at LCCC. Co-Chair Wilson replied in the affirmative. Mr. Traxinger noted that programs were available, but he did not have a list on hand. Co-Chair Wilson shared that she met inmates that expressed frustration. The inmates were unable to participate in any program because they were unsentenced.

Ms. Winkleman continued to slide 11 titled "OMP Plan":

- As a working document, the Offender Management Plan (OMP) includes, but not limited to:

  - Program completion dates
  - Referrals –should reflect risk/needs/responsivity of LSIR and professional recommendations of PO
  - Housing

- Employment or alternate means of support
- Treatment
- Counseling services
- Education or job training services
- Any other requirements for successful transition back to the community, including EM or furlough for the period between a scheduled parole hearing and parole eligibility

Ms. Winkleman reported that the OMP was frequently updated by the institutional probation officer (PO) with referrals and program completions while in custody.

Vice-Chair Johnston discussed whether a person could participate in treatment or if it depended on program availability. Ms. Winkleman replied that it was only the case if treatment was available at the institution. The offenders could place themselves on a waitlist, which would demonstrate an attempt to comply with court orders.

Co-Chair Wilson noted the committee would review the DOC programs the following Wednesday. She asked DOC to provide the waitlist numbers and the length of the programs available.

Representative Josephson confirmed that the OMP existed prior to SB 91 and noted that the administration was not asking to end the OMP. Co-Chair Wilson stated it was her understanding that prior to SB 91 the plan was only presented a few years before release. She asked for confirmation. Ms. Winkleman deferred to her colleague.

Mr. Traxinger answered that the OMP started in 2010 and was called the "IRP." The requirement passed in SB 64-Omnibus Crime/Corrections/Recidivism Bill [CHAPTER 83 SLA 14 - 07/16/2014] with the timelines currently in place.

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Representative Carpenter asked what tied the failure to follow the OMP to probation or a parole violation. Ms. Winkleman answered that because an inmate had not released on probation or parole the OMP was not tied to a violation but was indicative of their behavior and compliance in the institution. Representative Carpenter surmised that someone on probation had already completed an OMP plan. Ms. Winkleman replied that an OMP would be completed prior to

their release and would follow the inmate to probation or parole. Representative Carpenter deduced that the OMP plan followed the offender to the field parole or probation officer. Ms. Winkleman answered in the affirmative. She moved to slide 12 titled "Offender Joe may be eligible for community placement towards the end of his sentence.":

Community Residential Centers (CRC)

- Furlough
- Inpatient Treatment

Electronic Monitoring (EM)

- While incarcerated, if eligible, he can apply to serve the remainder of his sentence on electronic monitoring.

Mr. Traxinger elaborated on the slide. He reported that the inmate must meet certain criteria to be placed on furlough. He discussed that the offender must serve one-third of their sentence and based on their classification would determine the length of furlough in community placement. The minimum and medium custody inmates were furloughed for the last three and two years of their sentence. The higher risk, sex offenders, and arsonists had closed custody and were ineligible for furlough.

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Co-Chair Wilson asked if all CRCs had inpatient treatment. Mr. Traxinger answered in the negative. He commented that there were specific treatment locations that were furlough eligible. He provided a facility in Anchorage as an example. Co-Chair Wilson requested more information regarding the facility and program. Mr. Traxinger offered to follow up.

Representative Carpenter asked if individuals were referred to a CRC that did not offer treatment. Mr. Traxinger answered that treatment was addressed in a couple of ways; either treatment at the CRC or via a community partner. Representative Carpenter asked for clarification that a person could get referred to a CRC that did not have the required treatment but would receive treatment offered outside the CRC and was only the case when an individual was classified with a risk level allowing them to leave the

CRC. Mr. Traxinger clarified that once an inmate was approved for furlough, they could receive treatment through a community partner. Representative Carpenter asked if low and medium inmates could leave a CRC. Mr. Traxinger answered in the affirmative.

Co-Chair Wilson asked for the list of service providers and which CRCs had inpatient treatment and if not where in the community the service was provided and who paid the community partner. Mr. Traxinger agreed to provide the information.

Ms. Winkleman continued to address slide 12 regarding EM. She elaborated that an inmate could apply to serve the remainder of their sentence on EM. She listed the eligibility requirements as follows: the charge did not include domestic violence; the inmate was within three years of their release date; and they could not carry a closed custody classification.

Co-Chair Wilson asked for a definition of closed custody inmate.

Mr. Traxinger reiterated that the DOC had a classification system and inmates were classified as minimum, medium, or closed custody. He explained that closed custody depended on a person's scoring in the classification matrix and was based on the type of conviction, and behavior while incarcerated.

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Co-Chair Wilson needed clarity. She asked for an example of the crimes a person may have committed to fall under the closed category. Mr. Traxinger replied that an inmate convicted of murder in the first degree was a closed classification for the first year of incarceration indicating a high risk. Other crimes like assaults and combined with other criteria that included their disciplinary history would lead to the closed classification. He exemplified the if an inmate was found guilty of a sexual act or assaulted another inmate while in custody would likely increase their classification to closed custody.

Co-Chair Wilson asked for verification the state was not letting people who murdered people out on electronic

monitoring. Ms. Winkleman replied that closed custody was not eligible for EM. She added that an inmate was ineligible for EM if they had a major or high moderate infraction within the last 120 days of their incarceration. Co-Chair Wilson assumed that the inmate would also be ineligible for good time credit. Ms. Winkleman elaborated that as a result of a disciplinary matter a person could loose good time credit but could appeal to their institution's superintendent for reinstatement. Ms. Winkleman answered that short-time inmates (sentenced to less than one year) were approved for release via EM by their supervisor and long-time inmates (sentenced over one year) were approved by the director's office and their OMPs would be updated reflecting their conditions of release.

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Ms. Winkleman continued to slide 13:

> Offender Joe has Probation and Parole following release from incarceration. Institutional Probation Officers send a Notification of Release (NOR) to the Field Parole/Probation office. This NOR includes Offender Joe's Offender Management plan and conditions of Parole/Probation supervision.

Ms. Winkleman elucidated that the process listed on the slide was completed within 30 days of the pending release except for sex offenders. She communicated that the release process for sex offenders started earlier – 90 days. The institutional officers were starting to plan the polygraphs and containment model supervision approach.

Ms. Winkleman turned to slide 14 titled "Offender Joe's Parole Options":

> The below calculations are based on the 3 year prison sentence issued by the Court.
>
> Offender Joe will be eligible for Discretionary parole after serving 9 months. Early release from incarceration will be at the discretion of the Parole Board.
>
> If denied Discretionary parole, Offender Joe will release to Mandatory parole after serving 2 years (2/3

of the sentence) provided he does not lose any statutory good time.

Representative LeBon asked about electronic monitoring and the program's success. Ms. Winkleman replied that she believed the program was very successful and the department had an "excellent policy." She characterized EM as a reward. She detailed that within the last 12 months less than one percent escaped. The department did not track individuals following release to know about recidivism of individuals that had been on EM but felt that that the results were "pretty good."

Co-Chair Wilson asked if there was a similar record for pretrial. Ms. Winkleman replied there were not the same results due to the number ordered by the courts. The individuals did not apply for EM, the court ordered it.

Co-Chair Wilson surmised that both programs were operated by DOC, but the inmate released from prison was more successful because EM was desired by the individual versus in pretrial where the court ordered to option of EM. She asked whether the pretrial individual could refuse EM release.

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Ms. Winkleman stated it was her understanding the individual could not refuse EM in pretrial.

Representative Josephson asked if EM was part of a pretrial bail application. He thought that EM was granted due to a request from the defendant and attorney asking a judge to give the defendant a break. Ms. Winkleman deferred to Ms. Mead.

Ms. Mead explained the way a bail review or arraignment worked. She communicated that the bail hearing decided two factors: should a person be released on their own recognizance (OR) or if monetary bail was necessary because of a risk of failure to appear or was a threat to the community. She shared that if a person was released, she had never heard a defendant say they would rather stay in jail. She thought that the scenario could "hypothetically happen." The prosecutor could offer clear and convincing evidence to hold a person in jail or request monetary bail. The matrix was for nonviolent crimes against a person and

nonserious felonies. The matrix offered a presumption and did not directly specify whether EM was appropriate. The court would be free to impose conditions deemed appropriate.

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Representative Carpenter asked who made the decision whether EM went forward. Ms. Winkleman answered that if a person was sentenced to one year or less the probation supervisor would make the decision and if over one year, the director's office made the decision. She reminded the committee that the inmate had to apply for EM. Representative Carpenter asked about the furlough condition that required the inmate to serve one-third of their sentence prior to furlough. Ms. Winkleman deferred to Mr. Traxinger.

Mr. Traxinger answered that furlough required that the inmate served one-third of their sentence. Representative Carpenter asked if it also applied to EM. Mr. Traxinger deferred the question to Ms. Winkleman.

Ms. Winkleman responded answered in the negative. Representative Carpenter asked if there was a minimum time required before granting EM. Ms. Winkleman replied in the negative.

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Vice-Chair Ortiz recalled that only some areas of the state had access to EM. He asked whether that was still the case. Ms. Winkleman answered in the affirmative. She expounded that the equipment did not work in some areas or there were not probation officers to monitor the equipment. Vice-Chair Ortiz asked if it was the same for the Court System

Ms. Mead answered that the Court System did not supervise EM. Vice-Chair Ortiz asked if some people had access to EM and others did not under pretrial circumstances. Ms. Mead answered in the affirmative.

Representative Josephson referenced the parole and probation discussion. He exemplified someone with a nine-year felony sentence with three years suspended and six years to serve. He assumed that the person received mandatory parole after 4 years. He wondered whether the

parole board could reinstate time for an egregious act perpetrated by the offender after release on mandatory parole. He asked if the board could impose the suspended time along with revoking the mandatory parole time and whether the suspended time and mandatory parole time was running concurrently or consecutively.

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Ms. Winkleman responded that the items could run simultaneously. She delineated that DOC had a policy that it would file with only one entity for technical violations - they filed first with the Parole Board. She understood that the last entity imposing a sentence would decide whether the time ran consecutively or concurrently.

Co-Chair Wilson moved to the next testifier and would follow up with Representative Josephson's question if he was unable to answer the follow up question.

JEFF EDWARDS, EXECUTIVE DIRECTOR, PAROLE BOARD, DEPARTMENT OF CORRECTIONS (via teleconference), replied that the paroling system dealt with prison terms and the court dealt with suspended terms. The board and courts operated independently of each other. He referenced the example provided by Representative Josephson and answered that if the inmate violated mandatory parole and probation (suspended time) with a non-technical violation (a new criminal offense) or if a sex offender violated a condition of release the board could impose the mandatory parole time and the court could impose the suspended period of time. He noted that technical violations were a separate issue.

Co-Chair Wilson asked for an explanation of discretionary parole. Mr. Edwards explained that following sentencing DOC did math calculations called "time accounting." The department issue a time sheet based on the sentence using the math calculations. If the sentence was in excess of 180 days, the equations included two parts: the mandatory release date and the discretionary application date. He commented that an inmate was automatically released on mandatory parole after serving two-thirds of a sentence if they had not lost any statutory good time while in prison. Prior to mandatory parole, most inmates sentenced after SB 91 were eligible for discretionary parole. He noted that the time calculation was more complicated. He cited slide 14 as an example.

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Representative Carpenter asked whether discretionary parole existed prior to the adoption of SB 91. Mr. Edwards corrected that discretionary parole had been available since statehood. He communicated that SB 91 expanded the class of crimes eligible for discretionary parole. He discussed that prior to SB 91 a more limited class of inmates were eligible for discretionary parole. Subsequent to SB 91, most inmates would be eligible to apply for discretionary parole. Currently, Class A, B, and C felonies were eligible for discretionary parole after serving one-quarter of a sentence. He continued that unclassified felonies, Murder I and II, Mix 1, Kidnapping, etc. were eligible for discretionary parole after serving one-third of a sentence or the mandatory minimum whatever was longer. He offered that every unclassified sentence had a mandatory minimum sentence. Under current law, just under one thousand inmates per year were eligible for discretionary parole versus 200 prior to the enactment of SB 91. He summarized that SB 91 impacted the number of inmates eligible for discretionary parole.

Co-Chair Wilson requested a comparison of discretionary parole before and after SB 91 that included the number and eligible crimes. Mr. Edwards agreed to provide the information.

Vice-Chair Johnston referenced the OMP. She asked about the waitlist for treatment programs. She asked how many people on mandatory or discretionary parole were located in communities outside of their home.

Co-Chair Wilson requested the answers by the Wednesday morning meeting.

Representative Carpenter asked whether statute impacted the discretion of the parole board or if they maintained complete discretion.

5:03:39 PM

Mr. Edwards responded that two sections in statute guided the parole board when making release decisions. He detailed that one was specific to unclassified felonies and the other governed the remainder of the felonies. The board may release a person on discretionary parole for unclassified

felonies based on four governing factors. The regulations contained 23 factors for the parole board to consider. He furthered that for Class A, B, and C felonies there was a "shall" release provision in Alaska statute AS 33.16.100 (f). He read the statute as follows:

> (f) The board shall authorize the release of a prisoner who has been convicted of a class A, class B, or class C felony, or a misdemeanor, who is eligible for parole under AS 12.55.115 and AS 33.16.090, has met the requirement of a case plan created under AS 33.30.011(a)(8), and has agreed to and signed the condition of parole under AS 33.16.150, unless the board finds by clear and convincing evidence on the record that the prisoner poses a threat of harm to the public if released on parole. If the board finds that the incomplete case plan is not the fault of the prisoner or that the prisoner would not pose a threat of harm to the public if released on parole, the board may waive the case plan requirement.

Mr. Edwards recapped that the statute included a "may" and "shall" clause based on the presumption of release. He delineated that if it was determined that the offender would be compliant with their OMP upon release, the shall clause applied, unless there was clear and convincing evidence releasing an individual would present a danger to the public.

5:05:39 PM

Representative Josephson was concerned that the parole board needed clear and convincing evidence. He ascertained that under SB 91, if the five member parole board unanimously believed that an inmate was likely to reoffend it was not enough to keep the inmate in prison.
Ms. Winkleman continued with the presentation on slide 15 titled "Offender Joe on Supervision":

- Since a portion of Offender Joe's sentence was suspended by the Court, he will release to probation supervision
- Conditions of probation are set by the Court
- Conditions of Parole are set by the Parole Board
- During intake, Field Offices review Offender Management Plan and conditions with Offender Joe
- Field Officers conduct a risk assessment to determine

the level of supervision required
- Offender Management Plan is updated by Field Officers based on conditions of supervision and the risk/needs

Ms. Winkleman moved to slide 16 titled "Other Factors to Consider Surrounding Supervision";

- Earned Compliance Credits
- Violations
- Administrative Sanctions and Incentives
- Parole Violation Report/Petition to Revoke Probation
- Early Termination

Ms. Winkleman explained that Earned Compliance Credits were established in SB 91 and allowed offenders to earn compliance credits for time off supervision for 30 days for good behavior. Sex offenders and domestic violence offenders had to complete treatment before credits could be earned.

Ms. Winkleman turned to slide 18 titled "Offender Joe Completes Parole/Probation Successfully":

> Upon successful completion of Probation and Parole, Offender Joe and the Division of Elections, will be sent a letter stating Voter Rights can be reinstated, and supervision has been completed successfully.

Ms. Winkleman concluded the presentation with slide 18 titled "Oversight, Reporting, Training, and Accountability." The slide contained references to the statutes that corresponded to the requirements DOC had to comply with.

Representative Carpenter asked whether data was collected related to CRC furlough, EM, and discretionary parole to determine when there was a problem and when the use of discretion was successful. Ms. Winkleman answered they were collecting data, but she did not know how it was used. Representative Carpenter stressed that the "pain" felt in communities was due to crimes by repeat offenders. He wanted to understand where the problems with the system originated.

Co-Chair Wilson noted the Alaska Criminal Justice Commission would testify in a future meeting. She discussed the schedule for the following morning.

#

ADJOURNMENT

5:12:20 PM

The meeting was adjourned at 5:12 p.m.