HOUSE FINANCE COMMITTEE
April 26, 2019
1:45 p.m.

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CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 1:45 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

Representative Geran Tarr, Bill Sponsor; Stephanie Andrew, Staff, Representative Geran Tarr; Carmen Lowry, Director, Alaska network on Domestic Violence and Sexual Assault; Susanne DiPietro, Executive Director, Alaska Judicial Council.

PRESENT VIA TELECONFERENCE

Carly Wells, Sexual Assault Advocate, Fairbanks; Troy Payne, Ph.D. Associate Professor, Justice Center, Associate Director, Alaska Justice Information Center, University of Alaska Anchorage.

SUMMARY

HB 20 SEXUAL ASSAULT EXAMINATION KITS

HB 20 was HEARD and HELD in committee for further consideration.

HB 145 PROPERTY CRIME; MOTOR VEHICLE THEFT TOOLS

HB 145 was SCHEDULED but not HEARD.

PRESENTATION: CRIMINAL JUSTICE REFORM IN ALASKA

PRESENTATION: REARREST WITHIN 7 DAYS

Co-Chair Wilson reviewed the agenda for the day.

#hb20
HOUSE BILL NO. 20

"An Act requiring law enforcement agencies to send sexual assault examination kits for testing within six months after collection; and providing for an effective date."

1:46:04 PM

REPRESENTATIVE GERAN TARR, BILL SPONSOR, introduced the PowerPoint Presentation: "HB 20" and drew attention to a handout, Standing Together Against Rape (STAR) 2019 Policy Priorities, to help with context.

Representative Tarr provided some background information beginning on slide 2. She explained there were two parts to the bill. The first dealt with one of STAR's 2019 priorities. The second part of the bill was related to what she referred to as the next phase of the rape kit reform. She had started working on rape kit reform in the fall of 2014. At the time, she did not know the number of untested rape kits there were in the state. The first step was to complete an audit. She was able to get the audit into another crime bill which was how she learned the state had 3400 untested rape kits. At the same time there was a crime lab audit that that went into the bill. She had found some problems with the way rape kits were handled through the crime lab. For example, prior to the audit a chain of custody system was not in place. The rape kits were prepared in Anchorage and sent out to the over 200 law enforcement agencies statewide but without any tracking

information. There was no way to know, once it left Anchorage whether it was used, misused, or lost. As a result of the crime lab audit, there was a new system in place that had unique identifiers for each kit as it left the crime lab in Anchorage, as it went out to a law enforcement agency, and as it returned to Anchorage. The kits would all be stored in Anchorage.

Representative Tarr continued that some other provisions were part of HB 31. She explained that she had been working with a national organization called the Joyful Heart Foundation. They had what they called, "The Survivor Bill of Rights." Some of the ideas had come from the foundation and were ideas Alaska took into consideration. In HB 31 in the prior year she included the victim-centered approach which allowed an individual, after a sexual assault, two options for submitting the kit. One was called an anonymous report allowing the person to have the evidence collected because of time sensitivity (the kit had to administered within 72 hours of the event). She spoke of recently hearing about a case that was thrown out of court because they stated that it was not collected in a timely enough fashion. Sometimes a person did not want to decide about moving forward with the criminal portion, such as working with law enforcement and going through the courts, because of the trauma associated with the sexual assault. The anonymous report allowed them to have the evidence collected but be able to decide later. The other option was the law enforcement report for an individual who was deciding whether they wanted to move forward with prosecution at the time the kit was collected.

Representative Tarr conveyed that the bill also required training for all law enforcement professionals in sexual assault response. Prior to HB 31 the statute only required training on domestic violence. She wanted to make sure that Alaska's law enforcement professionals had training on both. The pieces that were not included and were a part of HB 20 were a timeline established for testing and victim notification once the testing occurred. She wanted to provide the committee with context of all the pieces she had been trying to incorporate. She was proud of all the work on the issues over the past few years. Some significant improvements had been made to how Alaska's system worked.

Representative Tarr stated that she would skip over sections 1, 2 and 3 and move to section 4 on slide 6: "Section 4: Sexual Assault Examination Kits." She explained that she wanted to establish the timeline for when the kits had to be tested and a victim notification requirement. One of the things she learned when she started working on the issue was that some of the untested kits were multiple years old. There were some that were more than a decade old. She reported that in the court system sometimes kits would not be tested until the cases went to court. The delay could be a couple of years from the incident. She conveyed how difficult it was for the victim to have to wait. The bill established that the sexual assault examination kits had to be sent to the crime lab within 30 days of collection. She had reached out to law enforcement to make sure the timeline was not overburdensome. She talked to the Alaska State Troopers and the Anchorage Police Department and everyone confirmed that the timeline was a good standard.

Representative Tarr reported that sexual assault kits would also have to be tested within one year. When she started looking into the issue, she discovered that the process was taking an average of 18 months. Currently, the state has reduced the timeframe to 10 months. She would like to get to the place where 1 year became 6 months and 6 months became 30 days. However, the state needed to work through the process to build capacity first. She worked with the crime lab and established that 1 year was more reasonable than 6 months which was why she changed it. She wanted to have some certainty. She furthered that when an individual experienced sexual assault they knew when the kit was collected, when it would go to the crime lab, when it would be tested, and that the victim would be notified by law enforcement that the testing was complete. With a process and timeline in place it would help avoid retraumatizing the victim. One of the unfortunate things that happened in sexual assault cases was that if an individual wanted to know what was going on with their case, they would have to retell the story over-and-over which further traumatized the victim.

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Representative Knopp clarified that the victim would be notified within 2 weeks of testing which could take up to 1 year to be processed. Representative Tarr responded in the

affirmative. She added that currently there was no timeline. She had confirmed with law enforcement 2 weeks was a reasonable amount of time for them to receive the test results and report back to the victim.

Representative Knopp asked how long it took to receive the results once the kit was processed. Representative Tarr replied that currently, the kits that were backlogged had been sent out of state. She reported that part of strengthening the capacity of the crime lab was to make sure everything was happening in-state. Recent cases were being processed in-state, and she wanted to keep it that way. She wanted to make sure the timelines worked for the current level of state staffing.

Co-Chair Wilson asked, for those anonymous kits, if there was a data base that would show whether a person had been involved in another potential crime. Representative Tarr conveyed that it was her understanding that if a victim chose to do an anonymous report, the kit would not be tested until such time as they chose to have it tested. There were circumstances in which a state prosecutor would want to move forward with the victim in a Jane Doe capacity. Under such a circumstance, if there was evidence of a perpetrator of more than one crime, they might move forward without requiring participation from the victim.

Co-Chair Wilson suggested there was not a current mechanism that would allow evidence to be used without involving the victim. Representative Tarr suggested that in the circumstance presented by Co-Chair Wilson the survivor could give permission to test their kit. She thought that someone from the Department of Law could provide more detail on the issue. She thought the circumstances could move toward testing. It was different in that the victim was granting their permission.

Co-Chair Wilson indicated that the Department of Public Safety (DPS) would be present at the meetings over the weekend and, the topic could be revisited.

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Representative Tarr turned to slides 7 and 8 dealing with sexual examination kits. She referred to the Justin Schneider case. One of the things that made it difficult to move the case forward was losing contact with the victim.

When the case went into the court room it was a "He said, she said" scenario, and there was no one to defend the victim's side of the story. She indicated that when she first started to address the issue, she wanted every kit tested no matter the circumstances because of not wanting to miss an opportunity to find evidence against a dangerous person. However, the U.S. Department of Justice put out a white paper about the importance of having a victim-centered approach when doing the reforms which was the reason for an anonymous report. Much of the time when an individual chose an anonymous report initially, they later chose to go forward. If an assault occurred in a community with a Sexual Assault Response Team (SART), the team would have a sexual assault nurse examiner, a police officer, and an advocate present to avoid the victim having to tell their story multiple times. Alaska had a very fragmented system for the SART, only 6 communities in Alaska had them. She reemphasized that depending on where a person lived, the overall experience could be very overwhelming and could result in a person choosing to remain anonymous.

Representative Tarr continued to slide 9: "Section 7: Sexual Assault Examination Kits." She explained that the audit report was included in members' handouts. The information helped to understand what was happening with the backlog and prosecutions and to further improvements to the system. In working with some advocates, there was interest in understanding why some of the kits were not tested. The sections added language that identified three categories needed. She read the slide:

Title 44: State Government
Chapter 41: Department of Public Safety
Section 70: Report on Untested Sexual Assault Examination Kits

Amends 44.41.070 to add a new subsection (e) to read

A sexual assault examination kit is ineligible for testing if the law enforcement agency or state department finds that the sexual assault examination kit

(1) was collected improperly
(2) is not necessary to identify the perpetrator of the crime; or
(3) was collected from a person who does not wish to proceed with criminal charges.

Representative Tarr highlighted the second item on the list. She indicated it was important because sometimes the kits weren't tested. In some instances, the identity of the individuals involved were known, but consent was in question. She furthered that in states where they had conducted the testing, they found more serial offenders than expected. For example, in Detroit, they found hits in the DNA database in 39 other states. She had been told that it would not be difficult to integrate the additional items into the audit reports that were already being prepared.

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STEPHANIE ANDREW, STAFF, REPRESENTATIVE GERAN TARR, noted that the language had changed slightly in the most recent version of the bill. The criteria included the kit was scientifically unviable, did not meet eligibility requirements for the inclusion in the CODIS [Combined DNA Index System] database, and was collected from a person who wished to remain anonymous. The concept was the same as what Representative Tarr had discussed from the first draft. However, the language was the same as the language used by DPS in their report to the legislature.

Representative Tarr asked members to pull up the document listing the Star priorities. She relayed that the committee would be hearing public testimony from representatives of STAR and the Alaska Network on Domestic Violence and Sexual Assault. She drew attention to the first policy priority which was to rename "Sexual Assault in the Second Degree" to "Sexual Contact with or Penetration of an Incapacitated Person." The first priority was related to the second priority, rewriting the consent definition. The current consent definition in Alaska's statute suggested that force had to be used.

Representative Tarr elaborated that there were circumstances where a person was incapacitated. Therefore, there were no visible signs of force. When such cases went before a jury, the jury was often left thinking an incident was not sexual assault because they did not see visible signs of force. STAR wanted to strengthen the definition for sexual assault in the second degree to address the issue. The suggestion on STAR's list was rejected by Legislative Legal Services because sexual assault in the second degree contained more than the piece about

interaction with an incapacitated person. They did not want to redefine the entire category of sexual assault in the second degree. Instead, they wanted to update the language.

Representative Tarr asked members to look in the bill in the sections regarding sexual assault in the first, second, and third degrees. She drew attention to page 1, lines 13-14 of the bill which she read. By removing the words "the offender knows" the default was what a reasonable person should know. The grey area of how much a person knew or did not know was removed. The issue was addressed in the current bill and in the Senate's version, SB 35. There were 3 or 4 iterations of the language. She suggested the language was what everyone had landed on and was the cleanest version to tighten things up. The language was repeated in Section 1, Section 2, and Section 3.

Representative Tarr mentioned that there were folks online that could answer questions. She noted working with Senator Hughes on the definition of consent.

Co-Chair Wilson indicated there was invited testimony. She also indicated the committee would be hearing public testimony the following day at 3:30 P.M.

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CARMEN LOWRY, DIRECTOR, ALASKA NETWORK ON DOMESTIC VIOLENCE and SEXUAL ASSAULT, reported that the entity had been talking about the bill extensively for a long time particularly because Representative Tarr had been involved in the Sexual Assault Kit Initiative (SAKI). It was an initiative supported by the state to address the backlog of sexual assault kits. She highlighted how victim-centered the bill was. It allowed for victims to be very clear on what would happen. She indicated that the sections clearly outlined the timeframes. The kit went to the crime lab allowing a certain amount of time for processing. Law enforcement had a certain amount of time to get the information back. Knowing the time perimeters were critical to allow a victim to understand that they were being treated with respect and their kit was being treated with respect. She returned to what had been discussed earlier about anonymous testing. She relayed that for a person who went to a hospital to get a sexual assault exam, it was sometimes difficult to make a life altering decision to move forward with reporting. She was thrilled that victims

could get health care and have a trained medical provider to explain the forensic exam. They could also have an advocate present. A victim could hold off making any decisions until later. She thanked Representative Tarr and the committee for the opportunity to speak on the bill.

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CARLY WELLS, SEXUAL ASSAULT ADVOCATE, FAIRBANKS (via teleconference), spoke in support of HB 20. She could not stress enough the importance of passing HB 20. Alaska was the highest in the nation for sexual assault in the middle of an epidemic. She reported that the healing journey for victims was long, painful, and difficult. Passing the legislation would give a level of dignity back to someone by knowing a timeframe when their kit would be processed rather than it sitting on a shelf for an unknown period. She argued that having a year would provide some peace of mind. A victim would know they would not be receiving multiple calls years later with the results, a frequent occurrence to many victims nationwide. Passing the bill did not bring extra costs in getting the kits tested and showed how much the state cared about getting justice for the victims in a reasonable timeframe. She stressed the importance of passing the bill to avoid revictimizing individuals and causing them undue trauma. She thanked the committee.

Co-Chair Wilson asked members if they had questions for the folks online. Seeing none, she indicated the committee would set the bill aside.

HB 20 was HEARD and HELD in committee for further consideration.

^PRESENTATION: REARREST WITHIN 7 DAYS

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Co-Chair Wilson clarified that Mr. Payne was online.

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TROY PAYNE, PH.D. ASSOCIATE PROFESSOR, JUSTICE CENTER, ASSOCIATE DIRECTOR, ALASKA JUSTICE INFORMATION CENTER, UNIVERSITY OF ALASKA ANCHORAGE (via teleconference), would discuss an analysis that the folks at the Alaska Justice Center had been doing on arrest data they received from DPS. He provided a brief background of the Alaska Justice Information Center and the University of Alaska Anchorage Justice Center. He introduced the PowerPoint Presentation: "Rearrest within 7 days."

Mr. Payne turned to slide 2: "Data Source." He indicated that the analysis he was presenting used data that was required by AS 44.19.645. The statute required that agencies reported certain individually identified data to the Alaska Criminal Justice Commission. The Alaska Judicial Council would provide additional information later in the presentation. Among the data required to be reported to the commission were arrest and citation data as collected by DPS and recorded in the arrest history repository for the state.

Mr. Payne moved to slide 3: "DPS arrest and citation Charge-level data." The Department of Public Safety data had charge-level information on all felony arrests, felony citations, misdemeanor arrests, and misdemeanor citations covering a period beginning in July of 2014 through the end of the calendar year of 2018. He noted that the data did not include infractions, violations, and charges with no arrest tracking numbers.

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Mr. Payne advanced to slide 4: "Methods." He reported that what he received from DPS was a large table with several columns. There was one record or row per charge. The table contained 222,313 charges between July 1, 2014 through December 31, 2018. Only a handful of fields were used to collect data including an Alaska Public Safety Identification Number (ASPIN) ID - the identification number that uniquely identified a person. It was like a Social Security Number but for interactions with the criminal justice system. Other field uses for the analysis included the arrest date, the arrest statute, and the arrest tracking number which was a unique tracking number attached to each arrest.

Co-Chair Wilson asked how many individuals were responsible for committing the 222,313 charges. Mr. Payne would follow up with the committee.

Representative LeBon asked him to include multiple repeat offenders. Mr. Payne replied that the Alaska Justice Information Center was actively working the data. He encouraged members to make information requests related to the analyses.

Mr. Payne continued to slide 5: "Methods: Calculate days to next arrest." He explained that what his organization was looking at was how many people were rearrested within a short period of time. If someone was arrested in the present day, he would be looking at whether they were arrested within the following 7 days. That was the analysis he was presenting in the committing meeting. He wanted the broadest picture possible of individuals who were having multiple engagements with the criminal justice system in a very short period. He calculated the number of days between an arrest and the next arrest for that person. He determined whether it was 7 days or less and counted the number of people who were rearrested for every week. He would show the information plotted on a chart on the following slide.

Mr. Payne turned to the chart on slide 6: "Number of people rearrested within 7 days." He explained that the slide started with the chart construction. He noted that the chart started with only one dot representing the number of people that were arrested in a specific week then rearrested within 7 days.

Mr. Payne advanced to slide 7: "Number of people rearrested within 7 days." The number of arrests each week were plotted on the chart. Moving forward in time there was a scatter of dots over time. He reiterated that he was looking at the number of people who were rearrested within 7 days of an initial arrest overtime." He indicated the chart did not show much difference in the period that he had on the data prior to criminal justice reform (from July 2014 through July 2016), the period between criminal justice reform SB 91 [The omnibus crime legislation passed in 2016] and SB 54 [Legislation passed in 2017 regarding crimes, sentencing, probation, and parole], and the period after SB 54. There was a variation but there was not that much difference in the period prior to criminal justice

reform compared to the period after criminal justice reform.

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Mr. Payne reviewed slide 8: "Number of people rearrested within 7 days." The slide showed the same information as the previous slide, but instead of using dots a line was used. It helped to reinforce that there was not a significant amount of movement of the line. The line was at the same point prior to criminal justice reform as it was after criminal justice reform.

Co-Chair Wilson asked if the issue was people were reoffending with 7 days of release. Mr. Payne interpreted the data such that the phenomenon of people being arrested and arrested again in a relatively short period of time, was very real. He indicated that when he heard reports of the phenomenon from law enforcement and prosecutors, it was clear that the phenomenon occurred. The question he was seeking to answer was whether there was a difference in the number of folks for whom it was true prior to criminal justice reform compared to after. He was seeing from the analysis that there was not a difference after criminal justice reform compared to before. To the extent it was a problem, it had not worsened after criminal justice reform.

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Vice-Chair Johnston referred to page 4 showing more than 22,000 arrests. She asked if the public safety number was an individual number. Mr. Payne replied in the affirmative.

Vice-Cahir Johnston asked if the arrest tracking number went with the Alaska public safety ID number. Mr. Payne responded affirmatively.

Vice-Chair Johnston wondered if the public safety number was the way in which he tracked whether they reoffended and in how many days. Mr. Payne responded in the affirmative. He could identify that a particular person was arrested on a certain date and that another arrest record existed for the individual on another date. He was able to take the difference between the two dates.

Vice-Chair Johnston suggested that it was easy to track individuals because of the i.d. number they were assigned. Mr. Payne responded, "That is correct."

Co-Chair Wilson thought he was saying that people were reoffending with the new tool, but people were already reoffending prior to the tool being in place. She asked if her analysis was accurate.

Mr. Payne would not necessarily agree with her analysis. He thought her analysis extended outside of the data he had. He was looking at a narrow slice. He offered that the number of people that were arrested and arrested again within the following 7 days had stayed constant over the period in which he had data.

Co-Chair Wilson asked where on the chart the Department of Corrections (DOC) started using the tool that allowed more people to stay out of jail. She thought the tool was first applied in January 2018.

Mr. Payne responded that her question was very complicated to answer. He relayed that January 2018 was when DOC started using the pretrial risk assessment tool. The pretrial risk assessment tool began being used in January of 2018. He thought there were some reforms to pretrial detention practices that occurred in 2016, and there were changes made around the same time to the bail schedule set within the court system. He was evaluating the accuracy of the tool. There were several changes to pretrial detention that occurred around the same time. It was very difficult to attribute causation to any of them.

Co-Chair Wilson indicated that the committee was getting ready to do a crime bill. She was frustrated with not having the right kind of data. Based on the data presented, the state still had an issue with people reoffending. She had hoped the number would have gone down. She wondered what she was not understanding.

Mr. Payne indicated his analysis was very narrow. He expounded that if there were more folks being released pretrial, he might expect there to be more people who were rearrested. There were a couple of different ways of interpreting the data. He suggested that if the state was releasing more people pretrial, it was not impacting the measure he was looking at. It was a complicated issue

because of the number of changes that had been implemented in a short period of time. He reported that the pretrial enforcement division did not really start operating until 2018. It was a large difference from prior practice. It had not significantly impacted the number of people that had been rearrested.

Co-Chair Wilson asked Mr. Payne why he showed the committee the graph if no information could be gleaned from it, and it was too complicated to understand.

Mr. Payne responded that he would not characterize it as being too complicated. He thought that trying to attribute cause was difficult. The reason he would be interested in sharing results from an analysis was to ensure that policy makers had the relevant information to make policy. He continued that to the extent that the State of Alaska was releasing more people pretrial, the claim was that more folks were being arrested in a short time afterwards. However, he was not seeing the claim in the available data.

Co-Chair Wilson remarked that the legislature could not make good policy without understanding the cost.

Vice-Chair Johnston asked about whether there was a concentration of arrests during any one of the periods of time [denoted on slide 7]. Mr. Payne replied that in general, the analysis did not look at the number of people arrested over time. The analysis specifically looked at folks who were arrested within a period of 7 days on slide 7. However, he could look at the number of people arrested per week over time. He had the data to do so and could follow up with her.

Vice-Chair Johnston would appreciate the information. She thought it might help.

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Representative LeBon asked how the study would capture an individual who was rearrested on the same day. Mr. Payne responded that someone rearrested on the same day would be counted as having been rearrested. If they were arrested on a new arrest tracking number on the same day, it would be counted as a rearrest.

Representative LeBon asked if the ATN was tied to a particular arrest event. He wondered if the number would change on a rearrest the same day. Mr. Payne responded that his understanding was that the ATN should be unique to the arrest event.

Representative LeBon reported that Anchorage or South Central Alaska was suffering from several rearrests. He asked if the data showed geographic distribution. Mr. Payne suggested looking at the arresting agency which would be as close as he could get to geographic distribution. He had not done so for the analysis that he was discussing presently.

Mr. Payne skipped to slide 11: "Number of people rearrested within 7 days." So far what he had discussed excluded violations of conditions of release (VCOR). Slide 11 included VCOR. He explained that the reason VCOR was excluded in the prior slides was that, in the period between SB 91 and SB 54, violating conditions of release was not a crime. Rather, they were simply violations. The data he had only included felonies and misdemeanors. It did not include violations. In the period when VCOR were not a misdemeanor or a felony, they disappeared from the data set. Without subtracting them from the entire data series, the line dropped during the period from July 2016 to November 2017. In the interest of completeness, he added VCOR. The overall picture was similar. There was a gap between criminal justice reform and SB 54 where VCOR disappeared from his data source. Otherwise, the story was the same - there was not a large difference prior to criminal justice reform and afterwards.

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Mr. Payne continued to slide 12: "Summary." The overall summary indicated that each week statewide, there were about 26 people who were rearrested within 7 days of an initial arrest. He did not see any evidence of a change in the number before criminal justice reform compared to afterwards which was relatively constant across the entire data series. He indicated that in members' briefing books there were additional slides in which he looked at time periods shorter and longer than 7 days. He had considered 3, 7, 10, 14, 30, 60, 90, and 180 days. The number of arrests changed, but the overall story did not. The number of people who were rearrested in whatever time window he

was looking at was constant before criminal justice reform and afterwards. He concluded that, overall, the numbers stayed relatively the same which was very consistent no matter the period. One of the concerns at the beginning of the analysis was that 7 days was too long or short of a period to consider. However, it looked the same before and after criminal justice reform.

Co-Chair Wilson thought that, based on the summary, there would be 1,352 crimes in a year that were rearrests within a 7-day window. She wondered how to mitigate the problem with rearrests based on the data he had seen, as rearrests appeared to be a large issue.

Mr. Payne offered that he could provide the total number of arrests. His role was to provide an analysis of data. He was not looking at policy solutions. He thought it was notable, to the extent that there were changes made by SB 91 and the associated reform bills since, that there was not much movement in the particular measure he was currently looking at. While the data had not improved, it had not worsened. He suggested that there might be other benefits from the policies that had been pursued in the period since. He reiterated that he was looking at a narrow measure trying to determine the extent to which rearrest was a problem and the extent to which it had changed since reform.

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Vice-Chair Johnston spoke of the changes to the provisions of VCOR. She thought there were some changes to the data that reflected a slight increase. She suggested that there was a ramping up reflected in all the graphs. She asked if he had any thoughts on the matter.

Mr. Payne could only offer speculation regarding her questions. He thought it was possible that the standing up of the pretrial enforcement division had some impact. He reported that the VCOR numbers tended to stabilize over time. They increased slightly post SB 54 and found an equilibrium roughly the same as pretrial reform. There was a much shorter period after SB 54. He did not know how much he would read into it.

Representative Knopp spoke of not being very familiar with SB 91. He thought Mr. Payne's material clearly showed no

change before or after [criminal justice reform]. He thought Mr. Payne was correct that it did not lead to more or less rearrests. He suggested that part of the reason the state embraced criminal justice reform was due to the costs of incarceration, particularly the cost of incarceration of people who had yet to stand trial. He wondered what to take away from the data. He asked if the state reduced any costs of incarceration. He asked if he was accurate.

Mr. Payne relayed that the topic of Representative Knopp's question was not part of his analysis. He was not looking at the extent to which any of the individuals that were arrested had been detained. That analysis would require linking DOC's data to arrest data which was a technically complicated task.

Representative Knopp was looking for anything that the state had made gains in since the implementation of SB 91. Mr. Payne relied, "Not in this analysis." He deferred to the Judicial Council who was better suited to address his question.

^PRESENTATION: CRIMINAL JUSTICE REFORM IN ALASKA

2:46:58 PM

SUSANNE DIPIETRO, EXECUTIVE DIRECTOR, ALASKA JUDICIAL COUNCIL, provided a brief introduction and explained that the chair had asked her to discuss a couple of things. First, she was asked to remind members about the commission, why they had the data, and what the commission was doing with it. She hoped she would be able to address some of Representative Knopp's concerns and questions. The representative also asked her to review what the data was showing, how things were going after reform, and how the situation compared to pre-reform.

Ms. Di Pietro introduced the PowerPoint Presentation: "Criminal Justice Reform in Alaska." She began with slide 3: "Members of the criminal justice Commission." The slide listed the members of the commission. She reported that membership was set in statute by the legislature. The commission had membership from the executive, legislative, and judicial branches. She elaborated that the idea behind the membership was to have the most broad-ranging perspective from the criminal justice system and the Department of Health and Social Services, which was not

always thought of as being a part of the system. The commissioners directed the staff to conduct the analysis and provide the data they needed to make any recommendations.

Ms. Di Pietro continued to slide 4: "Oversight and reporting duties." She reminded members of a part of SB 91 that had been very helpful to the commission and, she hoped, to the legislature with respect to data. the commission was commanded to look at what was happening with the recommendations that were made in 2015 and enacted into law with the various reform bills. The commission had been tracking the information since the reform passed and submitted a report to the legislature every year on November 1st. The reports were sent to legislators via email but could also be found on the commission's website. The commission's website was linked to the Judicial Council's website. There was a lot of information available online.

Ms. Di Pietro continued to slide 5: "Data Collection AS 44.19.645(e)-(g)." She wanted to tell members about the data the commission received to answer the question, "How are we doing?" The court system provided information about all charges that were disposed every quarter. The Department of Public Safety provided the citations, arrests, and charges every quarter. The Department of Corrections provided several pieces of information related to pretrial outcomes, related to the prison population, and related to probation and parole data. The commission also received data from the parole board. The information was given quarterly.

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Ms. Di Pietro turned to slide 6: "Data Analysis." The commission staff worked in partnership with the Alaska Justice Information Center to analyze the data. The commission analyzed the data with an eye to answering the questions that were in statute. One of the things in statute was recidivism data. She thought the question underlying some of the discussion she had heard earlier was what was happening with recidivism. There were a couple of definitions of recidivism in statute that the commission would be using. The commission would be collecting additional data because of the importance of policy makers understanding the topic. She reported that the normal

window for looking at recidivism was 3 years. The reform was passed so recently that 3 years had not gone by yet. The commission was keeping track of the information. She noted that members might have seen some recidivism from DOC which was excellent data. However, it was slightly more limited than what the commission would be reporting.

Ms. Di Pietro continued that the commission would also be attempting to report recidivism data from misdemeanants such as property offenders and felons. The commission was not only looking at the people who went to prison, it was also looking at individuals charged and convicted but whom might not have had a prison sentence or served their time pretrial. The commission wanted to provide the most comprehensive information that it could.

Ms. Di Pietro pointed out that the information the commission had was unique in the sense that the information was from 3 different agencies, and it could be knitted together in the way Dr. Paine had mentioned. The commission had data that could offer a broader perspective than from an individual agency. The commission was happy, ready, and excited to do analyses for members of the legislature. She wanted to provide the data members needed as much as was possible.

Ms. Di Pietro highlighted a couple of reports that the legislature told the commission to publish, which it had. A report on restitution, a report on Title 28 offences (driving under the influence offences), and a new publication on sex offenses were all posted on the commission's website.

Ms. Di Pietro indicated she would be discussing the results of the data analysis. She would go quickly through the first slides in the section.

Ms. Di Pietro advanced to slide 8: "Reasons for reform." She reported that the slide listed the issues the Criminal Justice Commission uncovered when it conducted the criminal justice assessment. She clarified that the assessment spanned information up to about 2014. One of the main problems identified was that Alaska was experiencing some unsustainable prison growth. The recidivism rate, the rate at which people went back to prison after they were released, was fairly high. She thought the most interesting information and studies the commission did were studies on

pretrial detention. The commission found that the ability to be released pretrial was related to a person's ability to pay bail. It also uncovered racial disproportionalities in pretrial detention.

Ms. Di Pietro moved to slide 9: "Reasons for reform – prison growth." The slide contained the chart showing prison growth over time.

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Ms. Di Pietro advanced to slide 10: "Reasons for reform – prison growth." The slide showed the expected increase in the cost of corrections. She relayed that the numbers were inflation adjusted.

Co-Chair Wilson asked about slide 10. She noted that DOC increased by 1100 people, but the cost increased by $200 million. She wondered why there was such a large increase. She was looking at the growth in the number of inmates from 4133 to 5267 [Slide 9]. She opined that there was a much larger increase [in costs] than the number of people. She asked if Ms. Di Pietro knew why there was such a substantial increase as opposed to the increase in people.

Ms. Di Pietro did not know off the top of her head. She speculated that it might have had something to do with new prison that was built which would have increased operating expenses. The chart did not include capital expenditures. She suggested directing the question to DOC.

Ms. Di Pietro explained slide 11: "What reforms were enacted?" The slide showed the evidence-based principles that the commission used when it made recommendations that later became a part of criminal justice reform. The foundational principles were built on hundreds of studies that had been done nationally and in Alaska about what worked and what did not work for people arrested and charged with crimes. The first principle was to focus prison beds on serious and violent offenders.

Ms. Di Pietro continued that the commission recommended strengthening supervision practices at DOC. The commission did a series of crime victim round tables throughout the state and amassed a list of crime victim priorities posted on the commission's website. There were several recommended priorities from the reports that went into the reform bill.

The commission was very clear about the need to implement evidence-based pretrial practices which began in 2018. The commission also strongly recommended reinvesting in treatment, which the legislature did. The commission was also keeping track of what the reinvestment was in treatment and prevention programs every year. It also kept track of what the State of Alaska received in exchange of its investment. In other words, the commission followed what programs were invested in and how many people went through them.

Representative Josephson thought it would be valuable to have a list of savings and a list of expenditures resulting from SB 91. He would appreciate seeing the information.

Ms. Di Pietro indicated that every year on November 1 the commission was required to produce an annual report which contained the information Representative Josephson was looking for. She did not have the numbers with her but could look into it. She was unclear about his reference to the reappropriation issue.

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Representative LeBon referred to slide 11 and pointed to the fourth bullet regarding the implementation of evidence-based pretrial practices. He wondered what it meant.

Ms. Di Pietro indicated the answer was on the following slide. She turned to slide 13: "Pretrial Reforms – Risk-Based Decision-Making." She explained that the evidence-based phrase referred to the use of an actuarial risk assessment tool. The bottom line regarding the tools was that studies showed that more accurate decisions about pretrial detention were made when information was included from a risk assessment tool as opposed to relying only on professional judgement. It was the reason the commission recommended enhancing the pretrial decision making by using the tool.

Ms. Di Pietro continued that the other piece of the pre-reform was to create the pretrial enforcement division. She highlighted the left-hand side of the chart in the "Before" category. She emphasized that most people had a money bail imposed on them which created a situation where people who had access to cash could get out, and people who did not have access to cash could not. She thought it did not seem

fair. More importantly, how much money a person had did not appear to be related to their risk of pretrial failure. She wondered why money was being used. She also highlighted the second-to-last bullet point which was that 37 percent of defendants released pretrial before reform were rearrested for a new offense. She personally looked at the number and wanted to do better than 37 percent. It was one of the statistics the commission was trying to address. Another key piece in the prior practice was that judges imposed third party custodian requirements on several different defendants. The commission's research showed that being in the position of a third party custodian was strongly associated with the inability to be released pretrial.

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Ms. Di Pietro skipped to slide 15: "Pretrial reforms – risk-based decision making." The slide addressed the question of whether more people were being released pretrial after reform compared to before reform. She reported that the Alaska Judicial Council had been doing a study of defendants who were released a few months after the pretrial reform provisions, and the Pretrial Enforcement Division (PED) went into effect even before HB 312. The council gathered a bunch of case files and had been studying and following the defendants. The commission wanted to figure out who got released, who did not, and what bail conditions were imposed on them. She did not have complete answers to the questions because not enough time had passed for the cases to be resolved. There were still quite a few people from the file sample of about 400 files who were still in the pretrial phase. She wanted to be cautious about providing the data. However, because of the importance of the issue, she wanted to provide some information about what the council knew thus far.

Ms. Di Pietro pointed to the right-hand side of the chart. It appeared that more defendants were being released during the pretrial period after reform, than before. The figure from before was about half. In other words, before reform about half of the defendants were not released before their case was resolved. Presently, about 69 or 70 percent of defendants were released by judges. She also reported that fewer money bonds were being used. Before, about 69 percent of defendants had a money bond imposed. About 41 percent of defendants had the condition in the sample the council was studying. Also, there were much fewer third party

custodians which was related to the fact that if there were PED officers available to supervise a person, a third party custodian was not authorized. The council was seeing a large increase in the use of unsecured bonds. An unsecured bond was when a person promised to pay money in the event they messed up during pretrial. A secured money bond required money upfront. Whereas, an unsecured bond required payment if a person failed. All the research showed secured money bonds were equally effective at ensuring the appearance of the defendant as compared to unsecured money bonds. She added that with an unsecured bond people could get out more easily.

Ms. Di Pietro continued that another study showed that about half of the defendants in the study were assigned to PED supervision suggesting that the courts were heavily using PED to supervise people being released pretrial.

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Ms. Di Pietro reported that the commission was trying to get at the issue of ethnic disparities. The Alaska Judicial Council had conducted a couple of studies documenting ethnic disparities in pretrial detention situation. She reported that an Alaska Native was more likely to be detained then if they were Caucasian. The first time the judicial council documented that in a robust study was in 2004. The council did another study in 2015, pre-reform, and found similar ethnic disparities with about 26 percent of Alaska Natives being released in comparison to 55 percent of Caucasians. She reminded members that about half of all people were being released pretrial.

Ms. Di Pietro drew attention to the 2018 sample. she cautioned members that the study was not final yet. It looked as though the disparities between Alaska Natives and Caucasians had decreased significantly. She highlighted that the percentages of people being released were different on the current slide. She had been reporting 50 percent. There was a problem with the comparison because another thing that changed that was not a part of criminal justice reform but has complicated the council's ability to analyze the pretrial situation, was the bail schedule changed. People were also being released on the bail schedule. The council could not compare people released on the bail schedule currently to people released on the bail

schedule before because of not having the right kind of data.

Ms. Di Pietro continued that if a person looked at everyone released after arrest, whether by bail schedule or by appearing in front of a judge, the number was higher than the figure she provided to the committee earlier. She was happy to follow up with anyone who wanted further clarification regarding her explanation.

Ms. Di Pietro advanced to slide 16: "Pretrial reforms – pretrial outcomes being studied." Although more people were being released, she thought the question was whether they were being arrested more. She thought Dr. Payne's analysis was an important data point regarding the question. She did not believe the question had been fully answered yet. She reported that the judicial council was tracking some cases and Dr. Payne, who was under contract with the justice center and DOC, was asked to reevaluate the pretrial risk assessment tool. Part of the revalidation analysis would include rates of rearrest. The information was forthcoming. She reiterated that in the scheme of the criminal justice system and how it operated, there had not been sufficient time between the effective date of the reform and 6 months later (when HB 312 went into effect) for the system to stabilize and to generate sufficient data to provide the type of analysis that everyone wished they had. The information was a start. She hoped to provide more definitive answers going forward.

Ms. Di Pietro continued to slide 18: "Sentencing Reform." She reported that sentencing reform was the next category. They would be looking at people who were convicted and sentenced. Under sentencing reform, the focus had been on prison beds for serious and violent offenders. For a low risk offender, time in prison could make a person more likely to recidivate. For some of the violent high-risk offenders, prison was the place they needed to be. For some of the lower risk offenders, such as property offenders, prison might not have the desired effect of reducing recidivism. Rather, it might have the opposite effect. The idea was to be more targeted in how the state used incarceration. Incarceration was a very expensive resource, and the state wanted to use it in the best way possible to get the best results. The last point on the slide was that prison should be used for individuals that citizens were

afraid of, rather than angry at, if the goal was to achieve recidivism reduction.

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Representative Carpenter referred to the bullet indicating time in prison could make some low-risk offenders more likely to recidivate. He wondered if the statement was an opinion or a statement based on facts. Ms. Di Pietro responded that it was a fact-based, data-based observation. The council had the R-2015 report with footnotes showing all the relevant studies available on their website. She added that she would welcome information from people who disagreed with their findings. She thought the finding was a bit surprising. She would send the committee the specific information she was referring to.

Ms. Di Pietro moved to slide 19 "Violent vs Non-violent Prisoners." The chart on the slide showed that changes in the law caused the state to slowly begin to focus its prison beds more on violent offenders. She thought it was a great example of the analysis the state was doing based on the statutes.

Representative LeBon asked for the definition of a low-risk offender. Ms. Di Pietro responded that the study the council relied on was looking at the risk-assessments such as the LSI [Level of Service] and the LSI-R [Level of Service Inventory - Revised] that DOC had talked to the committee about recently. She indicated some good examples were the misdemeanant offenders, although some of them could also be high-risk.

Representative Sullivan-Leonard asked Ms. Di Pietro to provide a list of violent versus non-violent offenders. Ms. Di Pietro responded that the commission used DOC's definitions of violent versus non-violent, the same list of statutes. She did not have the list on hand but could provide it.

Representative Sullivan-Leonard asked for some examples. Ms. Di Pietro replied that any offense in 1141 would be a violent offense. She also noted that as a rule 1146 offenses were not included as violent. Representative Sullivan-Leonard requested the list.

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Representative Josephson clarified that the 1161 offenses were not put in the violent category which was troubling to him, because it included firing a weapon in a moving vehicle. He hoped the commission would consider it violent and treat it accordingly in the data. Ms. Di Pietro was uncertain. The commission relied on DOC for a list of categories.

Ms. Di Pietro advanced to slide 20: "Admissions for Drug Crimes". She pointed out that the slide showed admissions to prison for drug crimes. The chart indicated that prior to reform, when possession of a small amount of heroin, opioids, and methamphetamines was a Class C felony, there were several admissions in a fiscal year. After reform, when the crime of possession became a misdemeanor, felony admissions went down. However, the number of misdemeanor offenses went up but not as large as the Class C felony offenses were originally. She thought it was interesting that the Class B felony offenses, the distribution offenses, were not going down. She thought it was encouraging because the research showed there was not a great way to deal with drug crimes. The idea of arresting and prosecuting the commercial distributors and dealers vigorously was to get them out of the system disrupting the chain, at least for a while. It was not necessarily helpful to convict the people of a felony who possessed small amounts or sold small quantities to friends. It was also not necessarily helpful to give them a significant amount of prison time unless they received treatment. The slide showed how things were working under the new scheme.

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Representative Josephson expressed concern that above the FY 17 and FY 18 bars there was untold drug usage. It was not plausible that there was a marked decline during an opioid epidemic. The people in the void were not being treated. He wondered if the commission was looking into it.

Ms. Di Pietro thought Representative Josephson had a very good point. One of the questions was whether possessors were being arrested post-reform. Another question was whether they were seeing treatment. She conveyed that the commission was very concerned about the current heroin use and other drugs. She noted that the law did not change an officer's ability to arrest a person for drug possession.

However, there might be unintended consequences with arrests going down.

Representative Carpenter asked what the slide depicted in terms of success given the state's statutory goals. Ms. Di Pietro answered that part of the goal was to not convict single possessors of a Class C felony which would impede their ability to get a job, to secure housing, or to seek rehabilitation. The chart showed that fewer people who possessed smaller amounts of drugs were convicted of Class C felonies. She thought the chart also showed that the total number of admissions for drug crimes had gone down. She agreed that it needed to be investigated further.

Representative Carpenter suggested that perhaps employment was not necessary based on the following slide which showed a disturbing increase in theft crimes. He speculated that the state had reduced the numbers of low-level drug users in jail only to increase the number of thefts. He commented that it did not pass the common sense test. He did not care that less people were in prison if there were more thefts occurring.

Ms. Di Pietro pointed out that slide 21 showed admissions to prisons for theft crimes, although she would speak to larceny theft in another slide. The graph showed that people were still being arrested and admitted to prison for misdemeanor and felony theft crimes. One of the things the council would want to review since the penalties were lessened, was whether there was a significant decrease in people being admitted (which was not the case).

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Representative Carpenter noted there was a decrease in admissions for low-level drug crimes and an increase in admissions for theft crimes. He asked about the net. Ms. Di Pietro requested the representative restate his question. She wondered if he was asking about the net change in admissions. Representative Carpenter responded in the affirmative.

Ms. Di Pietro moved to slide 22 and continued to discuss prison admissions. The slide reflected the number of admissions. Since SB 54 passed, there had been an uptick in prison admissions for non-violent crimes.

Ms. Di Pietro continued to slide 23: "Prison Population Down." She reported that earlier in the presentation there had been a question about prison population. She reported that the prison population had reduced since reform. She noted the difficulty of generating a prison population because it fluctuated substantially. The prior slides reflected admissions which were counting people as they went into prison. The current slide showed a snapshot day of how many people were sitting in beds in DOC. Care needed to be taken as to which day to look at. The council had chosen the same day each year to make things consistent from year-to-year to properly track changes.

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Representative Carpenter noted that the state had seen admissions for drug crimes from FY 15 to FY 18 of around 1200 in FY 15 to 700 in FY 18. He noted a decline of 500 admissions. He noted about the same amount of increase in theft crimes. He was unsure the state succeeded. He surmised that the state might have added to the prison population.

Ms. Di Pietro mentioned that the prior slides showed admissions. For example, a person who was counted in slide 21 for an admission for theft might have been admitted, served their sentence, and been released without being counted on the day that the prison population snapshot was taken [shown on slide 23]. She explained that the reason the council looked at admission and a static population snapshot was because it wanted to measure the churn. Admissions might appear to be up with people cycling in and leaving. However, the prison population on average might not be increasing as fast or at all. She thought it would be misleading not to show both. She indicated that a person could not add the numbers on slides 21 and 22 to get to the numbers on slide 23.

Representative Carpenter was not suggesting that he was adding the numbers on slides 21 and 22 to get to the numbers on slide 23. He was pointing out that there was a decline in prison population "success" for drug crimes and an increase in population for thefts on slide 21. He was wondering about the effect the legislature was trying to get with the policies that were enacted. He thought the state had incarcerated more people.

Ms. Di Pietro offered that one of things that she had heard was that there were some people who were using or possessing substances who were not committing crimes. Those people were not necessarily being arrested. However, the people who were using, possessing, and committing crimes were being arrested - it was a higher priority to arrest them and get them into the system. She did not see a contradiction between 20 and 21. It was only her theory. She understood where the representative was coming from.

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Vice-Chair Johnston asked a global question. She wondered if the data was from ACOMS [Alaska Corrections Offender Management System]. Ms. Di Pietro responded in the affirmative.

Vice-Chair Johnston suggested that the people on the Criminal Justice Commission were the right people at the table. She wondered how many times the commission met and what the statutory requirement was.

Ms. Di Pietro noted that the commission met about every other month, although they were only required to meet 4 times per year. The commission had work groups that typically met in the off months. The commission has had at least one meeting since the new administration took office. The was another meeting scheduled in the current month. The new commissioners either came themselves or sent representatives. The commission had not stabilized around the new members yet. She noted that the public defender membership was currently up in the air.

Vice-Chair Johnson noted that the committee had bumped up against the end of meeting time.

Representative LeBon referred to slide 23. The slide showed a period from 2010 to 2018. He noted that slide 21 and slide 22 went back to 2015. He wondered if it would help the committee to understand trends by looking at the same 8-year period on slides 21, 22, and 23. Ms. Di Pietro was happy to make a change to slide 23.

Co-Chair Foster indicated that Co-Chair Wilson was presenting a bill in another committee but wanted members to review the remainder of the slide presentation on their own.

Ms. Di Pietro thanked the committee for the opportunity to present. She drew attention to slide 28 had some great feedback about how DOC was working on its probation and parole discharges.

Co-Chair Foster thanked Ms. Di Pietro for her work. The committee would adjourn until 10:00 A.M. the following day, Saturday, April 27, 2019, at which time discussions would continue on HB 20.

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ADJOURNMENT

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The meeting was adjourned at 3:36 p.m.