HOUSE FINANCE COMMITTEE
April 27, 2019
2:02 p.m.

2:02:30 PM

CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 2:02 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

Anthony Newman, Program Officer, Division of Juvenile Justice, Department of Health and Social Services; Nancy Meade, General Counsel, Alaska Court System; Kelly Howell, Director, Division of Administrative Services, Department of Public Safety; Michael Duxbury, Deputy Commissioner, Department of Public Safety; Kelly Goode, Deputy Director, Department of Corrections; Representative Matt Claman.

PRESENT VIA TELECONFERENCE

Robert Henderson, Assistant Attorney General, Department of Law; Jennifer Winkelman, Director, Division of Probation and Parole, Department of Corrections; Mike Coons, Self, Anchorage.

SUMMARY

HB 20 SEXUAL ASSAULT EXAMINATION KITS

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

Co-Chair Wilson reviewed the meeting agenda.

#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."

2:04:32 PM

ANTHONY NEWMAN, PROGRAM OFFICER, DIVISION OF JUVENILE JUSTICE, DEPARTMENT OF HEALTH AND SOCIAL SERVICES, referenced the adopted committee substitute (CS) version [committee substitute for HB 20, Work Draft 31-LS0253\C (Radford, 4/26/19) that was adopted during the earlier 10:00 a.m. 4/27/19 meeting] and explained how it affected the division. He reported that on page 13, Section 22 regarding electronic monitoring, the CS changed the crime of escape in the third degree. He read from the bill:

(3) while under official detention for a misdemeanor, (A) removes, tampers with, or disables the electronic monitoring equipment; or (B) without prior authorization, leaves one's residence or other place designated by the commissioner of corrections or the commissioner of health and social services for service by electronic monitoring;

Mr. Newman confirmed that the Division of Juvenile Justice (DJJ) placed electronic monitors on juveniles and noted that the division believed the provision was a useful tool for the small number of youths placed on electronic monitors. He understood that fewer than 12 juveniles were placed on the monitors at any given time.

2:05:54 PM

Vice-Chair Johnston asked whether a felony charge remained on the record of a youth who was placed on electronic monitoring. Mr. Newman responded that a felony adjudication

for juveniles remained on their record. However, confidentiality laws required that the information was not shared with others.

Representative Carpenter clarified that a juvenile that tampered with their electronic monitoring would be charged with a felony. Mr. Newman responded in the affirmative if the crime of escape in the third degree was a felony.

2:07:42 PM

Representative Knopp asked whether a juvenile felony charge would carry over to their adult record.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, understood that the charge was handled by DJJ and the juvenile was adjudicated rather than convicted of a felony. The felony adjudication stayed on a person's record within the Department of Public Safety's APSIN (Alaska Public Safety Information Network) system but was not published publicly. She qualified that exceptions existed for juveniles waived into adult court where felony convictions were a matter of public record.

Representative Knopp had concerns with a felony showing up on a juvenile's records for less serious crimes like escape. He was not 100 percent comfortable with that idea.

Representative Merrick learned that a base station was required for an ankle monitor. She was wondering if the base station was interpreted as part of the monitoring equipment. She read the phrase from the bill, "removes, tampers with, or disables the electronic monitoring equipment." She wondered what happened if some else tampered with the equipment. Ms. Mead deferred to the Department of Corrections (DOC) for questions regarding electronic monitoring equipment; she was not familiar with how the devices worked. She deduced that tampering with any piece of the electronic monitor was included in the statute. Representative Merrick wanted to ensure that a defendant was not blamed for tampering with equipment they did not alter.

Co-Chair Wilson deferred the question until knowledgeable testifiers from DOC were available to answer questions regarding electronic monitoring.

2:11:21 PM

Representative Josephson liked the committee substitute for HB 20. He cited the Class C felony issue for drug possession. He wondered who the experts were for [treatment] programs or options and their availability. He expressed interest in imposing conditions on the defendant like inpatient treatment. He wanted to provide an opportunity for the drug user to avoid felony charges if they carried out the conditions. He wanted to know what all the available options were before he crafted an amendment. Ms. Mead pointed out that one of the provisions of SB 91-Omnibus Crim Law & Procedure; Corrections [CHAPTER 36 SLA 16 - 07/11/2016] created the very mechanism he was referring to, called the Suspended Entry of Judgement (SEJ) which was a tool for suspending a judgement. The provision was not being repealed. She noted that it was different from a Suspended Imposition of Judgement (SIJ). She explained that if the defendant pleaded guilty, he could enter into a deal with a prosecutor for a suspended judgement under a probationary term that could include treatment or other conditions. Once the defendant met the required conditions, the case would be dismissed. She referenced John Skidmore's [Director, Criminal Division, Department of Law] earlier testimony that he hoped to employ SEJ more often for cases like drug possession. She suggested talking with someone from the Department of Health and Social Services (DHSS) or the Mental Health Trust Authority to find out about program availability.

Co-Chair Wilson was concerned about the court ordering treatment that did not exist in certain areas of the state. She wondered if the judges were provided a list of programs available and their locations. Ms. Mead thought it was generally true that judges in Anchorage were aware of the available programs in Anchorage. She clarified that a judge did not order treatment to any specific program in any area of the state. She indicated that a discussion had already occurred between the prosecutor, the defense, and the defendant where everyone agreed to the course of action, particularly with an SEJ or deferred sentencing. The court could not impose an impossible condition since the conditions were negotiated in advance of the hearing. However, treatment as a condition of probation was different because the court would not know where a person would want to live after they fulfilled their sentence.

2:16:37 PM

Co-Chair Wilson had a question regarding the pretrial tool. She asked if the courts saw validity in the pretrial tool. Ms. Mead suggested that some judges liked the tool, and some did not. She continued that Judiciary did not take an official position on the tool and because it is the law the judge and attorneys referred to it. She could not comment further on the use of the tool. Co-Chair Wilson deduced that if the pretrial tool was merely advisory, it would mean that a judge could use their own discretion and "not be forced into a decision." Ms. Mead reminded the committee that SB 54-Crimes; Sentencing; Probation; Parole [CHAPTER 1 4SSLA 17 - 11/26/2017] fixed the issue regarding mandatory bail statutes requiring mandatory release dependent on the tool's score. The law currently operated under the presumption of release unless clear and convincing evidence was presented to demonstrate a threat to public safety or failure to appear. She characterized the tool currently as essentially advisory and for serious felonies or any crime against a person where the judge had no presumption. The judge would be able to use the tool in a strictly advisory capacity if all presumption was eliminated, returning to how judges functioned prior to SB 91.

2:20:59 PM

Vice-Chair Johnston asked how much sentences were increased for drug traffickers versus drug users in the CS.

KELLY HOWELL, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF PUBLIC SAFETY, deferred the answer to Deputy Commissioner Duxbury who prior to his current position was the department's commander of the statewide drug enforcement unit.

Representative Josephson discussed the relevance of provisions regarding DNA samples in relation to rape kits in the governor's version of the crime bill. He hoped the department would provide an opinion about the provisions having to do with submitting a DNA sample. Ms. Howell explained that the provisions for qualifying offenses in the governor's crime bill made refusal to provide DNA evidence upon arrest a crime. She added that currently refusal was legal. She indicated that DNA evidence collection related to the sexual assault rape kit testing that was not collected via refusal would not be entered

into the Combined DNA Index System (CODIS). She deferred to the crime lab for answers regarding when DNA evidence was entered into CODIS.

Representative Sullivan-Leonard had not properly digested everything in the new CS. She wondered where she could find vehicle theft provisions in the CS. Ms. Howell deferred to the Department of Law for the answer (DOL).

2:26:05 PM

Vice-Chair Johnston was trying to understand the impact of increasing the sentencing for drugs. She wondered if the sentences were increasing for drug dealers versus drug users and how that related to the quantity of drugs involved.

MICHAEL DUXBURY, DEPUTY COMMISSIONER, DEPARTMENT OF PUBLIC SAFETY, offered that it was difficult to determine what a large versus small quantity of drugs was. He relayed that when drugs were classified as Schedule 1A or 2A etc., the potency, lethality, and the drugs impacts were significantly different even among the various Schedule 1A drugs. He exemplified consulting federal Drug Enforcement Administration (DEA) chemists to determine potency differences between Schedule 1A drugs. He was informed that an oxycodone would be given a power of 1, morphine was given a power of 10, heroine was assigned a power of 100 and fentanyl was given a power of 1000. In addition, car carfentanil an additive used in Heroine or other opioids would be given the power of 10,000. He stated that a single gram of heroine equated to a fourth of a packet of sugar and was a typical amount for daily addicts. Conversely, the amount of fentanyl that covered a date on a penny was a lethal dose. Therefore, one gram of fentanyl could potentially kill many people. He indicated that making small amounts of drug possession a felony was intended to occur with SEJ and SIJ. A one-time incident did not necessarily result in a large sentence. He wondered if he had answered the representative's question. Vice-Chair Johnston responded, "Sort of." She was trying to find the fine line of sentencing that was appropriate for users and was uncertain she supported the "jump" to making users felons. She wondered how effective pressuring drug users to "squeal on their dealer" was and whether the sentences were being increased for the user who dealt versus the major dealer, where it actually might assist in taking drugs off

the market. Mr. Duxbury responded that the pre-SB 91 sentences were trying to better address the major dealer. He addressed her questioning of whether harsher sentences were appropriate for addicts to induce them to treatment or in compelling them to inform on the dealer. He believed that it was not beneficial to "put addicts in jail." He related that currently users who sold very small quantities in order to support their drug habit only received a citation. Therefore, nothing currently was available to incentivize accountability and treatment, or cooperation and assistance in catching a dealer. Traditionally, law enforcement was successful in catching the major dealer through the user/small dealer. He emphasized that previously sentencing for small quantities and the use of SEJ and SIJ were effective tools to accomplish catching dealers. Recently, many cases were handed over to the federal government for prosecution and the offender was sent out of state to federal prisons. He also mentioned that not having tools to use for the user/small dealer affected the quality of life issues for the public.

2:34:58 PM

Vice-Chair Johnston was looking at the difference between changing the sentencing between misdemeanors and felonies. She asked if the deputy commissioner saw any flexibility in keeping misdemeanors versus holding the felony over the user/small dealer's head. She surmised that SEJ and SIJ were more effective tools than increasing sentencing to felonies. Mr. Duxbury offered that he took a law enforcement perspective on the issues she raised. He deferred to Mr. Skidmore about the use of SEJ and deferred judgment tools. He reminded the committee that one gram of heroin mixed with fentanyl could kill 10 people. He wanted to stop the "insidious" small time dealing where the lethalness was worse than ever before. He acknowledged her point of view but worried about the deadly consequences of drug use.

Co-Chair Wilson talked about a constituent who was asked by the police to video tape a neighboring home where drug activities were taking place. She inquired whether the proposed changes in the CS would make it easier for the police to respond without asking for neighborhood surveillance. Mr. Duxbury did not want to reveal the surveillance tactics employed by the police. He reiterated that the ability to compel the person charged with

possessing a small amount of drugs to help identify the dealer might lead to a search warrant for a drug house in the scenario Rep. Wilson described. He thought that the bill would help the police acquire the reasonable suspicion and probable cause necessary for a warrant to enter a suspected drug house. Co-Chair Wilson asked whether the department was willing to take its drug sniffing dogs through the prison to identify drugs. Mr. Duxbury indicated that dog drug searches without probable cause would typically be a violation of privacy and law enforcement had to act in accordance with the state constitution. However, he was working with DOC to develop more ways to find drugs in prison and would be willing to use drug sniffing dogs for that purpose. Co-Chair Wilson asked if her rights were violated if a drug sniffing dog was walking through the airport. Mr. Duxbury responded that the scenario happened via a federal security regulation carried out through Homeland Security that allowed the Transportation Security Administration (TSA) to search for dangerous items such as bombs. He reiterated that the state could not search for drugs without probable cause.

2:42:06 PM

Representative Josephson understood the two options in the proposed Class C felony of either accepting the sentence or going to treatment. He wanted to understand how cooperation fit into the options. Mr. Duxbury indicated that law enforcement did not make offers to individuals by themselves; they worked in conjunction with a prosecuting attorney to discover what conditions would be important to the individual. Law enforcement approached the situation with its regulations and the constitution in mind. When they find an individual, who was willing to cooperate and share information the process was always done in consultation with DOL.

Representative Carpenter questioned whether inmates had a right to privacy and if dog searches were prohibited in prison. He asked for clarification. Mr. Duxbury responded that he was unsure of the legality of the issue and would work collaboratively with other involved agencies. He would seek legal guidance from the Department of Law if the policy was under consideration.

Co-Chair Wilson commented that she was aware that DOC had one trained drug sniffing dog and was trying to work with DPS to establish an agreement.

2:46:48 PM

Representative Sullivan-Leonard asked whether the CS contained harsher sentences for repeat vehicular theft.

ROBERT HENDERSON, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), explained that vehicle theft was a Class C felony offense. He cited page 4, line 2, Section 33 of the CS and noted that the CS adjusted the presumptive ranges for Class B felonies and did not adjust Class C felony offences. He added that for a first time Class C felony vehicle theft the presumptive term was zero to two years.

Representative Carpenter wondered whether there was a presumptive right to privacy that would prevent law enforcement from using a drug dog to search for drugs. Mr. Henderson replied that all Alaskan citizens had a "heightened" right to privacy that was greater than the provisions in the US Constitution. Prisoners had lesser rights to privacy and search dogs were permitted in prison. Representative Carpenter asked if the dog could belong to another agency like DPS. Mr. Henderson responded in the affirmative.

2:49:43 PM

Representative Merrick asked whether corrections officers were subject to the same privacy rights as prisoners. She had heard that many of the drugs had been coming into the prison through prison staff. Mr. Henderson wanted to further explore the issue. He reiterated that prisoners had a lesser expectation to privacy and a correctional facility had a lower expectation as well. However, a corrections officer as an employee had an expectation of privacy at work. He deemed that there would be protections and circumstances that would protect privacy rights. He wanted more time to "think through the nuanced legal issues" before he could advise DOC on the matter.

Co-Chair Wilson requested follow-up. She wanted to ensure privacy rights but also the ability to detect drugs in prison. She shared that she had received a letter from an

inmate that stated inmates find it easier to find drugs inside the correctional facility than on the outside. She characterized the problem as a "major issue."

2:52:01 PM

Representative Josephson asked whether the reason the CS for HB 20 and the governor's crime bill did not adjust Class C felonies was the belief that the issue was addressed in SB 54. Mr. Henderson replied that SB 54 did change the presumptive sentencing for first time C felons from an 18-month probationary sentence to a zero to two-year sentencing range. He clarified that the governor's bill did address presumptive ranges for Class C felonies. Representative Josephson spoke to vehicle theft and noted that a colleague introduced a mandatory minimum bill. He related that the administration's crime bills did not contain mandatory minimums. Mr. Henderson responded in the affirmative.

Co-Chair Wilson asked Mr. Henderson how the department would measure the impact of the changes being made in the bill. She wondered how effective the decisions being made were. Mr. Henderson offered that the question was "very broad." He explained that the criminal justice system was based on discretion and relied on the professional judgement of its practitioners. The system was adversarial by design. He pointed to the "discretion" that existed prior to SB 91 that compelled where the appropriate sanction was. He noted that prior to SB 91 the range for a class A felony offense was 7 to 11 years if a dangerous instrument was involved. He believed that the court could assign the appropriate sentence based on the circumstances of the offense. He concluded that the system was based on the discretion of highly trained judges weighing the information presented by the prosecution and defense that could offer aggravating or mitigating factors. He endorsed returning the law to pre-SB 91 standards. He emphasized that SB 91 reduced the amount of discretion in the system.

2:56:36 PM

Representative Knopp stated his unfamiliarity with the judicial system. He wondered if the judge had the discretion to accept or reject the deal or change the deal "on the spot" when a defense and a prosecuting attorney reached a deal. Mr. Henderson responded that it depended on

how the plea deal was structured. He indicated that in general, a judge had the discretion to only accept or reject the agreement. The charging decision rested solely with the prosecution. The court could look at the sentence and determine whether the sentence was too harsh or too lenient and would ask the parties to adjust the agreement but could not impose a different sentence. Representative Knopp asked whether a mechanism was in place that affords a judge the discretion. He felt that the discretion always ended up with the prosecutors or defense attorneys and not the judge. Mr. Henderson replied that the answer lied in the recognition that most cases were resolved via a plea agreement, which was the function of volume. The system did not contain the capacity to take all cases to trial. He thought that sentencing ranges provided discretion to the prosecutor and the judge in plea agreements. The court would look at the plea agreement. He agreed that prosecutors had a "tremendous amount of discretion in the criminal justice system." He felt that prosecutors took the matter of discretion very "seriously." He agreed that when more discretion was granted to the system more discretion was given to prosecutors.

3:01:06 PM

Representative Josephson referenced credit for time served under electronic monitoring (EM) while on bail. He noted the use of the word "may" regarding credit for time served and wondered why a judge would very likely grant a certain amount of credit. He pointed out that may could mean "maybe or maybe not." Mr. Henderson cited the statute that Representative Josephson referenced AS 12.65.027 (d) that used the words "may grant." He added that another provision stated, “may grant if.” He qualified that that the statute was typically interpreted as "if the offender did not commit a new criminal offense" time served may be granted. He was unsure whether the legislature intended that the judge had complete discretion, but the way many judges interpreted the statute was as a directive to grant credit if the offender did not commit a new criminal offense while on bail. He furthered that the one case, Bell versus State [1983 - Alaska Court of Appeals] that had interpreted the subsection and was carried through to the Court of Appeals. He noted that the case started with the proposition that if the offender did not commit a new criminal offense while on bail, he was entitled to EM credit. He called it "the foundational premise" of the case. Mr. Henderson provided a

hypothetical scenario. He suggested that if the legislature intended a different goal, then it would not be the practitioner's interpretation. Representative Josephson deduced that the small word "if" "energized the word "may" to lean towards awarding the credit in conjunction with the Bell case. Mr. Henderson responded in the affirmative.

Co-Chair Wilson inquired about how to fix the issue. Mr. Henderson suggested the legislature clarify the statute. Co-Chair Wilson asked whether the legislature could have taken more time to clarify the statute or did the problem lie in how the statute was written. Mr. Henderson agreed with the former statement and reported that the appellate courts would always look at legislative intent and how much weight was placed on the intent depended on how clear the underlying statute was. He favored clearly written statute in the situation. Co-Chair Wilson agreed that clarity was the superior choice.

3:06:30 PM

Representative Josephson offered that the defendant was entitled to an "order" that rationalized the judge's decision and was another problem with not granting the credit. The way the statute was written it could appear that the judge's decision was "arbitrary" and "capricious" even if the judge felt that the defendants past violent acts negated or precluded credit. He asked for comment. Mr. Henderson maintained that the representative made a very good point. He voiced that the time served should be left to DOC and the courts.

Co-Chair Wilson thought that the bill would remove the pretrial EM altogether. Mr. Henderson answered in the affirmative. He relayed that the court was really doing two separate analysis. In the pretrial phase, the judge assessed whether the person was a flight risk or posed a danger to the public, but when sentencing many factors were considered. He expounded that the court was not considering the same sentencing factors when granting Pretrial release and was granting credit for time served under pretrial considerations that under sentencing were not the same considerations.

3:09:10 PM

Representative Carpenter thought that if a person was on electronic monitoring, a good defense strategy would accumulate time served to minimize the jail time the offender served. He asked whether the scenario was happening. Mr. Henderson believed that the scenario occurred. He thought that it was a beneficial strategy to lengthen the time on bail whether on EM or for cases that resulted in incarceration. There was an incentive to delay a case and remain in pre-trial status for as long as possible. Representative Carpenter deduced that time and money was wasted in the strategy and thought it was a significant issue.

Co-Chair Wilson indicated that the Department of Corrections was available to answer questions.

Representative Merrick asked whether the EM base station was included in terms of tampering with the devise and how they were managed so they were not tampered with by someone other than the offender. She had learned that EM technology did not utilize GPS technology and solely relied on a base station unit.

JENNIFER WINKELMAN, DIRECTOR, DIVISION OF PROBATION AND PAROLE, DEPARTMENT OF CORRECTIONS (via teleconference), clarified that GPS monitoring equipment was used for EM except in some areas where it didn't work. She explained that the equipment on the ankle was the primary concern related to tampering. Officers stationed at the base station were trained in reading the alerts and working with the manufacturer to determine tampering or equipment issues. She had not experienced another person tampering with the GPS system. The GPS relayed information regarding the defendant in real time.

3:15:29 PM

Representative Merrick asked if ankle bracelets were monitored 24 hours a day 7 days a week. Ms. Winkelman answered in the affirmative. She explained that the equipment was monitoring the bracelets continuously and the data was entered into a database that the officers could access at any time. However, if an alert happened the call center immediately alerted the probation or parole officer to respond. The alerts went off immediately for things like low batteries, tampering, fit, or proximity. Simultaneously, the officers had access to the data base on

a computer system at any time. She likened the call center to an emergency 911 call center. Representative Merrick asked how the ankle monitors were tampered with. She wondered if it was difficult to tamper or remove them. Ms. Winkelman was aware that the EM had to be easier to remove in case of an emergency. She reported that the percentage of escapes in the prior years was minimal. She had looked at the amount of escapes that happened in the prior 12 months and noted it amounted to less than one percent. The department had done a risk assessment prior to placing someone on EM. She added that when an alert was sounded, it was investigated immediately to determine the cause. If the conclusion was tampering or removal, the defendant was placed back into custody. She emphasized that very few offenders tampered with the equipment.

Co-Chair Wilson wondered how a person could get lost under EM. Ms. Winkelman was unable to answer the question. She noted it depended on the reliability of the GPS system and guessed that it would happen in area without GPS coverage.

3:19:56 PM

Representative Sullivan-Leonard requested information concerning misconduct involving a controlled substance. She referred to page 14, Section 24, which was the point HB 49-Crimes; Sentencing; Drugs; Theft; Reports was partially inserted into HB 20 to form the CS. She communicated that her community's overwhelming concern was regarding drug users, drug offenders, drug distributors, and meth producers and the "revolving door" of offenders not being sentenced for longer periods. She asked whether HB 20 would close the gap that created a revolving door of offenders going in and out of prison. She wondered whether DOC was prepared for a larger prison population and rehabilitation services.

KELLY GOODE, DEPUTY DIRECTOR, DEPARTMENT OF CORRECTIONS, deferred to DOL and the Court System regarding sentencing since DOC was on the "downstream" side of sentencing and sentencing laws. She relayed that DOC was given time, until the following Monday, to provide a fiscal note for the bill. The department was carefully scrutinizing the bill to prepare accurate fiscal notes and present "real numbers" to the committee.
Representative Carpenter asked how the present pretrial electronic monitoring compared to the less than one percent

escape statistic for sentenced individuals on EM. Ms. Goode deferred the question to Ms. Winkelman.

Ms. Winkelman answered that she would provide the committee current numbers. She commented that the crime was not charged with escape. Pretrial escape was considered violating conditions of release or "VCOR". She needed to compile the information.

Co-Chair Wilson interposed that she heard discussions regarding eliminating Pretrial EM, which currently included over 1,000 individuals. She asked Ms. Winkelman to provide an estimate of people who would reject EM if they did not receive credit. She wondered how the department could measure the scenario. She inquired whether under the current risk assessment tool process, the defendant had an opportunity to choose jail time instead of EM. Ms. Goode deferred to Ms. Meade and DOL to help answer the question. Co-Chair Wilson reiterated her question.

Ms. Winkelman also deferred to Ms. Meade for assistance. She explained that very rarely would a person decline to be released, if given the option. She observed that individuals released on Pretrial EM often did not have a home or supportive environment to return to versus inmates released on EM. The department would not release an inmate on EM without establishing the residence they returned to was livable. Some pretrial EM involved releasing individuals without support in place.

Co-Chair Wilson asked Ms. Mead to answer the question. She relayed her question again. She relayed a hypothetical scenario. She wondered if an offender had to accept EM instead of jail time. Ms. Mead thought Co-Chair Wilson's hypothetical scenario was unlikely, which made it difficult to answer. She hypothesized that a homeless person without the option of plugging in the monitoring device might turn down EM even if their pretrial tool score recommended release. She suggested that if the prosecutor agreed, the judge would reverse the finding and likely offer cash bail that would effectively keep the individual in bail. She thought it highly unlikely that a judge would grant the request of an individual to be placed in jail if EM was possible to be carried out safely just because they desired jail time for credit. She maintained that judges do not impose jail as housing and thought the idea was "farfetched." Co-Chair Wilson merely wanted to know if the

offender legally had the choice. She continued to address her hypothetical scenario and deduced that the tool created the choice unlike the system prior to SB 91. Ms. Mead expressed some confusion with the scenario and relayed that it was a difficult hypothetical to provide an answer for. She answered that prior to SB 91 a judge could order certain conditions of release and the person could choose not to meet them as was still currently the case. She could not imagine a judge taking up a jail bed for someone turning down pretrial release just because they refused it. Co-Chair Wilson restated her question and concerns with over 1,000 individuals on EM. She wondered if her scenario was likely a reality. Ms. Mead did not believe Co-Chair Wilson's scenario was realistic even if time served credit was eliminated.

3:33:55 PM

Co-Chair Wilson OPENED Public Testimony.

3:34:25 PM

MIKE COONS, SELF, ANCHORAGE (via teleconference), noted that he was the President of the Greater Alaska Chapter of AMAC. He was confused with the process by which HB 20 was being vetted. He wondered whether HB 20 was a substitute for HB 49 and HB 52-Crimes; Sex Crimes; Sentencing; Parole that were added to HB 20. He contended that some members of the House were "leading a concerted effort" to "tie up" the governor's crime bills that overturned SB 91. He talked of the prior year's passage of SB 54 being a watered-down effort to address crime. He thought the current process was equal to "smoke and mirrors" and deceptive. He believed that citizens voted for the governor to address crime and the PFD. He demanded that the committee address the governor's crime bills. He urged members to either support the people or the criminals.

Co-Chair Wilson commented that there would be other opportunities for public testimony in the future.

Representative Knopp asked about the acronym that Mr. Coons mentioned. He asked Mr. Coons to repeat his organization's name. Mr. Coons responded AMAC was the Association of Mature American Citizens.

3:37:11 PM

Co-Chair Wilson CLOSED Public Testimony.

Representative Merrick thought the current topic was the most important subject of the session.

Co-Chair Wilson indicated the committee would take whatever time was necessary.

Representative Merrick asked about what was being done about drug contraband in the state's correctional facilities and how prevalent the problem was. Ms. Goode was unprepared to answer the question fully. She offered that DOC was aware of the problem and constantly addressing contraband in its correctional facilities. The correctional officers were trained to identify contraband. The commissioner was always seeking new ways to address the issue. She stressed that the issue was a high priority for DOC.

Representative Carpenter asked if DOC had a policy that addressed making sure people were aware of their rights being limited upon entry of correctional facilities. He asked about the privacy policies and process for employees and visitors. Ms. Goode would provide the policies to the committee. Representative Carpenter asked if the department saw a problem with prosecuting employees who bring drugs into prison. Ms. Goode related that the current commissioner stated she would seek prosecution for employees providing drugs to prisoners. Representative Carpenter asked whether she knew of any prosecutions under the new administration. Ms. Goode replied in the negative but noted that any pending cases would be confidential.

Co-Chair Wilson inquired whether the drug dogs would be prohibited from entering some parts of the correctional facility to check for drugs. Ms. Goode replied in the negative.

Representative Tilton asked whether the policies were the same for all correctional facilities statewide. Ms. Goode answered that in general, DOC policies covered all institutions that were pertinent to a specific institution, with some exceptions. However, the overall policies that managed all the department's institutions were the policies for the entire department. Representative Tilton asked whether the commissioner could change a specific institution’s policy. She exemplified a policy specific to

a facility that allowed for an event that could result in contraband entering the facility. Ms. Goode replied that the commissioner would have the ability to alter the policy. She agreed that the allowable events were an area of risk for contraband.

3:44:44 PM

Representative Knopp highlighted the high level of behavioral health issues at correctional facilities. He was informed of the rehabilitation and educational programs DOC offered and was "astonished" at the number reported. He addressed the mental health support provided to inmates. He wondered how the support was provided and who mandated them. He referenced the programs and rehabilitation services. He wondered if any statutes drove offering the rehabilitation services or whether it was a good faith effort on the part of DOC. He wondered whether out of state facilities would be chosen that offered the same sort of resources if the services were mandated via statute. Ms. Goode responded that 68 percent of inmates had mental health issues and 22 percent had severe issues. She was uncertain what guided the policy regarding mental health support and would provide the answer. Alaska's constitution mandated reformation, which drove the rehabilitation and educational opportunities. In terms of a request for proposal (RFP) for sending prisoners to an out of state facility, the facility was mandated to provide the required services.

Representative Tilton referenced the money spent on educating prisoners in relationship to inmates in the system and thought spending the dollars should have the best impact on Alaska's prisoners. She asked how often the educational programs were reviewed for efficacy and whether funds were readjusted towards more effective rehabilitation programs. Ms. Goode reported that the current administration shared the concern and learned that many programs were not measured for effectiveness. She agreed that the dollars should be spent on programs that had the best impact on reforming inmates and helping become law abiding citizens. She emphasized that the department was addressing the issue.

Co-Chair Wilson cited the severe mental health inmate population. She questioned whether DOC had the expertise to support the severely mentally ill. She asked whether the

department had looked at certain out of state facilities that could offer better assistance for those inmates with severe behavioral health issues. Ms. Goode was unable to answer the question and offered to provide the information. She was uncertain the facilities existed. Co-Chair Wilson surmised that correctional facilities were not set up to help the severely mentally ill. She expounded on her opinion of Alaska's prison systems. She ultimately wanted to know whether the changes the legislature was embarking on would produce desired outcomes and how they were best measured. She believed in punishment but also in rehabilitation. She deemed that "the system was made to fail and not to succeed and wondered why."

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

Co-Chair Wilson relayed that Amendments were due by 5:00 pm on Monday, April 29, 2019 to Legal Services. She reported that committee would not be meeting on Sunday, April 28, 2019 at 1:30 P.M.

#
ADJOURNMENT

3:55:06 PM

The meeting was adjourned at 3:55 p.m.