

HOUSE FINANCE COMMITTEE
May 1, 2019
1:34 p.m.

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CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 1:34 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

John Skidmore, Director, Criminal Division, Department of Law; Kelly Goode, Deputy Commissioner, Department of Corrections; Kelly Howell, Director, Division of Administrative Services, Department of Public Safety; Representative Steve Thompson; Representative Matt Claman.

PRESENT VIA TELECONFERENCE

Katherine Monfreda, Director of Division of Statewide Services, Department of Public Safety.

SUMMARY

HB 49 CRIMES; SENTENCING; MENT. ILLNESS; EVIDENCE

HB 49 was HEARD and HELD in committee for further consideration.

Co-Chair Wilson reviewed the agenda for the meeting.

#hb49

HOUSE BILL NO. 49

"An Act relating to criminal law and procedure; relating to controlled substances; relating to probation; relating to sentencing; relating to reports of involuntary commitment; amending Rule 6, Alaska Rules of Criminal Procedure; and providing for an effective date."

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AT EASE

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RECONVENED

Co-Chair Wilson relayed the committee would be hearing public testimony for HB 49 at 5:00 p.m.

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, would be providing a sectional analysis for the committee substitute (CS) for HB 49 that came out of the House Judiciary Committee. Co-Chair Wilson directed him to distinguish what was in the original version of the bill and the Judiciary version.

Mr. Skidmore began with Sections and Section 2 found on pages 1 through 3 of the bill. The sections were conforming laws for changes in the drug laws that came later in the bill. They were conforming changes made to Alaska's murder statutes that referred to drug crimes. It was slightly different than what was in the original version of the bill due to the differences in the drug laws. The changes made in each of them were the statute numbers. The numbers differed between the 2 bills because of the differences made in the original HB 49 and the Judiciary version currently before the committee.

Mr. Skidmore moved to Section 3 pertaining to the elimination of the marriage defense. The marriage defense was not found in HB 49 but was found in HB 52. The provision in HB 49 was different than that of HB 52. He

explained that for certain sexual assaults, being married in Alaska provided a complete defense to an act of sexual assault. It occurred in various sections of sexual assault that had to do with the mental functioning of the victim at the time of an assault. Alaska had certain statutes that talked about when a victim was mentally incapable, incapacitated, or unaware that a sex act was occurring. It was those type of provisions that made marriage a defense in current Alaska law. He described the concept as outdated. He argued that the issue needed updating. The bill still allowed marriage as a defense in 4 areas and eliminated it in 2 instances. The 2 instances that the marriage defense was eliminated was if the victim was incapacitated or if the victim was unaware a sex act was occurring. Both terms were defined in statute. Marriage defense was left intact when penetration or sexual contact between 2 people and one of the individuals was mentally incapable and in the care of the other.

Mr. Skidmore continued that in statute [AS 11.41.470(4)], a person was mentally incapable when they were suffering from a mental disease or defect that rendered them incapable of understanding the nature or consequences of the persons conduct including the potential for the harm to that person. He clarified he was talking about Subsection 4 rather than 2 which he misstated. He used the example of a person suffering from dementia or Alzheimer's that was placed in the legal care of their spouse. A person suffering from dementia or Alzheimer's, although they might not understand the circumstances or nature of the conduct, could be a victim because - the spouse caring for them could still engage in sexual behavior with them even when the person did not fully understand what was happening. He used his grandmother's situation as an example. His grandmother had Alzheimer's and did not know on a daily basis who his grandfather was, who her children were, or who her grandchildren were. At times, it would cause her to be combative. The bill indicated that if it was their spouse that was taking care of them, it was okay for the person to satisfy their sexual desires or gratification even though the person they were going to satisfy themselves with did not recognize who they were or what was going on. HB 49 would allow the behavior.

Mr. Skidmore continued that what was removed by the provision had to do with the person that was incapacitated or unaware. A person was incapacitated when they were

temporarily incapable of appraising the nature of one's own conduct. An example would be when a person was intoxicated and passed out. Marriage would no longer be a defense in that circumstance. He thought the bill was a step in the right direction. The policy decision that the legislature would have to make would be whether the bill took the step far enough. In the other bill he had referenced, the provision was eliminated for all but sexual assault in the fourth degree. Sexual Assault in the fourth degree was when there was criminalized sexual behavior between a corrections officer and somebody in custody, between a Department of Juvenile Justice Officer with somebody in custody, between a law enforcement Officer with somebody in custody, between a probation officer and somebody in probation, or between a juvenile probation officer with somebody on probation. In those situations, if the 2 people were married, then marriage could be used as a defense. One person's employment would not criminalize sexual behavior if they were married. Only the two circumstances he mentioned remained in the bill.

Vice-Chair Johnston asked how the law would apply for someone in a coma. Mr. Skidmore responded that a person in a coma would be considered temporarily incapable of appraising the nature of one's own conduct. Marriage would not be a defense to someone in a comma under HB 49. Currently, under law it was a defense, but the bill would change it for a coma.

Vice-Chair Johnston clarified that a coma meant a temporary condition or a vegetative state. Mr. Skidmore restated that the definition of incapacitated was temporarily incapable of appraising the nature of one's own conduct or physically unable to express willingness to act. It was different from suffering from a mental disease or defect. He did not believe a coma would be characterized as a mental disease or defect.

Representative Josephson did not believe the provision solved the issue. He asked about a person with dementia who might initially consent then not recall giving consent. He asked Mr. Skidmore to comment.

Mr. Skidmore thought Representative Josephson was describing someone who at one point had consented but could not recall consenting later on. In such an instance, when he thought of prosecution, he typically walked himself

through how the criminal justice system worked. He began with the report to law enforcement. He looked at how an incident was reported to law enforcement as a crime that needed to be investigated. Once an incident was reported and investigated, it would be referred to the prosecutor's office. He would then look at how the prosecution would demonstrate how a sexual act occurred if the person that was the victim had mental issues and had difficulty remembering that they provided consent. Assuming that hurdle could be cleared, the prosecution would have to have confidence that the person with the mental illness was capable of providing consent. Another question would be, in the scenario where a person had a mental illness, whether they were capable of providing consent. The choice was whether the state would have a law that would protect the individual or whether the caretaker would be allowed to have sex with their spouse. He returned to his personal experience with his grandmother with Alzheimer's. He understood the point Representative Josephson was making.

Representative Josephson indicated that it was not his point, but one that had been raised. Mr. Skidmore corrected himself, that it was a point that had been raised and a policy call the legislature would have to make.

Representative Knopp referred to Section 3, line 21 and line 27 of the bill where it mentioned separation and divorce. He wondered about a couple that was separated and whether marriage defense would apply. Mr. Skidmore referred to Section 3(a)(1), lines 24-25, and pointed out that they were the same laws that existed previously. He furthered that what was being changed began in Section 2 where it talked about being married to a person and neither party having filed with the court for separation, divorce, or dissolution of the marriage. He clarified that if there was not paperwork filed in the courts indicating separation, divorce, or dissolution, then marriage could be used as a defense.

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Vice-Chair Ortiz understood how marriage defense went back significantly in time. He pointed out that both the governor's version of the bill and the version that emerged from the House Judiciary Committee reduced the circumstances in which the marriage defense would apply. He wondered if it was fair to say that the Judiciary version

was less restrictive. Mr. Skidmore responded that Vice-Chair Ortiz's statement was accurate.

Vice-Chair Ortiz asked what prompted the change. He wondered if there had been a significant increase in the number of cases. Mr. Skidmore responded that Vice-Chair Ortiz was correct. In the previous 2 to 3 years, there had been several cases reported to the department by victims claiming to have been sexually assaulted by their spouses. The Department of Law had to inform the victims that the law stated that it was not a crime. Many things occurred simultaneously bringing the issue to the forefront and contributed to the department's decision to propose a change in law.

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Representative Merrick noted that Mr. Skidmore had mentioned occupational scenarios in which the marriage defense was not a defense. Mr. Skidmore responded, "In which marriage is a defense."

Representative Merrick clarified, "So, is that if they are under the care of that person?" Mr. Skidmore responded in the negative. He referred to the applicable statute, sexual assault in the fourth degree (AS 11.41.427). He indicated that Subsection (a)(1-5) created a series of crimes. Sexual assault in the third degree (AS 11.41.425(a)(2-6)), had the same relationships. The difference between the two was that the higher level encompassed sexual penetration and the lower level was limited to sexual contact. In both scenarios, for example, it would be illegal for a corrections officer to engage in sexual penetration or sexual contact with someone in the care of the Department of Corrections (DOC) because it was considered an imbalance of power. Marriage would be a defense to those particular crimes. Therefore, in the instance of a corrections officer being married to a person in the custody of DOC, whether imprisoned or on electronic monitoring, marriage would be an acceptable defense. The elimination of the marriage defense helped to define where it was not acceptable - under circumstances where a person was incapable, incapacitated, or unaware or under the care of a spouse. It would be illegal for a spouse to engage in sex with their spouse in the instance where only the spouse knew that a person was incapacity and in their care for protection.

Representative Merrick asked how often there was a parole officer married to a parolee. She thought it made more sense that person would be under the direct care of DOC. Mr. Skidmore responded that it would be a conflict of interest to assign a parole officer to their spouse as a parolee. He thought it was broad enough to say that it could not be any parole officer for any parolee even if they were not direct supervision.

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Mr. Skidmore moved to Section 4 - Section 6 which dealt with online enticement. The sections were not found in the original version of HB 49. However, they were found in HB 52. Currently, if a person tried to entice a minor over a computer online to engage in sexual activity it would be criminalized. If the same person tried to engage with a minor face-to-face it would not be criminalized. In the committee substitute enticing a minor was not limited to online activity, it applied to enticing a minor to engage in sex.

Mr. Skidmore moved to Section 7 - Section 23 which talked about the removal of adjusting for inflation. The removal of adjusting the threshold between a misdemeanor and a felony by inflation every 5 years was removed in the current version the committee had in front of them in HB 49 and was removed in the original version of HB 49. There were two differences found in Section 14 and Section 17. Those versions were not found in the original version of HB 49, and some additional language was added. Section 14 added an identification document - the term to the crime of misuse or fraudulent use of an access devise or an identification document. The language was not in the original version. Section 17, pages 9-10, added a new crime for possession of vehicle tools. Possession of vehicle theft tools was similar to a statute that was possession of burglary tools. Particular items frequently used by car thieves were described and became criminalized. It was not originally found in HB 49 but was in the Judiciary version.

[2:01:02 PM](#)

Representative Josephson welcomed Mr. Skidmore to editorialize the section. Mr. Skidmore relayed that the bill noted motor vehicle theft tools such as a slim Jim, a master key, an altered or shaved key, a trial or jigger

key, a lock puller, or an electronic unlocking device. He thought the provisions would provide additional tools to law enforcement and to the prosecution to try to combat the rise in vehicle thefts that had occurred across the state.

Vice-Chair Ortiz asked Mr. Skidmore to comment on all of the sections with changes including Section 14. Mr. Skidmore replied that Section 14 was found on page 7 having to do with fraudulent use of an access device. The section added an identification document that was used with the intent to defraud. It was an excellent addition.

Co-Chair Wilson asked if finding a driver's license on someone other than who it belonged to was okay if fraud could not be proven. Mr. Skidmore responded that a person possessing someone else's identification would have to have the intent to commit a fraud. Simply having another person's driver's license would not be a crime by itself. He could have his wife's driver's license or his daughter's license. He could find someone's driver's license on the ground intending to return it. None of those examples were crimes. He would have to possess an identification with the intent to commit a fraud with it.

Co-Chair Wilson asked how intent would be proven. Mr. Skidmore relayed that the person would have to use the access device or obtained property or services with the knowledge that the access device or identification document was stolen or forged. The person would have to know the access device or document was expired, revoked, or canceled, or any other reason that the person's use of the access device or identification document was unauthorized. It had to be that a person had to use the document to commit a fraud.

Co-Chair Wilson relayed a personal experience. Mr. Skidmore reiterated that a person would have to use a driver's license with the intent to commit a crime or fraud.

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Mr. Skidmore moved to Section 24 on page 12 of the bill. The section talked about aggregating the value of thefts over a period of time to allow the aggregated value to be used in a felony or higher-level charge. The section specifically talked about the aggregation being for property being taken from a commercial establishment over a

6-month period. The amount was between \$750 and \$25,000 (the threshold to put a crime into a felony level). There was already a statute in place that allowed the state to aggregate the value of property, but that particular statute was not expressed in the way the one in section 24 was regarding it being over a 6-month period. It was intended to help commercial establishments that were repeatedly seeing someone take a little bit one day and come back the next. The repeat thief's offenses could be aggregated to the point of being a felony which had the potential for more serious consequences. The statute seemed to be a good idea. He was unclear how it would work in practice.

Vice-Chair Ortiz asked if the provision was included in the original bill. Mr. Skidmore responded that it was not.

[2:06:14 PM](#)

Mr. Skidmore continued to Section 25 on page 12 which dealt with the generalized threat statute or terroristic threatening as defined by law. The current law suggested that if a person called in a bomb threat to a school or other place and the person had no intention of carrying it out, it was a false threat and the crime of terroristic threatening. If a person called in a threat to shoot up a movie theatre or the school with the intention of carrying it out, it would not be a terroristic threat, nor would it become a crime of attempted assault until the person had taken a substantial step. The proposed threat, with no intention of carrying it out, would result in a crime in the proposed statute. The language was in the original version of HB 49 as well as in the Judiciary version. He indicated that the other body wanted to add some sideboards to the bill. However, they were removed on the House side.

Co-Chair Wilson asked if he was talking about a companion bill. Mr. Skidmore confirmed that he was referring to SB 32 which currently sat in the Senate Finance Committee.

Representative Sullivan-Leonard was looking at the removal of subsection (d) and suggested that there was the presence of biological warfare and terroristic acts that might take the form of a chemical or radiological component. She wondered why that language was removed.

Mr. Skidmore answered that the language in the proposed bill included the threat of placing a substantial group of the public in fear of serious injury. The language was not limiting like the previous description; it was broader. A threat of bacteriological, biological, chemical, or radiological warfare were still covered, but the section was broader because of some of the things that have occurred in society more recently.

Co-Chair Wilson thanked Representative Claman and Representative Thompson for joining the meeting.

Representative Josephson suggested that the references to biological and chemical remained in the first degree. He thought they had been untouched in any bill. He asked if those items were higher offenses. Mr. Skidmore replied that what Representative Josephson was referring to was terroristic threatening in the second degree. There was a terroristic threatening in the first degree and the concepts might be found in the higher level. He had not looked at the statutes, but it made sense.

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Representative Josephson asked if the other body wanted the sideboards severe enough that first responders took some step, in response to the threat. Mr. Skidmore explained that it required some sort of emergency response. It did not have to be first responders but some action, such as an evacuation of a building, resulting from the step. He mentioned it because of the discussions occurring.

Co-Chair Wilson appreciated the information.

Vice-Chair Ortiz asked if the Judiciary version of the bill made it more of a crime if someone called in, even if they had not taken any steps to carry out their threat. Mr. Skidmore responded that he was correct. Part of the impetus for a change in the law was some of the school threats that occurred in Anchorage and in Ketchikan. The provision gave law enforcement an additional tool in response to a threat.

Mr. Skidmore moved to Section 26 on pages 13-14 regarding harassment to the second degree. The language that was added (beginning on page 14, lines 1-4) addressed repeated sending of images of genitalia to another person when they

did not want it. It was not something that was in the original version of HB 49 but was found in HB 52.

Co-Chair Wilson clarified the section and pages being discussed. Mr. Skidmore indicated he was referring to Section 26, pages 13-14. She confirmed that the language was not in the original version of HB 49, but it existed in HB 52. Mr. Skidmore responded that she was correct. She asked if the language was the same in HB 52. Mr. Skidmore believed it was the same. He would have to compare the bills side-by-side. However, in general, it was the same concept.

[2:14:00 PM](#)

Mr. Skidmore moved to Sections 28-34 addressing drug crimes. He would review each section individually. Section 27 created a new crime that did not currently exist in statute called misconduct involving controlled substance in the second degree. The section would create a Class A felony for distribution. The distribution would be a Class A felony if it was greater than 100 grams of schedule IA substance (heroin, fentanyl, and other opioids) or over 200 grams of a schedule IIA substance (methamphetamine, cocaine, or other similar drugs). Tablets were also referred to - 200 tablets or 400 tablets. The idea was that the current scheme the state had for drug trafficking was being broken down by distribution of drugs by weight for both schedule IA and IIA drugs. Previously the law was written such that under a certain weight it was a C felony, over a certain weight it was a B felony. However, once a person reached the B felony level there was no consideration of quantity. However, once a certain level was reached, the charge would become a Class A felony. He indicated that the language proposed was not in the original version of HB 49.

Mr. Skidmore continued that another proposal had been to remove the quantities and simply have a Class A felony and a Class B felony without a weight attached. He recalled having reviewed the Knight case that had taken into consideration all of the differing factors. The language in the Judiciary version did not fall in line with his previous comments. The revised version tried to build on what was currently in statute. He clarified that the policy decision the legislature had to make was whether to build

on what was currently in law or shift back to what the state had in statute previously.

[2:16:40 PM](#)

Representative Sullivan-Leonard asked about an accountability measure for a person caught with 100 grams of heroin or fentanyl. She asked if they would have their hands slapped and assessed a fine.

Mr. Skidmore reported that under current law, a Class A felony had a sentencing of 3 to 5 years for a first offense. A sentence would be ratcheted up on a second or third offense. He would not characterize the punishment as a slap on the wrist. He would have to finish analyzing the bill to make sure no other changes were made regarding Class A felony sentencing. The next decision that would need to be made would be whether the legislature thought 3 to 6 years was sufficient time.

Representative Josephson recalled Mr. Skidmore's reading of the Knight decision and the key word he took from it was nuance. He opined that the judge had been very thoughtful and talked about weight not necessarily mattering. The judge suggested looking at the size of a community and the chemical make-up of a drug. He wondered how to codify the judge's decision. He asked about the 100 grams for the schedule IA drugs and the 200 grams for the schedule IIA drugs and wondered whether all the boxes were filled.

Mr. Skidmore responded that whether the weight of the crime was the correct mark was not his area of expertise. He suggested Representative Josephson seek answers from the Department of Public Safety (DPS) and Deputy Commissioner Duxbury who had worked in narcotics. He believed the quantities to be significant. His understanding of heroin was that a single dose was a tenth of a gram. He relayed that 100 grams equaled 1000 doses before it would be a Class A felony. His opinion was that the number was too high. He suggested returning to the old system. He argued that as far as codifying the judge's decision went, it was already codified. It was already built into the system for aggravators and mitigators for the different levels. When discussing amounts, the values were different depending on location. He thought having something written into statute in such a large state did not allow for nuances.

Co-Chair Wilson suggested that members would have the opportunity to address questions to DPS.

Vice-Chair Ortiz asked if the departments had been afforded the opportunity to weigh in on the issue. Mr. Skidmore did not know.

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Representative Carpenter asked if the strength of a prosecutor's case was based on quantitative evaluations. He wondered if quantity was the best indicator of intent to distribute or sell drugs to other people.

Mr. Skidmore replied that when prosecutors built cases for drug distribution prior to the change in the law, the quantity was one factor. However, other things were taken into consideration such as packaging materials, large amounts of money, and ledgers showing distributions being made. He reflected on a case that dealt with the distribution of marijuana before it had become legalized. A large amount of product was not found on the premises, but ledgers were found documenting hundreds of thousands of dollars. It was not about the quantity of drugs that were found, rather, it was about the quantity a business was engaged in. He indicated that having the aggravators and mitigators allowed prosecutors to more readily assess what was going on in a particular case.

Mr. Skidmore reported that Section 28 and Section 29 were conforming language for the changes made in Section 27.

Mr. Skidmore referred to Section 30 which created conforming language. It also added the reference to AS 17.38 which talked about Alaska's marijuana industry currently. It included "Except as authorized" on page 16, line 29. The state would not prosecute someone for marijuana under the statute, it simply added clarification. He referred to page 18, which added Subsection 12. It made a change in the state's drug laws that was different than what was proposed in HB 49. The change was that, similar to a DUI, a person could commit a certain number of offenses, the third of which would be a felony. He read a portion of the subsection. The original HB 49 had a different approach where it stipulated that all possession crimes would start at the Class C felony level. The current version used a graduation method like DUI's. It was an approach that had

significant merit and was one for the committee to consider. He opined that the trick to the approach had to do with the sentencing of the misdemeanor offenses. The first 2 offenses did not have jail time, which he thought should possibly be changed in order to incentivize treatment.

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Vice-Chair Johnston asked if Section 30 was in HB 49 changing the statutes to conform to the marijuana laws. Mr. Skidmore responded that HB 49 originally did not include the protection provisions. The Senate version of the bill sitting in Senate Finance contained similar language. He thought that bill expanded it beyond AS 17.38. He thought it also included industrial hemp. He confirmed that it existed in the other body.

Representative Josephson thought one of the vital parts of the bill had to do with serious drugs. He suggested that prison was a way in which to withdraw from drug use. However, there was a tendency for a person to return to the use of the drug. He thought that if there was active jail time under a Class A misdemeanor, a person might effectively sober up. However, a sentence might be too short and resources too limited for a person to receive adequate help. He was trying to figure out what to do with a recreational drug user who had no intention to distribute. He needed clarification.

Mr. Skidmore relayed that the state's current response for recreational drug users was no response. He thought there needed to be an adjustment to create incentive. He listed a number of potential approaches.

Co-Chair Wilson asked whether treatment was offered and defined in statute. Mr. Skidmore clarified Representative Wilson's question. He suggested she was asking if Alaska's statutes and the sanctions in statute required treatment currently or assumed that it happened. He indicated that the statutes authorized treatment as something that could be imposed as a condition. However, they did not stipulate that treatment would be required in every case. He provided an example. As a prosecutor, when he encountered a case with someone in possession of drugs or alcohol with an illegal component, he might view the person as having a substance abuse problem. However, he was not a trained

expert. The criminal justice system might require a person to be evaluated by a professional to determine whether they had a substance abuse problem and, if so, to what degree. The evaluator would suggest the appropriate course of action including outpatient or residential treatment.

Co-Chair Wilson wondered who was actually at fault for a person reoffending if they were assessed and referred to a program but were unable to enter the program immediately because of a backlog. She was concerned with people that were making a good faith effort to comply but were unable to. It was her understanding that there was a greater demand for treatment than there was available resources. She asked Mr. Skidmore to comment.

Mr. Skidmore thought the bill was a first step in addressing the issue. Many steps would need to be taken that were not addressed in the current bill.

Co-Chair Wilson asked what kind of flexibility was available to those individuals trying to comply while treatment beds were not available. She asked whether an automatic lock-up would occur. She asked if there was any discretion involved and about evidence.

Mr. Skidmore answered that there was discretion based on how long someone was on probation or how long they had to complete their conditions. There were things the court and prosecutors would take into consideration. There were certain things defense attorneys would be arguing as well. Corrective action would be needed in a case of a willful violation where a person had the opportunity for treatment and did not take it.

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Mr. Skidmore thought it was unfortunate to have to exercise discretion as much as the Court System had to presently. Discretion was built-in and the courts did not punish people when they made good faith efforts and had been unsuccessful.

Co-Chair Wilson asked about a person who had served their time (either in jail or on probation or parole) without being able to get into treatment prior to their release date. She noted that at the time of their release corrections would no longer have control of the individual.

Mr. Skidmore replied that there were some programs available inside the walls of jail. He agreed that if an individual was unable to get into a program, they would not be held in jail longer to complete treatment. A person could be released on discretionary or mandatory parole with a stipulation that they complete treatment. In such a circumstance, they would likely have a longer period of parole or probation. If a person made a good faith effort to get into a treatment program to no avail, and their sentence and parole and probation periods came to an end, nothing could be done to ensure treatment for them. The Department of Corrections would no longer have control over them.

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Mr. Skidmore moved to Sections 31 through 34 which were conforming amendments. Section 31 changed third to fourth. Section 32 contained protections and clarifications for the marijuana industry. Section 34, found at the bottom of page 18, was another conforming amendment.

Mr. Skidmore moved to Section 35 on page 20. The concept contained in the section regarding AS 12.55.015 talked about the types of probation conditions that a court could impose in a sentence. The court was to presume that there should be no contact between the offender and the victim if the crime was a sex offense or domestic violence crime. The presumption could be overcome if it was necessary for the victim and the offender to have contact. The provision was not originally in HB 49 and could not be found in any of the proposals by the administration. It was a valuable concept.

Mr. Skidmore continued to Section 36 on page 20. It talked about credit for pretrial electronic monitoring. It was not in the original version of HB 49 but was in HB 50. He indicated that HB 50 would eliminate any pretrial credit for electronic monitoring applied to a sentence. It was based on the concept seen in the Justin Schneider Case where someone had been on electronic monitoring pretrial, and by the time they were sentenced the entire sentence was satisfied by electronic monitoring. Section 36 took a different approach than in HB 50. The section indicated that the court might grant credit for time spent on electronic monitoring pretrial as long as it met the

requirements of AS 12.55.005, the statute that set forth the goal of sentencing. He mentioned some of the goals otherwise known as the Chaney Criteria. The Chaney Case was the case in which the courts first articulated the sentencing goals found in the Alaska Constitution. The section was outlining that the courts would decide whether a person got credit, but the credits were dependent upon meeting the Chaney criteria. It was a different approach than taken in other bills - its success would depend on how the courts interpreted the concept. He was skeptical about whether it would result in a change over the current statute.

Representative Knopp referred back to Section 32, lines 26-27 on pages 18 and 19. He asked about the various changes in penalties. Mr. Skidmore called the changes conforming because they did not change the substance of law in any way. The sections were renumbered. He provided further explanation but reiterated that the changes did not alter the classification, elements, or sentencing of the offense. It was simply making the language follow appropriately.

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Representative Carpenter asked about the language that the courts "may" decide. He wondered if the judge or another individual decided. Mr. Skidmore replied that when he referred to the courts he was referring to a judge.

Vice-Chair Ortiz asked if the adoption of the section raised the bar for someone to receive credit for electronic monitoring. Mr. Skidmore responded that it was more of a changed criterion versus raising the bar which implied making it more difficult. He indicated that the Chaney Criteria were very broad, and any of the 5 circumstances could apply in almost any instance that someone was on electronic monitoring. He believed that a defense attorney could make the case to a judge. He did not believe the provision made it more difficult to award a credit.

Vice-Chair Ortiz asked if he was skeptical about giving the judge more discretion. Mr. Skidmore thought it was very easy to craft an argument that stated that pretrial electronic monitoring would meet one of the 5 Chaney Criteria. It was possible that a court could reject the

argument. However, he was skeptical that it would have the type of outcome the public was looking for.

Representative Josephson asked if the clause was effectively stating not to forget the thing that was supposed to be remembered.

Mr. Skidmore responded that currently the law set forth criteria for a judge to evaluate whether they thought electronic monitoring would qualify under the statute to be given credit. The court was not currently required to consider the Chaney Criteria in making an evaluation. The provision added something for a judge to consider, but he did not see it making it less likely that the court would award it. Rather, he thought it was one more box for the court to have to check.

Representative Josephson suggested that the reason the Chaney Criteria did not apply was that it applied at first sentencing, not in the context being discussed. Mr. Skidmore responded, "Correct."

Representative Josephson thought it might have given Judge Corey the ability to do something different but probably not. Mr. Skidmore did not want to put words in Judge Corey's mouth. He could not anticipate how any particular judge would decide any one particular case. As he had previously indicated, he thought it was possible for a judge to claim that certain circumstances did not meet the Chaney Criteria. He believed that on a broad spectrum across the state for all cases, he did not think it would be as effective as other options.

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Co-Chair Wilson indicated the administration was getting rid of electronic monitoring credit. She asked how many individuals were given credit in the previous year and for how long. She wanted to have an idea of the potential fiscal impact. Mr. Skidmore did not know the answer to the representative's question.

Co-Chair Wilson thought it was important to hear from DOC. She thought the deputy commissioner from the department was available. She relayed her question again. She wondered if the department kept track of individuals on electronic

monitoring that did not receive credit versus individuals that did.

2:49:40 PM

KELLY GOODE, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, responded that the department would be aware of individuals that were out and being supervised under pretrial. The department did not monitor the numbers for individuals that returned to the courts.

Co-Chair Wilson asked Ms. Goode if she knew of anyone that tracked the numbers. Ms. Goode did not know of anyone monitoring the numbers.

Co-Chair Wilson relayed that Ms. Mead from the Court System was in the audience shaking her head no. She was concerned because everyone was under the impression that everyone that was on electronic monitoring would receive credit. The statement was inaccurate. There were other provisions that had to be met as well. She thought such data was necessary in crafting the associated fiscal notes.

Vice-Chair Ortiz asked Mr. Skidmore if he saw value in the possibility of a person being able to receive credit for electronic monitoring.

Mr. Skidmore responded affirmatively. He argued that if DOC thought that electronic monitoring was not an appropriate sentence for an offence, it would not make sense for the offender to receive credit. Conversely, if DOC suggested that an individual should be on electronic monitoring, and they had already been on electronic monitoring for a time, it would make sense for them to receive credit for time served. Currently, there was a provision in statute that allowed electronic monitoring pretrial credit but was limited to 1 year for certain offenses. He suggested that instead of limiting the period to 1 year, the legislature could define which offences could be served via electronic monitoring. The legislature could also carve out certain offences that would not be served via electronic monitoring. He reaffirmed that, for certain offenses, it made sense to allow credit for electronic monitoring pretrial.

Co-Chair Wilson asked about the level of supervision as it applied to electronic monitoring. Mr. Skidmore answered

that the limitations currently in statute were appropriate limitations based on crime type. Co-Chair Wilson asked Mr. Skidmore to provide additional detail about the limitations. Mr. Skidmore had to look at the statute book. Co-Chair Wilson commented that there had been significant discussion on the issue.

Mr. Skidmore turned to AS 12.55.027:

(d) A court may grant credit against a sentence of imprisonment for time spent under electronic monitoring if the person has not committed a criminal offense while under electronic monitoring and the court imposes restrictions on the person's freedom of movement and behavior while under the electronic monitoring program, including requiring the person to be confined to a residence except for a

(1) court appearance;

(2) meeting with counsel; or

(3) period during which the person is at a location ordered by the court for the purposes of employment, attending educational or vocational training, performing community volunteer work, or attending a rehabilitative activity or medical appointment.

Co-Chair Wilson asked about an example provided on the House Floor. Mr. Skidmore responded that the answer depended upon why, in Representative Wilson's example, the person was walking down the trail. If the person was going for a hike that was not court ordered, then they would be in violation. However, if the person was walking on the trail to get to an appointment he had described, they would receive credit. The answer depended on the circumstance. Co-Chair Wilson appreciated the distinction.

Representative Carpenter understood what Mr. Skidmore had read from statute. He had not heard anything in relation to the victim. He thought the reason for sentencing had to do with the Chaney Criteria. In the constitution the goals for sentencing had to do with protection and some sort of punishment. He was concerned that victims would see a disparity for those allowed to serve time at home versus serving time in jail. He wondered if the judge would consider the victim's perspective in determining sentencing.

Mr. Skidmore responded that the consideration of a victim's perspective on sentencing was required by law. However, when the court decided on sentencing, it was not up to the court to determine whether the offender served in a maximum, medium, or minimum-security facility or in a halfway house. Rather, DOC made determinations based on the classification of the crime and what they thought was appropriate for a particular offender. He did not have all of the department's criteria with him. He suggested posing the questions to DOC. They would make the decision about the appropriate placement of an individual to serve their sentence. The court decided how long a person needed to be in the custody of the department. He understood Representative Carpenter's sentiment. He had heard similar sentiments.

[2:57:43 PM](#)

Mr. Skidmore continued to Section 37 which dealt with presumptive sentencing ranges for felonies. Under current law, a Class B felony had a sentencing range for a first offense of zero to 2 years. Section 37 altered the amount to be 90 days to 2 years which was not in HB 49. House Bill 49 altered presumptive sentencing for Class B felonies for a first offense to be 1 to 3 years and subsequently changed the ranges for a second and third offence. It essentially returned it to what it was prior to SB 91. The current version of HB 49 did not adjust presumptive sentencing for Class C felonies or Class A felonies. The presumptive sentencing for both were adjusted in the original version of HB 49. The second change was a sentencing range from 2 to 4 years for misconduct involving a controlled substance when the person to whom the substances were being distributed was either under the age of 18 or the person assisting in the distribution was causing the person under 18 to engage in such conduct. It was different than what was found in the original version of HB 49.

Representative Josephson asked if it could have been the intent of the Judiciary Committee, because of an amendment to amplify Class C felonies in SB 54, to leave the first presumptives matched with Class B felonies. He suggested it was an attempt to leave some separation, which he thought was a good thing. He believed Mr. Skidmore's point was that it still did not restore the period prior to SB 91.

Mr. Skidmore was not in a position to comment on the intent of the Judiciary Committee. However, Class B felonies, in addition to the discussion that Representative Josephson mentioned during SB 54 in October 2017 about Class C and Class B felonies, had the same sentence for a first-time offence of zero to 2 years. He had heard from the public that zero to 2 years was not a long enough sentencing for strangulation. He could not speak to the intention. He could only explain what the law did and what the other proposed provisions would do.

[3:01:27 PM](#)

Vice-Chair Ortiz queried about another statute that contained a limitation for time served with electronic monitoring. Mr. Skidmore responded that there was a limitation of 1 year for certain types of offences. He had suggested that instead of limiting it to 1 year, the legislature could specify whether it wanted electronic monitoring available at all. He agreed there was another statute that limited it to 1 year.

Mr. Skidmore continued to the conforming amendment in Section 38 on page 21. The conforming portion of the amendment could be found on page 22 which removed the term "online" from the crime of enticement of a minor which he had mentioned earlier in the presentation. There was no other substantive changes. There was a similar change for the subsection on page 23.

Mr. Skidmore continued to Section 39 on page 4 halfway down. It changed the sentencing for a Class A misdemeanor. Prior to SB 91 sentencing for a Class A misdemeanor was zero to 365 days. In current law and in SB 91 certain offenses were limited to zero to 30 days. The change increased the range to zero to 90 days. Also, there were categories of offenses that were excluded from the limit of 30 to 90 days and added to the category of all domestic violence crimes. Currently, there were some crimes against a person that were in the excluded category. However, not all domestic violence crimes were included. It could include things such as criminal mischief, damaging of property, and other things that were domestic violence crimes but not necessarily an assault.

[3:04:01 PM](#)

Representative Josephson referred to page 25 which was added to the bill through the amendment process. He wondered if all crimes of domestic violence would trump the 90-day limit. Mr. Skidmore responded that Section 39 carved out all domestic violence crimes so that they were excluded from the 90-day period.

Co-Chair Wilson asked if there was an unlimited time that the judge would be able to sentence. Mr. Skidmore replied that the judge would be looking at zero to 365 days which was the limit for a misdemeanor. The technical definition between a misdemeanor and a felony was serving more than a year in jail.

Co-Chair Wilson asked if any of Section 39 was in the current version of HB 49. Mr. Skidmore answered in the negative. He indicated that in the original version of HB 49 the sentence for all Class A misdemeanors was zero to 365 days. In the newer version the cap was expanded, and a certain type of crime was excluded. It was not as broad of an expansion as in the original HB 49.

[3:05:19 PM](#)

Vice-Chair Ortiz asked whether Mr. Skidmore supported the section. Mr. Skidmore responded that whether it went from zero to 90 days depended on what was being done with other provisions of law. He provided some examples. The bill did not go as far as what the administration had proposed, however, it was a step in the right direction.

Co-Chair Wilson asked which data the administration used to determine what to change in the bill. Mr. Skidmore thought the Co-Chair was asking an excellent question about where the discretion was appropriately placed for judges. He remarked that by including the zero to 90 days and adding the exception of domestic violence cases the legislature was providing more discretion to judges and eliminating problems prosecutors had found. For instance, in some of the Driving Under the Influence (DUI) cases the 30-day cap limits the prosecutor's ability to negotiate some things. The 90 days allows for more time for negotiations. It did not completely resolve the scenario in which a Class A misdemeanor might be deserving of more than a 90-day sentence. However, it was a step in the right direction.

Mr. Skidmore continued that the data prosecutors considered prior to SB 91 was flawed and called into question the changes that were originally made. Also, in looking at the data that indicated the system and the ability to incarcerate people and the judge's discretion in making the determination were things that worked for a long time. However, there were currently diminishing returns in increasing sentencing. Lastly, the data the prosecutor looked at were the ways in which the new version had worked under law. The data that he relied on was communications with law enforcement and prosecutors over the previous few years about the problems they had with the way the law read. The courts needed the discretion of zero to 365 days on a case-by-case basis.

Co-Chair Wilson asked if it was normal for a person to have more than one charge. Mr. Skidmore did not have a statistical report. In his long career as a prosecutor he had seen both scenarios very frequently.

[3:11:16 PM](#)

Mr. Skidmore spoke to Section 40 which had to do with Class B misdemeanors. Under current law the sentence for a Class B misdemeanor was zero to 10 days. Prior to SB 91, it was zero to 90 days. The original version of HB 49 returned it to zero to 90 days. The version under review was zero to 30 days. It was an improvement from zero to 10 days. He suggested zero to 30 days might be a good compromise.

Representative Josephson referred to Subsection(b)(3) regarding violation of conditions of release. He relayed that the issue was a large item in 2017. The state moved from a violation to a short sentence of a Class B misdemeanor. He wondered what the administration bill did in the subsection.

Mr. Skidmore answered that one of the differences between the original version of HB 49 and the version before the committee was there were things not found in the newest CS. One of the things missing was violations of conditions of release. There were no changes or adjustments made in the CS. The original version of HB 49 returned them to a Class A misdemeanor for a violation on a felony and a Class B misdemeanor for a violation on a misdemeanor combined with the changes in the sentencing. Instead of serving 5 days

for a violation, a person would serve zero to 90 days or zero to 365 days depending upon the underlying crime.

Co-Chair Wilson asked if Representative Josephson was talking about the current section or another.

Representative Josephson was talking about the concept page 25, line 18. He explained that offenders frequently violated their conditions of release and entered into a spiral. He asked Mr. Skidmore to comment as to why the provision in the bill was important.

Mr. Skidmore clarified that Section 40 was being discussed regarding violations of conditions of release that were pretrial conditions - different from probation or parole where there were also conditions. He explained that when a person had violated their conditions of release the concept contained in SB 91 reduced it to a violation rather than a new crime. The result was that people were not being held, and bail was not being adjusted as predicted with the change. It was changed back to a crime with a sentence of 5 days.

Mr. Skidmore explained that the sentence of 5 days was imposed in an attempt to bridge the gap from when the arrest was made until the bail hearing could occur. It was an improvement and a step in the right direction. He still heard from folks that 5 days resulted in some sanction, but still did not take into consideration the scope of sanctions that occurred, nor did it adequately allow for adequate response to egregious violations.

Mr. Skidmore presented an example prior to the passage of SB 91. There was an individual who had set his wife on fire. He was released from jail and bail and was told not to contact his wife. He ended up contacting his wife and charged him with violation of conditions of release but was released again. He contacted her again. He had committed 2 violations of conditions of release before the case ever made it to trial. Immediately after the fire had been extinguished and she was in the hospital, the wife provided multiple statements to first responders, family members, and other. However, once the husband was out of jail and contacting her again, the court had to arrest the wife and escort her to trial to ensure her appearance. The court did not have sufficient evidence to allow the prosecutor to charge anything like tampering with a witness. It was the

prosecution and conviction of a violation of conditions of release that allowed the courts to hold the husband in custody until the time of trial. He offered the example to help members understand what could happen in the system and why violation of conditions of release could be very important. His example was a success story prior to the implementation of SB 91. It was not an instance that could be repeated with the current laws.

[3:16:58 PM](#)

Vice-Chair Johnston asked if the case Mr. Skidmore presented was prior to SB 91. Mr. Skidmore replied, "Yes." Vice-Chair Johnston thought that in Mr. Skidmore's example, the husband had violated conditions of release twice. She asked if she was accurate. Mr. Skidmore responded affirmatively. Regarding his example, he clarified that violation of conditions of release prior to SB 91 allowed the prosecutor to prosecute the husband for violation of conditions of release and to hold him in jail for a substantial period of time until the prosecution could be conducted. He reported that in current law, it could not be handled in the same way.

Vice-Chair Johnston thought embedded in the example was the fact that someone violated their conditions of release twice. She wondered about how the state dealt with violations of conditions of release to avoid what happened in Mr. Skidmore's example. She continued that prior to the passage of SB 91 the amount was 5 days and did not seem to work.

Mr. Skidmore shared the representative's frustration that it took 2 violations to occur before the person was able to be held in jail. His example illustrated how frequently people already got off jail pretrial and the problems prosecutors encountered. He advocated the importance of having tools to respond to a problematic circumstance. Since the time the specific case occurred, bail statutes were changed (prior to the bail statutes being altered again in SB 91). Outside of the bill being considered, he thought bail issues needed to be further addressed. In answer to the representative's question, he did not believe 5 days was sufficient for a violation of conditions of release. He believed a greater sanction was needed than what was in current law.

Vice-Chair Johnston asked how the original version of HB 49 compared to what was being proposed in Section 40. Mr. Skidmore explained that the original version of HB 49, the governor's version, stated that violations of release would be returned to what it was prior to SB 91 - a Class A misdemeanor if the crime the person had been charged with was a felony. In his previous example, the offender had been charged with a felony. He was charged with a Class A misdemeanor twice. The sentence for the Class A misdemeanor was zero to 365 days. Therefore, by the time he committed the violation twice, the prosecutor could ask a judge to impose up to 2 years. Under current law, the prosecutor could only ask for up to 10 days.

[3:21:22 PM](#)

Mr. Skidmore moved to Section 41, 42, and 43 which were conforming amendments. Words were being changed that were consistent with language that was changed earlier in the bill. No substantive law was being altered.

Mr. Skidmore reported that Section 44 required DOC to notify a victim of domestic violence or sexual assault of the option to obtain a protective order and to advise them of some of the victim resources available in the state.

Mr. Skidmore continued to Section 45, page 27 - another conforming amendment. He indicated that sections 45-50 dealt with sex offender registration.

Vice-Chair Johnston asked if most of the language was also in SB 52. Mr. Skidmore replied that the language found in the specific sections was not found in SB 52. He would describe them together, then attempt to describe the differences.

Vice-Chair Johnston asked if HB 52 dealt with sex offender crimes. Mr. Skidmore confirmed that HB 52 primarily dealt with sex offences.

Mr. Skidmore explained that in HB 52 the bill proposed to say that a person required to register as a sex offender in another state would be required to register as a sex offender in Alaska. The concept behind the language was that Alaska did not want to encourage people from other states to move to Alaska simply to avoid a registration requirement. He continued that HB 49 utilized some of the

language from HB 52 that would require a person to register in Alaska. However, Section 46 went on to create provisions that would allow an individual to register and to petition to be removed from the requirement of registry if the crime they committed in another state would not have been a crime in Alaska. Currently, if a person committed a crime in another state that was not currently a crime in Alaska, they might have to register but could petition to have the requirement waived.

Co-Chair Wilson asked if there was a court process. She wondered if a judge would be involved. Mr. Skidmore replied that Section 46 discussed the petition. He clarified that the petition was not petitioning the court but DPS. The administrative decisions made by DPS could be appealed to a court. In the previous year, several decisions had been made by DPS that were appealed to the courts. The courts decided the person did not have to register. He referenced a case. He reiterated that the petition was initially submitted to DPS, but a subsequent appeal could be made to the courts.

Co-Chair Wilson requested that someone from DPS come to the table. She wondered if the department had been consulted.

[3:27:01 PM](#)

KELLY HOWELL, DIRECTOR, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF PUBLIC SAFETY, reported that Kathrine Monfreda was online and could better answer the question.

Co-Chair Wilson restated her question.

[3:27:30 PM](#)

KATHERINE MONFREDA, DIRECTOR OF DIVISION OF STATEWIDE SERVICES, DEPARTMENT OF PUBLIC SAFETY (via teleconference), explained that one of her responsibilities was the management of the sex offender registry. She had been consulted about the provision and stated that it was something the department could work with. The department would continue to evaluate sex offender registrants in the same way they were currently being evaluated. A petition would be similar to an appeal they presently received. The wording of the bill would allow the department to look at the facts of the case for an underlying conviction, which

the department currently could not do because of the Supreme Court decision. It would allow the department to look at the actions that were taken to determine whether a particular person should continue to register in Alaska.

Representative Josephson asked if there were states that considered public urination a sexual offense act. Mr. Skidmore was not in attendance, nor did he observe any of the House Judiciary hearings and could not comment on the thinking of the committee. In answer to his question regarding public urination in Alaska, it was not in and of itself a sex offense. However, if someone exposed their genitalia to others under age, it could be a sex offense and cause for registration. He had heard concerns about what other states criminalized that might require registration. He would want to see specifics.

[3:30:57 PM](#)

Representative Sullivan-Leonard asked Ms. Monfreda about provisions in statute that oversaw sex offenders and child kidnappers when an offender moved from one state to Alaska. She queried whether the department monitored such individuals. She wondered if Section 46 was necessary.

Ms. Monfreda replied that the issue was that the state had to compare the offenses committed in another state and the elements of the offenses to determine if they were similar to elements of a sexual offense in Alaska. In some cases, it had been determined that even though a sex offense in another state did not contain all of the elements, the courts did not allow the underlying of the offense. The department had been told they had to use the elements of the offense. She reported there had been numerous circumstances in which a person had to register in one state but not in Alaska.

Representative Sullivan-Leonard asked if Section 46 would assist the department. Ms. Monfreda responded affirmatively. The underlying actions could be taken into consideration.

[3:33:49 PM](#)

Mr. Skidmore turned attention to Sections 51-54.

Vice-Chair Ortiz asked if Mr. Skidmore supported the sex offender registration sections. Mr. Skidmore supported the idea of sex offenders being required to register in Alaska when they were already registered in other states. He did not think the administration would support a petition. The petition would allow a person to avoid having to register because Alaska had not criminalized certain conduct. The administration wanted to discourage anyone from coming to Alaska to avoid registration. He stressed that the petition would also be additional work by DPS to carry out the petition idea.

Vice-Chair Ortiz suggested there would be negative consequences. Mr. Skidmore agreed there were negative consequences associated with someone failing to register. He reiterated the concept that the state did not want to encourage people to come to Alaska to avoid registration.

Co-Chair Wilson asked about the administration's crime bills and why they introduced four of them. She wondered if the administration hoped to have separate discussions.

[3:37:10 PM](#)

Mr. Skidmore reported that the administration offered four separate crime bills in order for them to be moved through with more concise deliberation. Currently, the bill being discussed included several topics making the conversation more unwieldy.

Co-Chair Wilson asked if, by combining them, it made it more difficult to deliberate based on the time left in the session. Mr. Skidmore had expressed empathy for legislators having to understand and digest the vast amount of subjects contained in the legislation. He appreciated the effort of the legislature in trying to assess the bill quickly. Having a number of items in the bill work together was extremely important. He was hopeful, in the time remaining in the session, that he could sit down with legislators to explain the concepts in the bill making it easier for members to make informed decisions.

Co-Chair Wilson conveyed she voted in favor of SB 91. At the time the bill was voted on, she believed she understood it. Otherwise, she would not have voted for it. Looking back, she realized she did not understand certain portions of the bill. She would not move the current bill from

committee without thoroughly understanding it. She would rather do nothing than something that would place people in a bind similar to the previous few years. She did not care how much time was left in the session, it was her intention to understand what was in the bill that would be passed from committee. The disagreement would be about policy. She asked members to let her know if they were not informed enough to pass the bill from committee. The subject could not be rushed, and the committee needed to make an informed decision on the bill. She mentioned that a special session might be in order to get the legislation right.

3:39:00 PM

Representative Josephson thought it sounded like Mr. Skidmore was relatively satisfied with the contents of the bill other than the petition section. He asked Mr. Skidmore to comment on the current bill versus the governor's original version and juvenile registration requirements.

Co-Chair Wilson asked if the concept was in the bill before the committee. If not, she thought Representative Josephson wanted to know what bill it existed in. Representative Josephson responded affirmatively. Mr. Skidmore drew the committee's attention to page 29, Section 48, line 30 at the bottom of the page. The language included a person charged and convicted as an adult of an offense that required registration as a sex offender or child kidnapper in another state. The bill limited the requirement to adults who were obligated to register in other states. He continued that HB 52 did not limit the requirement to adult convictions.

Representative Knopp commented that many of the decisions were policy calls and that there was not perfect legislation. He surmised that the legislature fixed things when needed. There were no guarantees. Co-Chair Wilson appreciated Representative Knopp's remarks. She commented that it was important to be comfortable with one's own decisions.

Mr. Skidmore addressed Sections 51-54. They did two things for a felony DUI and a felony refusal. Sections 51 and 52 repeated in Sections 53 and 54 regarding a refusal. Section 51 talked about where a person was required to serve a sentence for a first-time DUI. When he first began practicing, the law stated that a person had to spend 72

consecutive hours in a jail facility if they committed a first DUI. Since then, the law changed allowing a person to serve 72 hours at a community residential center (CRC) or a halfway house. He continued that when SB 91 was enacted, the law changed allowing a person to be on electronic monitoring or on home arrest for the 72 hours. The provision in Section 51 returned it to a CRC. It was left to the discretion of the commissioner of DOC to decide on another appropriate place for a person to serve their 72 hours. Although not mandated, a person could be on electronic monitoring at a private residence. He wanted to provide historical information.

Co-Chair Wilson asked Mr. Skidmore to comment on the administration's position.

[3:44:43 PM](#)

Mr. Skidmore replied that Section 51 was the same as what was found in the original version of HB 49. He thought it was something the administration supported. He referred to Section 52 which addressed felony DUIs. However, the newest version of the bill made it easier for a license to be returned to an individual when it was revoked for a felony DUI. It stated that a person could have their license returned after 10 years if they had steered clear of a subsequent criminal offense. He suggested that while it was a provision that was not in the original HB 49, it was a concept that provided a way back to having a license for those convicted of a felony DUI. He had heard stories about people who should not have had their license restored but heard many more stories about people who benefited from their license being restored. In many cases it played a critical role in a person's ability to function in society including being able to have a job or go to the grocery store. He relayed a personal experience of hiring a painter with a felony DUI who had difficulty conducting his business. It was a provision that could be helpful.

Co-Chair Wilson countered that the people who had offended twice would be subject to losing their license upon a third DUI. She wondered if it would diminish the severity of getting 3 DUI convictions.

[3:47:40 PM](#)

Mr. Skidmore responded in the negative. He explained that at the third DUI in 10 years a person received a felony and would encounter significant additional consequences. He explained that when he first started as a prosecutor, revocation of a driver's license was about 10 years. Later it was changed to a lifetime. The provision was trying to strike a balance. The felony carried a much more significant jail sentence, a greater fine, and other provisions associated with a felony offence.

Representative Josephson saw the provision as a win-win from both a prosecutor's and a defense attorney's standpoint. He asked if he was accurate.

Mr. Skidmore highlighted lines 13-15 that limited who could apply for their license to be returned. He referenced Alaska Statute 11.41.100, a crime of murder; AS 11.41.210, an assault crime; AS 11.41.280, [an assault on an unborn child in the first degree]; and AS 11.41.282, [an assault of an unborn child in the second degree]. The provision outlined that a person committing certain types of crimes would not be eligible to have their license reinstated. For individuals that were eligible, the reinstatement of their license would help to fulfill the goal of rehabilitation. He reiterated that it was an appropriate compromise striking a balance in the system.

[3:50:24 PM](#)

Mr. Skidmore reported that Section 53 did the same thing for a felony refusal. He explained that if a person was arrested for a DUI and refused to provide a breath sample, it would be criminalized in the same way as a DUI. The same restrictions on a driver's license would apply, and the same proposal to allow a driver's license to be returned would apply.

Mr. Skidmore addressed Section 55 on page 34, line 23. The section created a statute that required a risk and needs assessment for a person sentenced for more than 90 days in jail. The assessment required the coordination with community reentry and a subsequent report. The section was partially in law but was amended. He referred to the sections on page 35, line 29 in Subsection 7. He reported that the risk assessment used to be required after 30 days but was changed to 90 days staying consistent with the change in Class A misdemeanors. There were similar changes

on page 36, lines 7-8 that took into account what was going on after sentencing and discussed the rest of the program.

Mr. Skidmore continued to discuss Section 55 moving to page 37, lines 4-5 about the coordination of reentry programs, a new addition to the bill. Lines 15-25 included the new information requiring the report he had mentioned regarding the risk assessment needs and the coordination of community reentry.

[3:52:57 PM](#)

Mr. Skidmore moved to Section 56 on page 37 which was a conforming amendment regarding drugs. It changed the statutes related to changes made earlier in the bill. There were no substantive rights that were changed, it only added another statute number.

Mr. Skidmore continued to Section 57 which added law to the departments that had to provide data to the Alaska Criminal Justice Commission in other reports that were previously mentioned in statute. He reported that Sections 58 and 59 on page 38 addressed a report that the Department of Law had to provide in conjunction with DPS relating to sex offenses. Certain information was requested to be provided including the number of cases reported to law enforcement that were not referred to prosecutors; the number of cases that were referred by law enforcement to prosecutors that were not prosecuted; the number of sex offense cases that were prosecuted that were resolved as non-sex offenses; and the number of victims that participated in court proceedings. He relayed that Sections 7-59 were reporting requirements not originally found in HB 49. Some of the requirements were added to SB 35 [Short Title: CRIMES; SEX CRIMES; SENTENCING; PAROLE], in the other body, that dealt with sex offences.

Mr. Skidmore moved to Section 60 having to do with sex assault kit examinations. It was not originally found in HB 49. However, it was found in HB 20 [Short Title: SEXUAL ASSAULT EXAMINATION KITS] that had been discussed in another meeting. The bill was sponsored by Representative Geran Tarr. Generally, what was found in Section 60 was that sex assault kits were required to be sent to the lab within 30 days. Once received by the lab, they were required to be tested within one year. He continued that within two weeks of the testing it was required that the

victim be notified that the testing was complete. There were some exemptions found in Section 63. He would review Section 61 first.

Mr. Skidmore explained that Section 61 required that all kits be accounted for each year. Section 62 required a report of the accounting of all kits found in Section 61. Section 63 exempted kits from testing requirements for three reasons: If they were scientifically unviable, if they did not meet the requirements for entry into CODIS (the program in which DNA was entered for other felonies or sex offences for the purpose of solving unsolved crimes), or if they were anonymous kits. He explained that in Alaska and under federal law the state was required to report a sexual assault to a medical provider and not to law enforcement. A victim could have a medical provider collect evidence in a sexual assault kit but could specify that they did not want to pursue the prosecution of the sexual assault. Therefore, the assault would not get reported to law enforcement and the kit would be collected anonymously. If a person wanted the evidence to be helpful, it had to be collected quickly after the incident occurred. There were times a victim might go through significant trauma and might be trying to process and deal with what happened to them. They might not be prepared to take on what was involved in a criminal prosecution, but they might want to later. If the evidence was collected and held anonymously, it allowed a person to come to a decision later on.

Mr. Skidmore moved to Section 64 which contained conforming language for the Department of Juvenile Justice in disclosing certain information about crimes that they would charge for juveniles. The section was conforming because it conformed to the changes made earlier in the bill relating to drug offenses.

[3:59:01 PM](#)

Mr. Skidmore moved to Section 65 which had to do with the ability of a prosecutor to use an Alaska Public Safety Information Network (APSIN) report. He explained that APSIN was the place to look for criminal history in Alaska for other offenders. At the grand jury level one of the elements that had to be established was that the person had a certain type of conviction in their history. Prosecutors were allowed to use APSIN to establish history at a grand jury but not at trial for a felony DUI or for a felony

refusal. Prosecutors were not allowed to use APSIN if the case had to do with a felon in possession. He provided an example. He indicated that the rationale in the section was that if it was good enough for a felony DUI, it should be good enough for other offenses. It did not change any substantive right. It was an efficiency concept for grand jury.

Mr. Skidmore indicated Section 66 contained repealers, of which there were only three. Section 67 contained applicability. Section 68 talked about a report to the legislature. Section 69 addressed an uncodified law for the conditional effect because some rules were being changed that required a two-thirds majority vote, and section 70 contained the effective date.

Representative Josephson asked if the last repealer in Section 66 was the section in which the Judiciary Committee stripped out petty theft penalties. He wondered if the effect of the repealer was to revert to the 90-day cap or the 30-day cap under a Class B misdemeanor. He asked if he was accurate.

Mr. Skidmore clarified that Representative Josephson was referring to AS 12.55.137 (1). The subsection set caps for low-level theft crimes. In SB 91 it had them at no jail time. In SB 54 in October 2017 the no jail sentences were expanded to be 5, 10, and 15 days for subsequent offenses. The current bill removed the caps in the low-level jail and authorized the sentence range to be determined by the legislature for Class B misdemeanors. Currently, the sentence range was zero to 10 days. The version of HB 49 before the committee changed it to zero to 30 days. The original version of HB 49 had a range of zero to 90 days. Depending on the provision of sentencing the legislature decided on for a Class B misdemeanor would depend on what range was decided on for the low-level thefts. The effect of the repealer removed the caps and made the range selected for Class B misdemeanors the effective range for a particular crime.

[4:03:06 PM](#)

Representative Josephson noted that Mr. Skidmore had talked about the absence of a restoration of the presumptive in the As and Cs in the bill. He asked if there was anything

else not in the bill. He was not asking about probation, parole, or pretrial.

Mr. Skidmore clarified that he was talking about the bill that was referred to as sentencing and classification which was the original version of HB 49. He would not be referring to the other bills that were introduced that dealt with pretrial, probation, parole, and sex offences. He provided a list of things no longer in the current version of HB 49. Escape was not found in the current version of the bill. Escape in the third degree was altered in the original HB 49 so someone that had an electronic monitoring device on them pretrial would commit a Class C felony with the removal of it. If someone had an ankle monitor on for a misdemeanor, it was a lower-level escape crime, and the original HB 49 elevated it to a Class C felony offense.

Mr. Skidmore brought up the second change, a change in the sentence for disorderly conduct of 24 hours to zero to 10 days in the original version. The change was not in the newer version. Another change was made to probation periods. The original HB 49 returned the maximum period of probation that could be imposed to what it was prior to SB 91. For sex offenses it was 5 years. Under current law it was under 15 years. For non-sex offenses prior to SB 91 it was a 10-year maximum. Under currently law there was a cascading approach to the maximum period of probation which he could not recall. There were various levels.

Mr. Skidmore noted he had already discussed the felony presumptive ranges, the differences in Class A misdemeanors and Class B misdemeanors and DUIs. He thought he had covered all of the differences between the original version of HB 49 and the current one before the committee. Co-Chair Wilson requested the section numbers in the original bill. Mr. Skidmore relayed the different section numbers to the committee. He would be happy to find the other section number and provide it to the representative.

Vice-Chair Ortiz asked about the maximum period of probation and about an impact on deterrence. Mr. Skidmore relayed that the maximum period of probation was a concept that could impact multiple issues. There had been a question earlier about treatment not being able to be completed in the set time period. The period of probation was the timeframe to be able to complete conditions

including treatment. If the probation period was insufficient, time would run out before a person could complete treatment. A longer period of probation provided a greater period of time for a person to comply with conditions. In terms of sex offenses, the containment model existed which monitored people on probation very closely and carefully. The containment model has been very effective. The period of probation being reduced from 25 years to 15 years meant that 10 years of containing a sex offender for treatment would potentially be lost.

Mr. Skidmore recalled another item that was not found in the current version of HB 49 that was contained in the original bill. It dealt with involuntary commitments. He explained that there was a provision that required data to be transferred from the Court System to DPS which was when someone was involuntarily committed. The mental commitments disqualified an individual from obtaining a firearm unless courts had decided the person was currently acceptable to have a firearm. A second hearing would have to take place revoking the mental illness designation of an individual. He noted a number of shootings that had taken place recently in the country. The concept, although it did not solve all problems, was important enough to be endorsed by the National Rifle Association. He noted that the provision did not change a person's substantive rights, it was a data transfer. The court had been particularly concerned about the provision because they had to go back to records from 1981 when the State of Alaska began mental commitments. It would take effort. There had been discussions between the Court System and DPS about whether there were available grant funds. The importance of a mental commitment was to ensure that Alaska was able to actively participate and comply with federal law for ensuring mental commitment information was supplied to the Department of Law for ensuring mental commitment and information supplied to DPS that they can help gun dealers to comply with federal law.

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Vice-Chair Johnston asked if Mr. Skidmore would provide an email to members with the sections that were no longer included in the newest version of the bill. Mr. Skidmore relayed that he was happy to provide an email and happy to follow up with individuals. Vice-Chair Johnston was really interested in the things that reflected changes in the administration's version of HB 49.

Representative Josephson relayed that the concept of involuntary commitment passed in 2014 and was introduced in 2014.

Vice-Chair Ortiz mentioned areas of the current version of the bill that were positive that the original version did not do. He wondered if Mr. Skidmore could comment about acting on the bill in its current form. Co-Chair Wilson did not believe the question should be asked of Mr. Skidmore presently. She was grateful to him for coming to the committee on short notice to present the bill's sectional analysis. She would like to hear his answer to the question after he had the opportunity to further study the bill.

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Representative Knopp imagined Mr. Skidmore's department crafted the original version of HB 49. Mr. Skidmore responded that he was involved in the bill drafting.

Representative Knopp asked if there was a side-by-side comparison between current law and the original HB 49. Mr. Skidmore replied that the department attempted to produce a matrix showing law prior to SB 91, the changes made in SB 91, the changes in SB 54 or HB 312, and HB 49. The matrix had been updated as it progressed in the other body. He would check if he had the information.

Representative Knopp was not interested in anything prior to SB 91. He was only interested in SB 91 and forward. Co-Chair Wilson had a copy and would supply it to members.

Co-Chair Wilson provided the call-in numbers for public testimony at 5:00 P.M. She hoped to hear from several members of the public.

HB 49 was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

[4:18:40 PM](#)

The meeting was adjourned at 4:18 p.m.