HOUSE FINANCE COMMITTEE
May 4, 2019
12:00 p.m.

[Note: meeting continued from May 3, 2019, 1:30 p.m. See separate minutes dated 5/3/19 1:30 p.m. for detail.]

12:00:02 PM

CALL TO ORDER

Co-Chair Wilson called the House Finance Committee meeting to order at 12:00 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

None

ALSO PRESENT

John Skidmore, Director, Criminal Division, Department of Law; Jen Winkelman, Director, Probation, Parole, and Pretrial, Department of Corrections; Nancy Meade, General Counsel, Alaska Court System; Kelly Goode, Deputy Commissioner, Department of Corrections; Sylvan Robb, Administrative Services Director, Department of Corrections, Office of Management and Budget; Representative Ivy Spohnholz; Kelly Howell, Special Assistant and Legislative Liaison, Division of Administrative Services, Department of Public Safety; Representative Bryce Edgmon; Representative Steve Thompson; Representative Louise Stutes; Representative Grier Hopkins;

Representative Josh Revak; Representative Matt Claman; Representative Sharon Jackson; Representative Jonathan Kreiss-Tomkins; Representative Geran Tarr; Senator Peter Micciche; Senator Lora Reinbold; Representative Adam Wool.

PRESENT VIA TELECONFERENCE

Laura Brooks, Deputy Director, Health and Rehabilitation Services, Department of Corrections; Steve Williams, Chief Operating Officer, Alaska Mental Health Trust Authority; Jeff Edwards, Executive Director, Parole Board, Department of Corrections; Andrew Greenstreet, Deputy Director, Alaska State Troopers Division, Department of Public Safety; Kathryn Monfreda, Director, Statewide Services, Department of Public Safety; James Stinson, Director, Office of Public Advocacy, Department of Administration; Beth Goldstein, Acting Public Defender, Department of Administration.

SUMMARY

HB 49 CRIMES; SENTENCING;MENT. ILLNESS;EVIDENCE

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

Co-Chair Wilson reviewed the meeting agenda. She highlighted the committee had previously heard HB 145, the House Judiciary Committee bill on the same topic. She reviewed other crime bills sponsored by the governor that had been included in a new committee substitute (CS) of HB 49 including SB 32, SB 33, SB 34, and SB 35. The concepts were not new and had been rolled into one document.

#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."

12:00:47 PM

Vice-Chair Johnston MOVED to ADOPT proposed committee substitute for HB 49, Work Draft 31-GH1029\E (Radford, 5/3/19). There being NO OBJECTION, it was so ordered.

Co-Chair Wilson acknowledged Representatives Bryce Edgmon, Chuck Kopp, Steve Thompson, Grier Hopkins in the audience. She reviewed the meeting agenda.

Co-Chair Wilson invited the Department of Law (DOL) to review the changes to the bill. The committee would also hear from the Alaska Mental Health Trust Authority, the Public Defender Agency, Office of Public Advocacy, Court System, and the Department of Corrections. She intended to hear draft fiscal notes from each of the impacted agencies.

12:03:06 PM

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, reported that the CS was a compilation of what he considered to be the most important provisions in the governor's four crime bills. He highlighted there were at least nine areas where the provisions were different than what the governor had introduced. He noted it was not to say that the governor was not interested in seeing provisions in the way he had introduced them; however, the department believed it could work with the proposed provisions. He believed the bill would be a substantial step towards "getting us back in the game to be able to help with some of the really important concepts." The bill would effectively repeal and replace the negative aspects of SB 91 [omnibus crime reform legislation passed in 2016]. He intended to highlight the nine major differences from the governor's original legislation as he reviewed the CS.

Co-Chair Wilson acknowledged Representative Louise Stutes in the audience. She noted the committee would have an opportunity to ask questions at the end of each section.

Representative Carpenter asked DOL to communicate whether a section maintained or repealed provisions of SB 91 throughout the meeting.

Co-Chair Wilson recognized Representative Ivy Spohnholz in the audience.

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Mr. Skidmore intended to discuss the legislative intent language originally found in the bill. He would also review a document [titled "Draft CS HB 49" from the Department of Law (copy on file)] that laid out concepts covered by the bill (he would not review the bill by sections) in order to help the public understand the legislation. The intent language at the beginning of the bill was designed to do important two things. First, the bill would overturn a couple of cases that had been handed down by the Court of Appeals. He elaborated that the intent language was meant to explain why and what was going on with the cases. The cases were Williams and Doe - the relevant sections were listed in the intent language. The department had worked on other intent language with the Court System that encouraged the increased use of video teleconferencing. Any other intent language had been found in some of the provisions the Senate bills had attempted to work on.

Mr. Skidmore began with the bill's elimination of the marriage defense for sexual assault. He explained that current statutes included a provision where marriage was a defense against sexual assault. The provisions addressed when a person was mentally incapable, incapacitated, or unaware that sexual activity was occurring to them. He spoke to the critical importance of understanding what the terms meant. He noted the committee had some previous discussions about Alzheimer's and dementia. He read the definition of mentally incapable under AS 11.41.470(4):

> "mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person’s conduct, including the potential for harm to that person

Mr. Skidmore elaborated that Alzheimer's and dementia were progressive diseases. He stated there were points in time where a person could be diagnosed with the diseases but still understand what was going on around them. He explained it did not make it illegal for there to be any sexual activity between spouses if the defense language in the CS was adopted. The state would have to prove beyond a reasonable doubt that at the time the conduct occurred the individual had been rendered incapable of understanding. He elaborated that if someone came forward claiming that the individual had understood, it would be a defense. The state would have to show they could not comprehend, that the

Alzheimer's or dementia had progressed to that point where they did not understand at the time of the activity. Under the bill, when a person had Alzheimer's or dementia that progressed to the point where a person could no longer speak, communicate consent, or control their movements, at that point marriage would not be a defense to sexual activity.

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Mr. Skidmore continued that the elimination of marriage defense had not been part of SB 91 and had come up as a separate issue that needed to be addressed.

Co-Chair Wilson acknowledged Senator Peter Micciche in the audience.

Mr. Skidmore addressed sexual abuse of a minor in the third degree. The crime occurred where a victim was 13, 14, or 15 years old and there was sexual contact and the offender was at least four years older. Despite the fact that the crime of sexual abuse of a minor included the term "sexual abuse," the crime was not considered a sex offense under current law. He elaborated that the crime was not subject to sex offender registration and did not carry the enhanced penalties that sex offenses did. The bill would establish a subset of sexual abuse of a minor that should be categorized as a sex offense for purposes of sentencing and registration. The bill increased the age difference between victim and offender from four years to six years. The age range for the victim would remain 13 to 15. When there was a six-year age difference the crime would be subject to the enhanced sentencing penalties of 2 to 12 years and the offender would be subject to sex offender registration.

Mr. Skidmore relayed that sexual abuse of a minor in the third degree had not been a part of SB 91, but it had come up in the conversation about SB 91. He explained that presumptive sentencing had been adjusted for all offenses except sex offenses under SB 91. He clarified that because sexual abuse of a minor in the third degree was not classified as a sex offense, the sentencing had been adjusted under SB 91. The change was in part, a response to what the state had learned during the SB 91 discussions.

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Co-Chair Wilson recognized Representative Josh Revak in the audience.

Vice-Chair Ortiz asked for more detail about the age differential [regarding the offense of sexual abuse of a minor in the third degree].

Mr. Skidmore replied that it would be a crime, but not a sex offense, when a 17-year old engaged in sexual contact with a 13-year old (an age difference of four years). The crime became a sex offense when there was an age difference of six years (e.g. a 19-year old engaging in sexual contact with a 13-year old). He gave further age range examples with the six year age difference. It would be illegal for a 19-year old to engage in sexual contact with a 15-year old, but it would not become a sex offense until there was a six-year age difference (e.g. a 21-year old engaging in sexual contact with a 15-year old).

Representative Josephson considered the difference in treatment between various ages. He asked for verification that if the crime involved a 17-year old and a 13-year old it would not be waivable to adult court; however, if the offender was 18-years old and the victim was 14-years old, the crime would be a felony for the 18-year old.

Mr. Skidmore affirmed. He explained that the two scenarios were both crimes, but there was a difference in the way the justice system managed juveniles and adults. Individuals under the age of 18 would be handled in juvenile court; the offense was not automatically waivable to adult court.

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Representative Knopp asked how the crime would be defined if the offender was 18-years old and the victim was 14-years old.

Mr. Skidmore answered that the scenario would be sexual abuse of a minor in the third degree, but under statute, the crime was not treated as a sex offense - it was not subject to a greater penalty or sex offender registration.

Representative Josephson surmised that an 18-year-old should not fall in love with a 14-year-old because even if they entered into a consensual relationship it could become felonious quickly.

Mr. Skidmore answered there was nothing wrong with falling in love, but the individuals would have to wait until they were older to engage in sexual activity. He provided a personal example about the age difference between him and his wife.

Vice-Chair Ortiz asked about the differences in sentencing levels.

Mr. Skidmore replied that a Class C felony for sexual abuse of a minor in the third degree that was not a sex offense, had a presumptive sentencing range of 0 to 2 years for a first time offense. When there was a six-year age difference, sexual abuse of a minor in the third degree became a sexual crime and carried a presumptive sentencing range of 2 to 12 years for a first time offense (there were additional sentencing ranges for repeat offenses).

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Mr. Skidmore discussed the crime of online enticement of a minor. Currently, the crime pertained to an adult trying to entice a minor to engage in sexual activity via the use of a computer. He explained that currently, if the same individuals were to communicate face-to-face it would not be a crime. The provision removed the term "online" from the title and from the elements of the offense, making enticement also illegal face-to-face.

Mr. Skidmore moved to the next provision related to the crime of indecent viewing. He noted the complexity of the statute that had confused practitioners for some time. He noted that some of the penalties associated with the particular concept should potentially be adjusted. He explained that the crime could sound sexual in nature, but it was not considered a sex crime for purposes of sentencing or [sex offender] registration. The crime involved two types of conduct pertaining to children and adults. The first was the viewing of the private exposure (defined in law) of genitals, anus, or female breast without consent. The offense could happen by looking through a window or peephole or via hidden camera. He referenced a recent problem where some Airbnbs in Ireland and other places had hidden cameras in homes people were renting for vacation purposes.

Mr. Skidmore shared that he had prosecuted a case 15 years earlier where a lifeguard had installed a camera in a smoke detector in the women's locker room to view children and adults changing clothes. The individual had been convicted and the crime had not been considered a sex offense at the time. He relayed that changes in sex offense laws had taken place much after that case. Once the changes had been made, he had been amazed to discover that type of conduct would still not be considered a sex offense. Other recent examples included individuals installing a spy camera in a significant other's bathroom that captured images of the significant other and their children. The bill would clean up the statutory language to make it easier for practitioners to follow. Additionally, the bill would help explain the sentencing. He detailed there had always been a different sentence between an adult victim and a child victim.

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Mr. Skidmore continued to review the sentencing for indecent viewing. He explained that the crime was a Class A misdemeanor for an adult victim and a Class C felony for a child victim. The Class C felony carried a sentencing range of 0 to 2 years, did not require sex offender registration, and did not have higher penalties. He detailed that the bill aimed to take a tiered approach. The crime would remain a Class A misdemeanor when it involved viewing an adult directly, but no photo was taken. The crime would become a Class C felony in cases where a photo was taken and would be subject to a sentence of 0 to 2 years, but it would not be classified as a sex offense. The sex offense designation was reserved for when the victims were children. The crime would be a Class C felony for direct viewing and a Class B felony for taking a photo - both offenses would be deemed registerable sex offenses and carry higher sentencing ranges.

Representative Sullivan-Leonard asked Mr. Skidmore to provide the bill sections for reference as he reviewed the changes in the CS.

Mr. Skidmore agreed. He cautioned that the order of the outline did not follow the order of the bill sections. He highlighted that provisions pertaining to indecent viewing were included in Sections 35 and 39 of the legislation.

Co-Chair Wilson acknowledged Senator Lora Reinbold in the audience.

Mr. Skidmore moved on to discuss theft crimes. He informed the committee that all of the provisions had been taken directly from HB 49 referred by the House Judiciary Committee. He noted that the online enticement and indecent viewing had nothing to do with SB 91, whereas, theft was one of the issues that occurred in SB 91. He explained that in SB 91, the state had changed the value threshold impacting whether the crime was a misdemeanor or a felony; the value was currently $750 and every five years part of the judicial branch was instructed to adjust the figure for inflation. He shared that the current law created two problems. First, it prevented the legislature from engaging in the public debate about the appropriate level for the dollar figure to be set at. He noted that the dollar figure had been changed after significant legislative debate in SB 64 in 2015, SB 91 in 2016, and SB 54 in 2017. He explained it was a policy call for the legislature, but it would eliminate the policy debate in the legislature that seemed to be significant to the public.

Mr. Skidmore reviewed the second problem with the current theft provision. The theft dollar figure threshold had been given to the judicial branch to notice everyone else - how everyone in the public was to learn of the changes and other things were issues the state had not yet encountered. The item was the last piece of SB 91 that would go into effect in 2020. The bill would remove that provision to eliminate the problem. The relevant bill sections were 11 through 27. Additionally, there were several other sections related to theft crimes, including the new crime of possession of vehicle theft. The bill also included an identification document, which was a good concept that came from the House Judiciary Committee.

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Mr. Skidmore shared that the third concept included was the aggregated value for theft (in Section 28) when it was over a six month period for commercial establishments. He explained it was a good concept from HB 49 by the House Judiciary Committee.

Co-Chair Wilson clarified that there were no lower committees, only prior committees.

Representative Knopp asked for detail on the vehicle theft tools.

Mr. Skidmore answered that the provision on vehicle theft tools was included in Section 21 on page 11. The section discussed a motor vehicle theft tool that could include a Slim Jim, a master key, an altered or shaved key, a trial or jiggler key, a lock puller, an electronic unlocking device or similar device adapted or designed for the use in committing vehicle thefts. The section defined a trial or jiggler key as a key designed or altered to manipulate a vehicle locking mechanism other than the lock for which the key was originally manufactured. He noted that because cars were changing and evolving there were different mechanisms to try to steal vehicles. The bill aimed at keeping up with the new mechanisms by including an updated list.

Co-Chair Wilson did not want to give anyone any ideas.

Vice-Chair Ortiz surmised that the change reverted back to the law pre-SB 91.

Mr. Skidmore agreed. The change would revert back to pre-SB 91 in terms of the method used for adjusting the value of a property offense between a misdemeanor and a felony. He detailed that the legislature could adjust the value in the future via legislation.

Vice-Chair Ortiz thought Mr. Skidmore mentioned the intent for a partial rollback in SB 54 [crime reform legislation passed in 2017].

Mr. Skidmore replied that SB 54 had originally removed inflation adjustment, but the provision had been deleted. Instead, people had elected to talk about the dollar figure that was the difference between misdemeanor and felony levels.

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Representative Josephson spoke to the reinstatement of potential jail penalties even for petty theft. He noted that those penalties were removed in the CS and a new Class B misdemeanor was created.

Mr. Skidmore affirmed. He noted that it pertained to sentencing provisions, which he would address later in the meeting.

Mr. Skidmore addressed the concept of the failure to appear. The committee had previously talked about the issue in a meeting on HB 49. The concept had been the 30-day grace period, which had created issues. The CS would remove the 30-day grace period and return the law to its state prior to the passage of SB 91.

Co-Chair Wilson asked for the section numbers.

Mr. Skidmore replied Section 31 and 32.

Vice-Chair Ortiz had heard about the reasons why the current 30-day grace period created problems because a defendant could fail to appear. He asked why the grace period had been implemented.

Mr. Skidmore recalled that prior to SB 91 there had been a practice within the Court System (that he believed still existed) where an individual failed to appear for a particular hearing and courts would issue a warrant but would hold it in abeyance. The court would grant a designated timeframe (e.g. 24 hours, 48 hours, or other) before putting the warrant into the system. He noted that sometimes the court would schedule another hearing and would not issue a warrant. The goal with the provision had been to take the concept and put it into law.

Mr. Skidmore stated that the practice or concept was not offensive; it was well within a judge's purview and was appropriate. However, the creation of the 30-day grace period swept other hearings or cases into the concept that the judge would not have chosen to do. For example, a judge may have said a particular individual had already failed to appear two times previously and they were issuing a bench warrant. He elaborated that the defendant could have failed to appear (without consequence) for a trial or evidentiary hearing that meant witnesses, victims, and others had been called in to appear in court. The provision had required the individual to report to the court within 30 days and a hearing would be rescheduled. The process had been deemed not to work well. He reported there had been approximately 137 prosecutions for failure to appear prior to SB 91; the

number had dropped to around 30 after the passage of SB 91. He noted the change was significant.

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Mr. Skidmore moved to the violation of conditions of release (Section 33). He detailed that prior to SB 91, it been a Class A misdemeanor if the person violated conditions set on a felony case. He elaborated that if a person violated conditions of release on a misdemeanor, the crime was a Class B misdemeanor. He detailed that under SB 91, violation of conditions of release had been eliminated as a crime and was returned to a violation. He elaborated that it had been reestablished as a crime under SB 54 in 2017. The change back to a crime had limited the penalty to five days. Under the CS, returning the crime to a Class A and B misdemeanor, would mean penalty ranges could be applied to the offense. He mentioned the concepts where the issue had been problematic. There were cases were individuals had violated conditions and the only way to keep them in jail up to a trial was to convict them and have them serve the sentence of the particular crime.

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Mr. Skidmore addressed the concept of escape, which had not been dealt with in SB 91. The crime related to individuals on ankle monitors. He explained that individuals could receive an ankle monitor pretrial or as a way to serve their sentence post-conviction. The removal of the monitor could be dealt with in a couple of ways. Pretrial, all the court could do was charge a person with a 5-day penalty for a violation of conditions of release. The bill would make the cutting of an ankle bracelet a Class C felony for a person wearing the monitor pretrial. Second, the CS would elevate the conduct from a Class A misdemeanor to a Class C felony if the person removed the ankle bracelet when sentenced and under detention for a misdemeanor. The goal of elevating the crimes and showing consequences was to increase use and encourage more use of ankle monitoring. The provisions were included in Sections 29 and 30. Additionally, the bill contained repeal language in Section 96, which would increase the crime to the felony level.

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Mr. Skidmore addressed the crime of terroristic threatening. He explained that the crime occurred when an individual made a false threat that caused a substantial reaction from authorities. The concept was currently in statute, but it did not address the threat that someone may have intended to carry out a threat. He explained that there was a crime of attempt, but it was not applicable until a person had taken a substantial step. He detailed that "substantial step" was a term of art found in the law for the crime of attempt; it required a person to take real concrete steps towards committing a crime. Adding the concept of a real threat that had not yet been acted on, allowed law enforcement to respond.

Mr. Skidmore elucidated that the concept had been generated from the concepts seen in Ketchikan and Anchorage where kids had made threats about something that may happen at school, which required a significant response from schools. Law enforcement could only be involved to a certain extent if there was not some sort of crime associated. The change allowed law enforcement to take the additional and appropriate steps when there was a threat resulting in a substantial response from law enforcement and the impacted entity (e.g. the evacuation of theater or school).

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Co-Chair Wilson noted the provision was in Section 34.

Representative Sullivan-Leonard asked about the different penalties for juveniles and adults for the crime [of terroristic threatening].

Mr. Skidmore rephrased his understanding that Representative Sullivan-Leonard was asking how the legal system dealt differently with children and adults. He detailed that an adult would be prosecuted in an adult court, whereas a juvenile would be prosecuted in a juvenile court and their name would be kept private. He added that the state's juvenile courts protected the privacy of juveniles and did not share the vast majority of the information. He noted there were a couple of exceptions, but terroristic threatening did not qualify. The second difference dealt with the way sanctions were imposed. He elaborated that when sanctions were imposed on adults the system looked at five factors called the chain of criteria. When the crime involved a juvenile, the system considered

the best interest of the child. He expounded that sometimes a juvenile had to go to a detention facility, but it was not always the case. He detailed that more often than not, things were resolved through probation, discussions with parents, and other. He explained there was a host of ways the system dealt with those things related to juveniles that looked very different from the adult world. He noted it was the reason it was very significant when a juvenile was waived into an adult court.

Vice-Chair Ortiz requested to hear which section of the bill was being discussed prior to Mr. Skidmore's review.

Mr. Skidmore agreed.

Representative Knopp returned to the crime of escape related to electronic ankle monitoring. He referenced Mr. Skidmore's discussion that the Department of Corrections (DOC) would decide post-conviction [about incarceration or electronic monitoring]. He thought the judge was responsible for making the decision.

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Mr. Skidmore confirmed that he had said DOC. He explained that once a judge issued a sentence or a judgement, it would be up to DOC to determine what risk the individual posed; DOC would determine whether the individual should serve their sentence in a low, medium, or maximum security facility, whether or not they could be on ankle monitoring, and whether they could be in a halfway house/community residential center (CRC). He noted DOC had policies in place (he was uncertain whether policies were set in regulation) and discretion to determine the appropriate place for a person to serve their sentence.

Representative Knopp stated he was beginning to wonder what judges were doing. He elaborated that prosecutors and defense attorneys entered an agreement for the judge to approve and then DOC decided how and where an individual would serve their sentence. He wondered if the system had stripped all authority away from the judges. He referenced Mr. Skidmore's mention that escape from electronic monitoring was a Class C felony. He asked for verification the sentencing range for the crime was 0 to 2 years.

Mr. Skidmore responded affirmatively.

Representative Knopp provided a scenario where a person cut off their ankle monitor after being sentenced and was retried and found guilty on a Class C felony charge. He asked if the individual would be put back on electronic monitoring.

Mr. Skidmore replied that he did not work for DOC, but he found it highly unlikely the scenario would occur. His impression based on how the policies had been executed over the years was that once someone had committed the violation of removing an ankle bracelet, it meant they were no longer a good candidate for electronic monitoring.

Co-Chair Wilson requested to hear from DOC. She believed it was important to understand the likelihood of someone being released on electronic monitoring after convicted of removing the device previously.

Representative Knopp thought it was important to know whether a person would be ineligible for electronic monitoring under the scenario.

JEN WINKELMAN, DIRECTOR, PROBATION, PAROLE, AND PRETRIAL, DEPARTMENT OF CORRECTIONS, answered that a risk matrix was completed for anyone who applied for electronic monitoring. If the person had been charged with a prior escape, they were given a certain number of points that precluded them from being a candidate for electronic monitoring. The individual could appeal the decision through the commissioner's office, but she had not seen an individual win an appeal under the scenario provided.

Representative Knopp asked for verification that the opportunity was still available for a person to be eligible for electronic monitoring under the scenario he provided.

Ms. Winkelman replied that individuals turned in applications all of the time; however, once the scoring was completed individuals could be denied. For example, by statute a person in on a domestic violence charge could not be placed on electronic monitoring, but they could still turn in an application even though the department would deny the request.

Co-Chair Wilson surmised individuals were all given the same opportunity to the process.

Ms. Winkelman replied affirmatively.

Co-Chair Wilson requested to hear about judges' responsibilities from the Court System. She pointed out that two parties could make a deal, but that did not mean the judge had to agree to it. She continued that at the end of the day the judge considered all evidence and there was no circumventing the judge's authority through any kind of plea deal. She did not want there to be a misconception that judges did not make a determination; they had a process they were required to go through.

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NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, replied that the judges were very busy. She believed the question pertained to the authority the court had in relation to plea bargains. She detailed that a judge may reject a plea bargain. Generally, the courts ensure that defense counsel and prosecutor had presented a legal agreement that sentenced the person within the appropriate ranges and that it was not something patently unreasonable. In general, plea bargains were approved by judges because judges at that point in the case had much less information about the circumstances of the case than the attorneys. She clarified, that did not mean the judge did nothing; the judge reviewed plea bargains to ensure attorneys had entered a legal and appropriate appeal.

Representative Knopp clarified he did not mean to imply judges were not doing anything. In earlier testimony the committee had heard that judges seldomly rejected plea agreements and did not have the option to change sentencing.

Ms. Mead agreed that judges could accept or reject a plea agreement. She elaborated that a judge did not have the authority to tell a prosecutor they should have pursued charges that the prosecutor had determined ought to be dismissed. She added that at that point in the case when plea bargains were entered there had not yet been a trial and the attorneys had much better facts about the case than the judge; therefore, there was a supposition that the attorneys knew a bit better about what was going on in a case.

Representative Josephson noted that the judge also had to make a probable cause finding. He asked if the judge had to hear basic facts of the allegation and make a pro forma finding that the allegation seemed to fit the charge.

Ms. Mead answered that she was not terribly familiar with a probable cause finding happening during a change of plea hearing (the hearing to accept or reject a plea bargain), but the court typically heard a brief explanation of the case to get a sense of what was going on. The court typically had something in the file, even if it was limited to a half page police report. She noted that the information the court had about a case at that point was not in depth.

12:51:50 PM

Representative Merrick asked what percentage of cases resulted in a plea deal and how the parties decided a case would be pled or tried.

Mr. Skidmore answered that approximately 95 percent of cases were resolved through plea negotiations. When the prosecution entered into a change of plea or plea negotiations, it considered the strength of the case and the likely outcome if a person was convicted as charged. Additionally, the prosecution consulted with victims and law enforcement. All of the items went into determining what the prosecution believed to be a reasonable outcome. Plea negotiations always required some incentive for a person to agree to giving up rights to go to trial and having witnesses brought in front of the court.

Ms. Mead agreed. She had recently looked at the information about how cases were resolved (referred to by the courts as dispositions). She shared that fewer than 5 percent of cases went to trial; the number had been around 3 percent in the last several years. The dismissal rate for misdemeanors was about 42 percent in the past year, which left less than 60 percent to be resolved in plea deals. The felony dismissal rate had been around 30 percent in the past year, with a couple percent going to trial, it left the percentage of cases resulting in plea deals in the high 60 percent range.

Mr. Skidmore clarified why he had identified the rate of cases resulting in a plea negotiation as 95 percent. He

explained that many of the dismissals were the result of plea deals. He noted that was not the situation for all cases.

Co-Chair Wilson recognized Representatives Matt Claman and Sharon Jackson in the audience. She asked a question related to the crime of threats. She provided a hypothetical scenario where a middle school student posted on Facebook that they planned to shoot certain people at school. She elaborated that the post was shown to the principal and law enforcement was called. She asked if the scenario was a crime currently; if not, she asked if it would become a crime under the CS.

12:55:23 PM

Mr. Skidmore answered that he was cautious about responding to hypothetical scenarios. He considered the scenario presented by Co-Chair Wilson.

Co-Chair Wilson clarified that in the scenario, the police had been called to the school, but the school was not evacuated, and no further action had been taken by the student making the threat or by the school. She was trying to determine whether the situation was considered a crime under current law and the CS.

Mr. Skidmore answered that under current law, law enforcement could respond to try to determine whether it was a real threat; if they believed the threat to be real, they would take steps to try to intervene. The difficulty was that law enforcement was limited in the steps it could take if the treat was real. He referred to Section 34 on page 17 of the CS and reported that the CS would enable law enforcement to take additional action. He read from the section:

> (a) A person commits the crime of terroristic threatening in the second degree if the person makes a threat that
>
> (1) places...a person...in reasonable fear of serious physical injury to any person with reckless disregard that the threat may cause...

Mr. Skidmore explained that in the situation, law enforcement would have to evaluate whether the person who had made the Facebook post had done so and that it resulted

in placing someone in fear of serious physical injury (he assumed that was the case in Co-Chair Wilson's scenario). He referenced the bill's language "disregard that the threat may cause," and explained that even though the school was not evacuated, the prosecutor would be obligated to show that the person who made the Facebook post was reckless in disregarding the fact that there could have been a more significant emergency response that includes the initiation of emergency protocol for a building, public place or area, or business premises that causes a serious public inconvenience or the public or substantial group of the public to be in fear of serious physical injury. The fact that the threat may result in one of those things would be a crime and would allow police to take additional steps that they could not currently take.

Co-Chair Wilson commented that unfortunately the issues were actually happening in schools.

12:58:22 PM

Representative Carpenter asked for verification the consequences would be different for a threat made by a child versus a threat made by an adult as they would be heard in different court systems.

Mr. Skidmore responded affirmatively.

12:58:37 PM

Mr. Skidmore moved on to discuss provision dealing with drugs under Sections 41 through 48 of the legislation. There were a couple major compromises found in the CS that were still very important aspects. He noted that Sections 2 and 3 included some conforming language given the changes in statutes for drug offenses. He cautioned that when reading the bill, it may appear certain sections were repeated, but it was necessary to read the sections in conjunction with the repealers in Section 96. He explained that SB 91 had reduced drug offenses from a Class A or Class B felony to a Class B or Class C felony. The bill would increase drug offenses back to a Class A or Class B felony. He advised that the language was not shown as deleted in Sections 41 through 48; it was necessary to read the sections in conjunction with the repealer to understand when a section was deleted.

Mr. Skidmore addressed drug possession. He explained that the governor's legislation proposed to return all possession to a Class C felony. Whereas, the CS specified that the first two offenses would remain a misdemeanor. He explained that the provision qualified as a "must have" and a substantial step in the right direction because under current law, the first two possession charges had zero active jail time. The CS would allow the first two possessions to result in a Class A misdemeanor that had a sentencing range of 0 to 1 year.

Mr. Skidmore explained that the change in sentencing was significant for two reasons. First, when law enforcement responded to a drug call, they would likely take the drugs and paraphernalia and destroy them, but not arrest the individual. Law enforcement had the authority to arrest the individual, but it was essentially meaningless because the sentencing provision carried zero active jail time. He explained it was the same concept that had been encountered for Class C felonies when it had been adjusted in SB 54 - people had not been arrested for the crimes because the jail potential had been zero; the penalty had been probation only. Consequently, the judge would immediately release a person if the jail sentence was zero. He explained that under the scenario, the penalty was greater for holding a person than the potential consequence at the end of the trial. Adjusting the sentencing to 0 to 1 year would allow officers to make an arrest; the judge would still have the discretion to determine whether a person should be held.

Mr. Skidmore highlighted the second significant difference related to possession charges. He referenced testimony he had given in a prior meeting related to the need to incentivize people to get treatment. The CS would provide incentive that was dramatically different from current law. He noted that the change did not go as far as what the governor had asked for. He underscored that the change was a critical step in the right direction.

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Vice-Chair Ortiz asked if the adjustment would revert back to the law pre-SB 91.

Mr. Skidmore responded in the negative. He explained that prior to SB 91 any possession of a drug was a Class C felony. He noted that under the CS, the first two offenses were misdemeanors and the third offense was a Class C felony. He added that a suspended entry of judgement (SEJ) could be used as well. Under the CS, for those individuals who were addicted, there would be more tools available to law enforcement and prosecutors to try to incentivize an offender to get clean. He understood that getting clean may not happen immediately. The individual would have two chances (potentially more changes when factoring in SEJs) to try to get clean. A third offense would be a Class C felony, which was a change from current law where the crime always remained a misdemeanor. He reiterated that the compromise was a substantial step in the right direction.

Mr. Skidmore referenced a study given to the committee at a recent meeting reporting that 77 percent of the people released from a drug crime committed a non-drug related crime in the next nine years. He stated that individuals struggling with addiction needed help and recognized that they could substantially impact communities by committing crimes that included theft, assault, criminal mischief, and other. He restated that the change was a substantial step in the right direction.

Vice-Chair Ortiz recalled that when the legislature had debated SB 91 there had been consensus that locking up individuals who use drugs was not working. He shared that it had been one of the motivators for looking at a different approach. One of the other factors had been that the state was incarcerating people at a rate that would require another prison. He asked whether the incentives for treatment and other things be maintained if the sentencing range was 0 to 180 days instead of 0 to 1 year as proposed in the CS.

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Mr. Skidmore answered that 180 days would be 180 days more than what was offered under law currently. He could not say it was not also a step in the [right] direction. He did not believe the increase to 6 months jail time was significant enough. Going up to one year was substantial and he stated it was a significant step that prosecutors and law enforcement would like to see. He did not know how others would view the idea of a 6 month jail sentence.

Co-Chair Wilson recognized Representatives Geran Tarr and Jonathan Kreiss-Tomkins in the audience.

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Vice-Chair Johnston asked for verification that throughout the process, prosecutors could use an SEJ as a tool to push towards treatment.

Mr. Skidmore agreed and clarified that an SEJ was a suspended entry of judgement. The tool would allow a prosecutor to direct a defendant to complete a certain set of conditions during a specified time period. One of the conditions could be to go to a residential treatment program that an expert deemed appropriate. He explained that if the individual complied with all of the designated conditions, the case could be dismissed. He explained that there would be an arrest but no conviction on record even for a Class A misdemeanor. He confirmed that the tool would still exist under the CS.

Vice-Chair Johnston stated that currently the tools were not in place. She asked if the current system contained elements to promote treatment if a person was arrested under any of the offenses discussed.

Mr. Skidmore replied that the option for an SEJ existed, but there was no incentive to utilize it. He explained that a prosecutor could direct a defendant to complete a residential treatment program and comply with other conditions for up to a year; however, the individual would likely take their chances at trial because they would not get jailtime. He underscored there was currently no incentive. He elaborated that the SEJ was not impactful without having the potential of jailtime. He returned to his statements in response to a question by Vice-Chair Ortiz that jailtime of 1 year was more significant than 6 months. The sentence had to be substantial enough for a defendant to be motivated to follow conditions. He added that he would prefer a Class C felony charge with sentencing of two years, but he believed the Class A misdemeanor proposed in the CS was much better than the current law.

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Vice-Chair Johnston directed a question to DOC. She asked about the difference between a 6-month and 1-year treatment program [in the DOC correctional system]. She asked about the availability of treatment during the two time periods.

KELLY GOODE, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, asked for the question to be repeated. She thought it may be better answered by the department's Health and Rehabilitative Services director.

Vice-Chair Johnston noted that currently there was a 0 to 1-year sentence [for drug possession]. She wondered about the tools available in the DOC system for drug treatment within prison. She asked about the availability of treatment and the difference between a 6-month and 1-year program.

Ms. Goode noted that it was a great question for her colleague Laura Brooks. She noted the topic had been covered to some extent with the committee in the past. She offered to have Ms. Brooks call in to answer the questions.

Co-Chair Wilson requested to have Ms. Brooks call in. She expounded on Vice-Chair Johnston's question. She requested to hear about the backlog in the DOC treatment program availability. She noted that a person may have jailtime of 6 months to a year, but treatment may not be available for three years.

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Representative Josephson remarked that a 12-month sentence was really an 8-month sentence and a 6-month sentence was really a 4-month sentence due to the good time factor. He thought it appeared there were two other parts of SB 91 that were good and would remain in the bill. He asked for verification that the first item was the SEJ, which had not existed prior to SB 91.

Mr. Skidmore agreed.

Representative Josephson addressed the second part of SB 91 that would remain in the bill. He provided a hypothetical scenario where a person did not believe they had a drug problem and recreated with cocaine twice a year. He asked for verification that if caught, the person would not be charged with a Class C felony, which could be a barrier

crime and badge of dishonor; the individual would receive a wake up call and escape a felony charge under the CS.

Mr. Skidmore replied in the affirmative, as long as any prior usage or convictions were outside the timeframe that would elevate the crime to a felony. The charge would be a Class A misdemeanor the first two times a person was caught; for a third offense, the charge would increase to a Class C felony.

Representative Sullivan-Leonard remarked that the particular change in the law would be a big step to help local enforcement agencies to make significant changes in neighborhoods. She referenced a recent situation when a person had heroin on them and had passed out in their vehicle in a neighborhood. The incident had been called in and the troopers had released the individual. She wanted to stop the distribution and use of drugs in the state's neighborhoods. She asked if the particular change would give tools to state troopers who were trying to fight the problem.

Mr. Skidmore affirmed.

Representative Sullivan-Leonard thought that rehabilitation services in the prisons fell under Salvation Army. She added that DOC was using Vivitrol that seemed to be effective for heroin and OxyContin addictions.

Vice-Chair Ortiz had a question related to the costs involved in starting to return to locking people up. He asked when the appropriate time would be to discuss the costs.

Co-Chair Wilson communicated her preference to address costs during the fiscal note portion of the meeting. The current portion of the meeting was related to policy. In response to a comment by Representative Sullivan-Leonard, she noted that the Department of Public Safety (DPS) would also weigh in on the bill.

1:18:33 PM

Mr. Skidmore moved to the distribution of drugs. He discussed that under SB 91 distribution had been reduced from Class A and B felonies to Class B and C felonies, and the concept of weight had been introduced to decide when a

crime should be a Class B or C felony. He explained that the weight concept did damage to the way in which the framework for drugs had been set up in Alaska. He referenced an opinion that talked about the different factors that were important for a judge or prosecutor to evaluate when looking at a case on drug distribution. The differences that could exist around the state from community to community and the various factors were thrown out the window when an exact weight was put into statute that would treat all communities the same.

He explained that the CS removed the weight quantity and returned to the original concept. Additionally, the CS reinstated the methamphetamine manufacturing and distribution protections that were previously in statute. The changes would return the law to its pre-SB 91 status related to distribution. He explained that distribution charges allowed prosecutors and law enforcement to aggressively attack the problem from the demand and supply sides. The changes would work in conjunction with other steps taken in recent years, such as creating Alaska as a high intensity drug trafficking area, which brought in substantial money to fight and prosecute drugs.

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Mr. Skidmore turned to arraignment in Section 49 of the bill. The bill would allow 48 hours after arrest to arraign a defendant and set bail. He explained that SB 91 had reduced the timeframe from 48 hours to 24 hours. He explained that prior to the change made in SB 91, defendants appeared within 24 hours in the vast majority of cases. He explained it was the preference of the Court System and he expected the same would happen again even with the change. The change allowed a bit of flexibility in two areas. First, the change provided flexibility if there were other reasons it was not possible to get someone arraigned within 24 hours. Second, the change allowed conversations and to evaluate whether or not having judges and prosecutors work 365 days a year was appropriate. He considered whether it was appropriate to take a break on a Sunday and holidays. He did not know the answer, but it allowed for the conversation. The change would put Alaska in the "middle of the pack" in terms of other states. He believed there were only a couple of other states with the 24-hour timeframe. All other states had something above 24 hours; he noted the outside number was 72 hours.

Mr. Skidmore moved to pertaining to presumptions for release on bail in Sections 50 through 54. He noted it was the second major area where there was a deviation from the governor's bills. The presumptions would return to the pre-SB 91 law, but with a significant difference. The current risk assessment tool could continue to be used, gather data, and be improved into the future; however, due to its imperfect nature, the tool would not be the driving factor in bail release statutes. He explained the tool would merely be a factor for the courts to consider.

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Vice-Chair Johnston believed the risk assessment tool was supposed to be reviewed annually. She asked if the review process would continue.

Mr. Skidmore affirmed. He detailed that the risk assessment tool was currently being evaluated and was supposed to be validated by June 2019. The concept was to continue to use it and validate it into the future to determine whether it could be improved. The concept of the tool was not a bad one, but the way it had been executed was flawed. He explained that adjustments were needed. The change would allow the system to consider improving the tool without doing further damage to the justice system in the way it handled pretrial release.

Vice-Chair Johnston communicated her understanding that data collection would continue, the state would continue to improve on the tool, and it would continue to be used as an advisory tool until all parties felt it could be implemented as desired.

Mr. Skidmore agreed it was the intent. He relayed that the provision allowed the state to continue improving the tool. He was not in a place to commit anyone in the future to something.

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Representative Carpenter asked for verification the tool would be used, but it would not be a mandatory requirement. He elaborated that the judge would have the discretion to consider the tool results and decide to go in a different

direction. He believed the change would give discretion back to the judges (pre-SB 91).

Mr. Skidmore answered in the affirmative. He cited the argument that the courts currently had the ability to use discretion. He explained the problem was that statute constrained the courts in relation to the low, medium, and high score designations. He stressed that the tool showed five scores, not three, and the state had to pigeonhole the data to fit into the law that only had three categories. The categories created presumptions about what the court was supposed to do. He clarified that the change in the bill would decouple the law from the presumptions. The change would return the law to its state pre-SB 91, but with the addition of the assessment tool. Additionally, the bill would leave the additional pretrial supervision available from DOC, which had not existed pre-SB 91.

Co-Chair Wilson summarized that the tool was advisory.

Vice-Chair Ortiz referenced the following language [from page 3 of document from Department of Law titled "Draft CS HB 49" (copy on file)]: "removes inability to pay as a reason for the court to review a bail setting."

Mr. Skidmore replied that when a person appeared before the court and conditions for release were set, if the person did not get out of jail within 48 hours, they had the right to another hearing. He noted it was true pre-SB 91 and under current law. He highlighted some differences and explained that when a person came in for a second hearing there was supposed to be some new information the court did not previously hear. Under SB 91, a person's inability to pay or to post bail could be considered new information (even though the court had considered it originally). The CS would change the law to its previous state (pre-SB 91) - it specified that a judge considered a person's inability to pay or post bail at the first hearing and did not need to reconsider it as new information at a subsequent bail hearing. He added that in his 20 years of practice he had attended many bail hearings where there had been a pitch for an individual to be released from jail based on other conditions and for bail to be reduced. He noted bail was always reduced in that scenario. The concept that new information was required to have bail adjusted was a fallacy.

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Vice-Chair Ortiz asked what the motivation would be for dialing the provision back. He asked if the new provision had created problems. He asked why there was a need to dial the law back to a pre-SB 91 setting if the judges were always considering a person's inability to pay bail.

Mr. Skidmore replied it was the reason a person could get a subsequent bail hearing. He stated the court did not want to end up with a daily bail hearing Monday through Friday and when a person's inability to pay could be new information, it could be new information at each bail hearing on Monday through Friday. At some point there had to be acknowledgement that the fact that a person could not post bail was not new information; it was necessary to give the judge new information in order to revisit their initial decision.

Vice-Chair Ortiz asked why the provision had been included if the ability for a person to pay bail had always been considered. He thought the provision must have been included out of fear or recognition that there was a disadvantage in the system for low income individuals.

Mr. Skidmore answered that the rationale for putting the provision in law was as he had articulated. He explained there had been multiple bail hearings occurring time after time. There had been recognition that the number of bail hearings taking place needed to be controlled. He clarified they were not saying just because someone was of a certain socioeconomic status they should not be released from jail. He elaborated that the judge had made an appropriate determination about where they thought the bail should be and that determination already considered a person's ability to pay. A subsequent hearing should be reserved for cases where new information was brought forward, and something had changed to indicate the person should be released. He characterized monetary bail was going out of vogue. He believed much information had been presented to the courts about the topic. He did not know whether courts would dramatically change their process related to monetary bail if the statute was changed.

Representative LeBon discussed that the DOC commissioner was required to determine a pretrial risk assessment as part of the process. He read the following excerpt from

language on page 28 of the bill: The unavailability of a report prepared by the pretrial services officer under AS 33.07." He asked for verification that the unavailability did not hold things up and the risk assessment determination may not be part of the process in the first 24 to 48 hours. He asked if the language was eliminated from the bill. He wondered how the language impacted the risk assessment score. He kept hearing that part of the problem was the risk assessment score was not effective in treating repeat offenders.

Mr. Skidmore replied that the CS proposed to eliminate the language Representative LeBon was referencing on page 28. He explained that the provision could remain in statute because the pretrial risk assessment tool would continue to be used. The language would be eliminated if the pretrial risk assessment no longer existed; however, if the tool was kept, the language could be kept. He affirmed the concerns with the tool were based on the lack of data used to develop it to begin with. The tool had been limited in the number of years and it had not considered [an individual's] out of state history. There were many other types of data that needed to be collected to refine and improve the tool.

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Co-Chair Wilson acknowledged Representative Adam Wool in the audience.

Mr. Skidmore turned to pretrial electronic monitoring and credit against sentences found in Section 56. The provision was a change from the governor's bills. The governor's bills would have made any electronic monitoring pretrial ineligible against a sentence. The CS allowed electronic monitoring pretrial credits available to be used against sentences for specific offenses.

Co-Chair Wilson asked for verification there had to be a determination made by the courts and that [applying electronic monitoring pretrial credits to be used against sentences] was not automatic.

Mr. Skidmore confirmed that a determination had to be made by the courts. He noted he had never seen it done.

Co-Chair Wilson thought there were other attorneys who had.

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Representative Josephson asked if the administration had any carveouts related to the provision. For example, he believed the Senate had been considering that sex offenses would not be eligible. He thought that would suggest that assaults may be eligible. He wondered if the administration had an opinion on the matter. Secondarily, he wondered if wearing the electronic monitor was part of treatment.

Mr. Skidmore responded that he believed there were some significant policy calls required by the legislature on the subject. He did not know that the administration had drawn a hard and fast line on which ones should not be [eligible for treatment], but the administration would be paying close attention to decisions made by the legislature.

Co-Chair Wilson directed attention to Section 56, page 34, lines 23 through 31 and page 35, lines 1 and 2 that included a list of crimes that would be ineligible for the credit. She asked Mr. Skidmore to review the items.

Mr. Skidmore explained there was an existing provision in law specifying the amount of credit to be applied towards a sentence from pretrial electronic monitoring was limited to a year for the offenses [listed on pages 34 and 35]. The CS changed the provision to prevent any credit for the offenses [listed on pages 34 and 35] including a felony crime against a person under AS 11.41 (i.e. murder, felony assaults, sexual assaults, sexual abuse of minors, coercion, kidnapping, robbery, and other), a crime involving domestic violence as defined in AS 18.66.990 (i.e. misdemeanor assaults, violations of domestic violence protection orders, domestic violence involving criminal mischief for damaging property), sex offenses as defined in AS 12.63.100 (the sex offense was significant it would preclude whether a misdemeanor or felony outside of AS 11.41), an offense under AS 11.71 involving the delivery of a controlled substance to a person under 19 years of age, burglary in the first degree under AS 11.46.300 (i.e. breaking into a residence with the intent to commit a crime), and arson in the first degree under AS 11.46.400 (i.e. setting a residence on fire and causing someone to be injured including a first responder).

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Co-Chair Wilson noted that Ms. Brooks from DOC was available online to answer an earlier question.

Vice-Chair Johnston discussed that the CS changed a number of approaches related to drugs. She explained that it was an effort to help the public and potentially improve the offender's life via drug treatment. She detailed that in Sections 41 to 48, sentencing for drug possession had changed to 0 to 365 days. She asked if there would be a difference in treatment availability for a 6 month sentence versus a 1 year sentence. She wondered if the treatment capacity existed and if there was a waitlist.

LAURA BROOKS, DEPUTY DIRECTOR, HEALTH AND REHABILITATION SERVICES, DEPARTMENT OF CORRECTIONS (via teleconference), answered that DOC determined who went into treatment based on a substance abuse assessment. The department had a number of different types of substance abuse treatment programs available. She detailed that the intensive outpatient substance abuse treatment was only 15 weeks long; however, there had been about 30 people on the waitlist the previous week. The residential substance abuse treatment program was 6 months long and currently there were approximately 60 individuals on the waitlist. She confirmed there were treatment programs for individuals who were incarcerated for less than one year; however, the department and community as a whole struggled to find treatment providers. She explained that waitlists continued to grow, because there were not enough treatment providers to meet the demand.

Ms. Brooks highlighted there were also waitlists for the treatment assessments, which were required before an individual could be referred to a program. Once an individual was on a waitlist, the department prioritized individuals on the list who were closest to release and had a court order for treatment. She elaborated that someone with a shorter sentence would move to a higher place on the waitlist than another inmate with a couple of years left to serve.

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Co-Chair Wilson referenced the SEJ tool and questioned how the incentive would work if the individuals were on a waitlist.

Vice-Chair Johnston thought it was important to compare the current system with any changes they may try to put in place. She spoke to her concern about providing treatment to the best of the state's abilities. She asked if the assessment waitlist was variable or a snapshot in time.

Ms. Brooks answered that there had been approximately 100 individuals on the assessment waitlist the past week.

Co-Chair Wilson asked how long it took to get through the waitlist. For example, she wondered how long individual number 50 would have to wait for an assessment.

Ms. Brooks replied that it depended on the facility; there were a different number of providers in the various DOC facilities. On average it would take about 60 days for a person to get an assessment.

Co-Chair Wilson asked Mr. Skidmore if SEJ was the appropriate acronym.

Mr. Skidmore affirmed. The term stood for suspended entry of judgement.

Co-Chair Wilson explained the SEJ incentive to Ms. Brooks that was supposed to enable an individual to have a reduced sentence if they underwent treatment. She was trying to determine what the incentive would be if a person could not get through the program. She reasoned the option was only a tool if the system worked. She reviewed the potential wait time to get into a program including 60 days to get an assessment and another 30 to 60 days to get into treatment. She wanted to know how the tool worked.

Mr. Skidmore clarified that regarding SEJ and placing someone on conditions to comply, he was speaking about a person who was out of custody.

Co-Chair Wilson asked if individuals (out of custody) who agreed to the terms of an SEJ had to go through an assessment. Additionally, she queried the average wait time to get into a treatment program.

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Ms. Brooks replied that a substance abuse assessment was required before a person could enter any treatment program

including the 15-week intensive outpatient program or the 6-month residential program. She explained that the assessment determined the level of need. She noted there were assessment waitlists in the community as well. In Anchorage, the waitlist for an assessment was approximately 60 days. Once an assessment had been completed, it took an additional 30 to 45 days to get into treatment.

Co-Chair Wilson remarked that it sounded like completing a sentence may take less time than the incentive option.

Vice-Chair Johnston addressed pretrial and stated that under the current system, "we have nothing." She asked what the treatment options would be under the proposed "carrot and stick" approach. She wondered if the Alaska Mental Health Trust Authority should weigh in on the subject.

Co-Chair Wilson stressed the importance of addressing concerns when considering any bill.

Ms. Winkelman answered that under pretrial status, if the court ordered an individual or they had an agreement to get an assessment, even if the underlying charge indicated an alcohol or drug problem, DOC did not have all of the individuals in a treatment program or signing up for one. She explained that in pretrial status signing up for a program may appear that the defendant was admitting something. She relayed that, similar to the situation for individuals on probation and parole, when a defendant in pretrial was ordered to get an assessment or treatment the shortage of treatment providers caused delay in program availability.

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Vice-Chair Johnston spoke to the current program where individuals were released and there was no incentive to go through treatment. She surmised that if an individual did not go to the courts, DOC had no provisions to help them with treatment.

Ms. Winkelman answered that as a pretrial service officer, DOC enforced the conditions the court placed on an individual. She elaborated that if the court ordered an individual to get a substance abuse assessment or go through treatment, the pretrial service officer would follow through to ensure the defendant complied. She

reported that DOC saw many individuals who did not have an assessment or treatment ordered. She explained that pretrial service officers would give urinalysis testing, breathalyzers, etcetera, if ordered by the court. The officers visited defendants in the community to check in and ensure they made it to their next court date. She did not have an exact number, but DOC did see individuals ordered into treatment in pretrial status.

Vice-Chair Johnston believed the CS would give the Court System more flexibility and encouraging the treatment (even though there was not much treatment available).

Mr. Skidmore agreed. He thought the committee's questions centered around what the state was offering in terms of assessment when someone was supervised by DOC. He clarified that was not what he was talking about when he spoke about an SEJ. He explained that an SEJ would allow the court to direct a defendant to get a risk assessment done. The defendant would return once the assessment was complete to talk about doing treatment - whatever time it took for the individual to get through the treatment, the court could work with them on the SEJ. He explained that if the individual successfully completed treatment, the case could be dismissed and would not appear on the person's record. He clarified the issue was not about the treatment available at DOC.

Co-Chair Wilson believed the concern was about the scenario where a person's sentence was shorter than the time it would take to undergo treatment. She thought it went against the goal.

Vice-Chair Johnston added that she was trying to determine how effective the new statute would be. She wondered what [treatment] would be available pretrial and with the tool, if a sentence was one year and was hanging over someone's head. She noted that drug addiction was a terrible disease with no great fix. She was trying to find the right approach to provide an option for individuals who were ready to get treatment.

Mr. Skidmore replied it was not about the length of time a person had to serve in jail versus how long it would take them to do treatment. He clarified that two things were offered. First, not being in jail at all. Second, avoiding a conviction on a person's record. He explained the two

incentives were available to people if they utilized an SEJ. He addressed the amount of time and the size of the incentive being offered. There was a difference between having a Class C felony with a sentence of 0 to 2 years and the potential of a felony conviction versus a Class A misdemeanor. From the prosecutor's standpoint, the Class C felony was preferred and there was more incentive for the prosecutor to offer. However, he believed a conviction on a Class A misdemeanor and jailtime of one year was much better than the current law.

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Co-Chair Wilson noted the concern was that addicts had a small window of opportunity. She thought it sounded like the window closed before it even opened. She asked if DOC could utilize telehealth to get caught up with its assessments.

Ms. Brooks answered that DOC had started using some telehealth options in the past year. For example, when DOC lost its program in Seward, it had also lost the individual who provided assessments. The department was now able to do assessments via telehealth. She reported that DOC was looking at how to expand telehealth to impact the assessment waitlist and wait time. She shared that DOC was moving to a software-based national standardized assessment tool for substance abuse. The Department of Health and Social Services (DHSS) was also looking at implementing the tool. She explained that standardizing assessments would enable individuals to take the assessment with them when they left custody and all treatment providers in the community would accept the assessment, which would reduce wait times and increase efficiency.

Representative Carpenter asked about the length of time for substance abuse treatment offered in prison.

Ms. Brooks answered there were a couple of types of treatment. The residential treatment program was the highest level of treatment available and lasted six months. For individuals who did not require the highest treatment level, there was an intensive outpatient substance abuse program that lasted 15 weeks.

Representative Carpenter highlighted a scenario where a person was sentenced to eight months for first-time

possession (the maximum sentence for a Class A misdemeanor). He believed that given the time it took to get assessed and undergo inpatient treatment, the person's treatment would be about three months longer than their actual sentence.

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Ms. Brooks answered that the waitlist fluctuated. She explained that priority was given to individuals who were closest to their release date. She agreed that the scenario provided by Representative Carpenter could potentially be the case. She elaborated that moving individuals closest to their release date up on the priority list sometimes made the wait between the assessment and getting into treatment a bit shorter.

Co-Chair Wilson asked when the standardized assessment tool would be done.

Ms. Brooks answered that the training process had begun, and she believed the system would start in July.

Representative Josephson observed that the law answered many of the questions on suspended entry of judgement. He referred to statute specifying that through agreement with DOL, defense counsel, and the court, an individual could be put on probation for a period as long as was allowed by law. He noted the governor's bill would expand that law. He surmised that some of the urgency of the queue and timeline was not as exigent as it may sound, albeit those items needed to be monitored and funding was necessary. He pointed out that a court could not discharge an individual from probation prior to one year under the statute. The statute specified that the court could not grant an SEJ if a person had violated the terms of their treatment. He thought the statute covered much of what was desired.

Mr. Skidmore agreed that current statute provided the leeway. The concept he had heard from others in the committee was striking while the iron was hot. He would not dispute that idea. He confirmed that the statute was written so there was a tool available; there were substantial periods of time, far more than what was needed, even for the treatment waitlists. Whether a person was still incentivized was the prudent question. He stated the issue was a policy call - the CS made the first two

possession charges a Class A misdemeanor with jailtime of up to one year, whereas, the governor's bill made possession a Class C felony across the board.

Representative Josephson referenced Mr. Skidmore's response to a question from Representative Carpenter. He shared his understanding of Mr. Skidmore's answer that under the plan proposed in the CS, an offender would be living and working in the community and would be going to treatment, which was the difference from the governor's plan.

Mr. Skidmore clarified that whenever he was speaking about an SEJ it involved a person who did not serve a jail sentence or have a conviction on the record. The SEJ had been set up with those two incentives, which he believed were substantial.

Co-Chair Wilson noted recognized Representative Ivy Spohnholz (co-chair of the Health and Social Services Committee) in the room. She noted that Representative Spohnholz had suggested looking at the DHSS Division of Behavioral Health website to view opportunities. She asked if the backlog in the programs was zero.

REPRESENTATIVE IVY SPOHNHOLZ, reported there was a real time list online specifying the number of beds, the waitlist, and the number of days it would take to get into any one of the inpatient facilities throughout the state. There were currently facilities with open beds. She detailed that if there were people needing treatment who were not incarcerated and had been presented with the possibility of jailtime or the alternative treatment, there was a way to get the individuals into treatment immediately.

Co-Chair Wilson asked if the Health and Social Services Committee was looking at the specific issue more in depth in terms of what the state had to offer and where the holes were.

Representative Spohnholz replied that the Health and Social Services Committee would hold a hearing on the topic on Thursday at 3:00 p.m.

Vice-Chair Johnston asked for verification that the SEJ could be used at any time. She provided a scenario where an individual had gone to treatment for an addiction and had

done well for a long period of time, but they were approaching a third strike. She asked if it was a circumstance the prosecutor would look at the SEJ. She explained that it was a scenario where someone was trying hard to deal with their addiction and they fell off the wagon.

2:06:11 PM

Mr. Skidmore asked for clarification.

Vice-Chair Johnston clarified that in the hypothetical scenario the person had two prior misdemeanors and were on their third strike.

Mr. Skidmore stated his understanding of the question. He believed Vice-Chair Johnston was asking when a person would be eligible for the prosecution on the felony. He confirmed that prosecution on the felony was available at that time.

Vice-Chair Johnston thought a prosecutor could use the SEJ as a tool under the scenario. She was concerned about a person trying desperately to get on the right track. She pointed out there were options and it was not merely a penal colony approach. She wanted the process to try to work with the addiction as best as possible.

Mr. Skidmore answered it was an excellent point. Under the CS, the first two offenses would be a Class A misdemeanor. The third offense had a stronger penalty and the incentive was larger. He explained that on the third offense the SEJ incentive would enable a person to avoid up to two years in jail and a felony conviction. The bill provided a path for the option that did not exist under current law.

Vice-Chair Ortiz asked if an individual arrested for possession would have different levels of access to the SEJ tool and treatment facilities. He asked if the person's waitlist would be longer if they were arrested in some communities versus others. He asked if the prospect of getting effective treatment would be different depending on where a person was.

Representative Spohnholz confirmed that the prospect of getting treatment was different in different communities. She explained that the availability was elastic and changed over time depending on what was happening in different

communities. For example, Akeela had two programs with no waiting list in the Anchorage area. Additionally, there were currently no waiting lists in the Bethel or Yukon-Kuskokwim regions. However, individuals in the Mat-Su Valley or Fairbanks would have difficulty getting into treatment. She noted that an individual could travel to get into treatment. She clarified that the information she had provided was about inpatient programs. She noted there were outpatient programs in addition to the inpatient slots that were available. Additionally, there were other treatment programs in the community that were based more around the 12-step model rather than a clinical model. There were a wide range of options available to participate in addiction treatment in Alaska.

Vice-Chair Ortiz asked for verification that if a person had to travel to get treatment, it would be at their expense and not the state's.

Representative Spohnholz replied it could be, but she thought it could be an element of the negotiation with the court as well. She noted that the topic of payment for travel to addiction treatment was outside of her purview.

Co-Chair Wilson stated that Medicaid expansion may also qualify for an inpatient facility.

Representative Carpenter agreed that the option in the CS looked better on paper and that it resulted in more jailtime. However, he questioned whether it would solve the problem. He considered that under the maximum jail time a person had between 8 and 10 months to finish a drug treatment program while incarcerated. He was setting aside the SEJ option of doing treatment outside the prison. He believed a judge would have to give a maximum sentence in order for a person to be in prison long enough to get through treatment. He explained that if an individual was given a 90-day sentence, they would not be able to get through treatment by their mandatory release date. He stressed that while the CS increased the sentence range, it did not improve the opportunity for individuals to complete treatment. He would like to see the process sped up and encouraged reducing the amount of time it took to get an assessment and get into treatment. He questioned whether the law would be improved under the provision.

2:11:38 PM

Co-Chair Wilson thought it was a policy call. She discussed that in the past when there had been an incarcerated individual with the ability to get treatment in an outpatient facility it could take weeks to get the person into treatment even when beds had been available. She did not want government to get in the way of individuals getting treatment. She asked Representative Spohnholz to include it in discussions.

Representative Spohnholz agreed.

2:12:40 PM

Vice-Chair Ortiz appreciated the comments by Representative Spohnholz. He wondered if it was accurate that Alaska was facing a significant shortage of treatment options overall.

Representative Spohnholz confirmed that there was a shortage of available treatment options in Alaska. She encouraged Co-Chair Wilson to share the website information with the entire committee. She detailed that the website was updated about every 24 hours at regular intervals. The local providers provided the inpatient treatment information to DHSS. She reported that there continued to be some challenges with capital facilities for inpatient treatment in Alaska. The state had refinanced the way it paid for addiction treatment.

Representative Spohnholz explained that in the past the state had funded addiction treatment solely by grants - the legislature gave DHSS a certain amount of funding for treatment and after the money was spent there had been no more treatment available regardless of what the opioid, alcohol, or other substance addictions there were. The state had refinanced several years back and had gone to a Medicaid billing model for addiction treatment. The change allowed the state to pay for more addiction treatment in response to the opioid epidemic. Once the problem was resolved, the state would spend less money on addiction treatment; the model was very efficient. The model allowed the state to pay for services and operations of the facility, but it did not allow for any investment of the capital facilities needed to ensure there were enough slots. There was still a capital problem that needed to be addressed.

Representative Spohnholz relayed there had been some federal money over the past several years that had been granted out to the communities in Fairbanks and Juneau. The state needed more in order to meet the need. The state also needed to address workforce shortage needs; there was a shortage of behavioral health providers available to do substance abuse treatment. She highlighted that the Health and Social Services Committee would hear about the topic at its Thursday afternoon meeting.

2:15:17 PM

Co-Chair Wilson asked to hear from Mr. Steve Williams with the Alaska Mental Health Trust Authority (AMHTA). She queried what AMHTA was doing regarding treatment.

2:15:53 PM

STEVE WILLIAMS, CHIEF OPERATING OFFICER, ALASKA MENTAL HEALTH TRUST AUTHORITY (via teleconference), appreciated the conversation that was occurring because he did not believe the particular dialogue had received the weight it deserved in discussions on the bill. He believed the conversation highlighted the necessity between looking at a criminal justice problem through a public health lens. He noted that public safety had to be first and foremost, but it was necessary to consider what was driving the underlying issues for the individual causing contact with the criminal justice system. It was necessary to consider how to respond and how to get the individual access to the needed treatment. He thought Representative Spohnholz was accurate in her description of the access issues and available access to treatment.

Mr. Williams believed it was important to remember that having the leverage of a sentence did not necessarily mean someone was going to access treatment. He stated that addiction is a disease and the motivations and use of particular substances vary. The organization had been engaged in the issue for several years and had partnered with DHSS on increasing access to treatment. Additionally, AMHTA had partnered with the Court System, DOL, and the Public Defender Agency on different diversion approaches to address those interested in treatment. The organization was working to provide opportunities for individuals to engage in treatment, when public safety was not at risk. He referenced therapeutic courts. He relayed that AMHTA

partnered with DOC on several of the programs Ms. Brooks had discussed earlier, in addition to some release programming.

Co-Chair Wilson thanked Mr. Williams for being available. She noted it was only the beginning of the conversation.

2:18:31 PM

Vice-Chair Ortiz asked Mr. Skidmore about the SEJ tool. He wondered how long the tool had been available.

Mr. Skidmore responded that the SEJ tool had been enacted under SB 91 in 2016.

Vice-Chair Ortiz asked for verification that the district attorneys and defense weighed in on the issue. Alternatively, he wondered if it was up to the prosecutor to determine whether to use the SEJ.

Mr. Skidmore answered that use of the SEJ required the prosecution and defense to agree on its use.

Vice-Chair Ortiz asked if there were any statistics showing how often the tool had been used by district attorneys or prosecutors since it became available.

Mr. Skidmore replied that the SEJ had not been in use for issues related to drugs and drug prosecutions because possession crimes had zero jailtime available since the implementation of SB 91; therefore, there was no incentive for anyone to try to engage in an SEJ for a drug possession crime.

Vice-Chair Ortiz asked if the tool would be used frequently if the jailtime was increased to one year. He surmised it would still be up to the prosecution to decide whether they wanted to use the tool. He thought there may be some good reasons why the prosecution may not want to use the tool.

Mr. Skidmore agreed that the SEJ required both parties to agree to its use. He expected there would be an increased use of the tool, but he did not know what the increased percentage would be. He elaborated that the criminal justice system was based on discretion because the facts and defendants varied in each case; the tool may be appropriate in one case but not another. Without the

increased sentencing, the SEJ would not be used for drug offenses. He stated that the current system was not working.

Representative Josephson referenced the current law as it related to the SEJ. He referred to an earlier comment by Representative Carpenter that it appeared a person would opt to go to jail if it was shorter [than an option with the SEJ]. He observed that under subsections (a) and (e) of the law, it was not possible to know what the sentence may be. He thought it was only possible to know the sentence may be up to one year.

Mr. Skidmore replied that the SEJ process began with a change of plea hearing. He explained that a defendant would plead no contest or guilty and before the judge entered a judgement, the entry of the judgement would be suspended. He explained no conviction or sentence was entered; no one knew what the outcome would be. He explained it was a person's opportunity to try to avoid potential jailtime and a conviction. He elaborated that if the outcome failed, the individual would go before the judge again and the judge would accept the plea, enter judgement, and hand down a sentence.

2:23:06 PM

Representative Josephson asked if he was correct in saying that all of the bills (including Representative Chuck Kopp's HB 10, HB 49, and the CS for HB 49) moved to a felony on the third offense. He asked if the question under consideration was whether jailtime should be available for the first two misdemeanor offenses as incentive for individuals to go through treatment.

Mr. Skidmore confirmed that of the bills listed by Representative Josephson, the CS was the only one to have jailtime associated with the first two offenses.

Representative LeBon asked if the provision was a "3 strikes, you're out" approach to treatment. He provided a scenario where a person tried and failed at treatment after their first two [drug] offenses. He asked if the third offense was a Class C felony.

Mr. Skidmore confirmed that the CS would make the third offense a Class C felony.

Representative LeBon asked how the individual would be treated by the court if they failed on their third attempt and came back a fourth time.

Mr. Skidmore responded that if a person was convicted of a Class C felony for their third offense, on a fourth offense the parties would evaluate the timeframe in which the person came back. He explained that two of the first three offenses would need to be within the timeframe the offense would be a Class C felony (set at 10 years in the CS); if within the 10-year period, the fourth offense would be a second-time Class C felony. He believed the sentence range was 2 to 4 years, but he would have to double check.

2:25:34 PM

Vice-Chair Ortiz asked Mr. Skidmore if any of the governor's bills included the SEJ tool as a means of criminal reform.

Mr. Skidmore responded that none of the governor's bills removed the SEJ from law; it would remain in the law and had been one of the items discussed by the administration.

Co-Chair Wilson indicated the committee would break until 2:35 p.m.

2:26:33 PM
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Co-Chair Wilson noted they would begin with probation lengths.

Mr. Skidmore addressed probation lengths in Section 58 of the bill. He detailed that the CS would return probation lengths to the maximum period that existed prior to SB 91 - 25 years for sexual felonies and 10 years for all other crimes. He noted that for an SEJ, the amount of time an individual had time to comply with conditions such as treatment was based on how long the probation was available. He stated that returning probation back to the maximum periods was important for multiple reasons.

Vice-Chair Ortiz recognized the severity of sex offense crimes; however, he thought 25 years seemed to be a long time on probation. He asked if statistics showed the length of time was necessary in order to prevent recurrence or promote rehabilitation. He remarked that probation of 25 years taxed the system including the probation officers. He asked if that timeframe was necessary.

Mr. Skidmore answered that the containment model used for sex offenders was based on probation and based on what an offender does on probation. He underscored the success of the model. The lengthy probation allowed the justice system to keep offenders on the containment model to reduce the risk of reoffense. He could not say whether 25 years was the magic number, but the longer someone was kept on the containment model, the better.

Co-Chair Wilson expressed appreciation for the conversation.

Mr. Skidmore turned to caps on sanctions for technical violations or absconding from probation (Section 55) or parole. He noted that some of the caps were addressed in the repealer section of the legislation. The caps on sanctions for technical violations referred to the concept that someone was placed on probation or parole with a series of conditions. Conditions could include the requirement for an individual to report to their probation or parole officer on a periodic basis, maintain employment, notify the justice system of any address change, not consume alcohol, treatment, no contact with children, and other. A violation of the conditions, other than committing a new crime or failing to comply with sex offender treatment, was deemed to be a technical violation.

Mr. Skidmore explained that one of the efforts under SB 91 was to model the whole system on PACE [Probationer Accountability with Certain Enforcement]. The idea was that when people violated their probation or parole, they would immediately receive a sanction. He noted there had been studies showing the success of the approach. The state had attempted to replicate the model, but the effort had failed. He explained that failure had occurred for several reasons. First, the state could not make the timeframe to get to adjudication fast enough. Second, in PACE programs the offender agreed to be on the program so they recognized what the sanction would be and that it would happen quickly

when they committed a technical violation. Third, it responded to a single allegation and the caps were not written into the law under the PACE program the way they were in statute.

2:41:55 PM

Mr. Skidmore explained that when a person committed a violation of probation or parole, a petition was filed. He detailed that it did not matter if the petition alleged one or multiple violations. When the person was arrested and placed in jail, there were statutes that prohibited the person from being held in jail longer than the cap available for the particular petition (currently 3, 5, and 10 days for the first three violations respectively). Once the person was released, their adjudication hearing had not yet happened, and some individuals ended up violating probation or parole again. He explained that the cap was still 3 days under the scenario because the individual had not yet been adjudicated - they were still under the same petition and it did not matter how many allegations they had.

Mr. Skidmore clarified that the situation did not happen in every case, but he illustrated scenarios that could happen. He stressed there were times when an individual committed 10 different violations before getting to their adjudication, yet the cap was limited to 3, 5, and 10 days. He explained it had created a scenario where there was no incentive to follow the conditions while waiting for adjudication. He underscored that the system did not work. The CS would return the law to its prior state without caps. He reminded the committee the bill contained a number of compromises. The governor's original bills talked about eliminating administrative sanctions. He elaborated that SB 91 had required DOC to develop an administrative sanctions program specifying that if an individual violated probation or parole, the department would attempt to address the violation without filing a petition. The department would attempt to address the violation administratively.

Mr. Skidmore reported that the CS did not eliminate administrative sanctions. He detailed that administrative sanctions had been utilized 21,000 times in the two years they had been available. He emphasized that administrative sanctions were the vehicle to get to swift sanctions and something other than jail. Once the sanction was used,

there would no longer be a 3, 5, and 10-day cap limitation. He noted that the court or parole board could determine there would be no jailtime for a petition, but they would have full discretion to determine the appropriate action.

2:45:30 PM

Vice-Chair Ortiz asked whether a new sanction level could be added for individuals who violate at higher levels, instead of the approach outlined by Mr. Skidmore.

Mr. Skidmore responded that the CS attempted an approach that would include something in statute. He explained that the system was built on discretion and when it was limited too much, particularly through statutes, it broke. Caps on technical violations was probably one of the top two things that prosecutors communicated had been broken via criminal justice reform [SB 91]. He emphasized the high amount of litigation over the particular concept. He stressed that the change needed to take place in order to repeal and replace aspects of SB 91. He reiterated that administrative sanctions would remain in place, but the caps on technical violations would be eliminated.

2:47:10 PM

Co-Chair Wilson asked the director of the Parole Board to weigh in on the topic.

JEFF EDWARDS, EXECUTIVE DIRECTOR, PAROLE BOARD, DEPARTMENT OF CORRECTIONS (via teleconference), reported that Mr. Skidmore had accurately portrayed the concerns the Parole Board had with the existing caps, which the board referred to as the "3, 5, and 10 system." He elaborated that the caps had been a dueling system with PACE, which was a swift and certain sanctions program adopted for the paroling authority. He explained that PACE had been intended to deal with violations swiftly with most certain arrest; it had been an efficient way to deal with violations to prevent them from dragging out for months. The board found that when an individual committed a technical violation (e.g. drug or alcohol use or failing to report to a parole officer), 3 days had turned into part of doing business for those individuals on supervision. He furthered that by the time the individuals had reached their third or fourth violation, the board had discretion to impose significant

jailtime; whereas, the 3, 5, and 10 system was part of doing business.

2:48:57 PM

Mr. Skidmore moved to early termination of probation and parole. He explained that prior to SB 91, a probation or parole officer had the ability to make a recommendation either to the court or Parole Board respectively. He explained that the officers could report that their probationer or parolee was doing well and no longer needed to be on probation or parole; the officers could recommend ending an individual's probation or parole early. Under SB 91, instead of having a recommendation by an officer, it would be called a recommendation, but it would be required to occur in statute after a certain period of time.

Mr. Skidmore elaborated that it was no longer a judgement call made by the probation or parole officer but would be automatic under statute. As long as a person did not have a violation in a specific period of time (e.g. 12 or 18 months), the officer had to recommend their probation or parole should end. He pointed out that the recommendation was not based on progress or anything left to be accomplished by an individual. He did not believe the process made any logical sense. The CS would eliminate the provision, but the probation and parole officers would have discretion to make a true recommendation to end probation or parole early. He explained the change would end a one size fits all provision.

2:51:37 PM

Mr. Skidmore turned to felony sentencing in Sections 60 and 61 in the bill. He explained the felony sentencing provisions in the CS contained multiple compromises from the governor's original bills. The provisions applied to Class C, Class B, and Class A felonies. He reviewed that SB 91 reduced Class C felonies to probation only. He elaborated that SB 54 had returned to the law prior to SB 91 that carried a sentence of 0 to 2 years for a first time offense. The second and third [Class C] felonies were also reduced in SB 91 and were not adjusted in SB 54. He pointed out that Class C felonies were not listed in the bill. He expounded that although the governor's bills would adjust the [presumptive ranges for] second and third time Class C felonies to their pre-SB 91 status, the CS left Class C

felonies alone. The sentence ranges were 1 to 4 years for a second offense and 2 to 5 years for a third offense (5 years was the maximum sentence for a Class C felony). The sentencing ranges had not been changed in the CS because they were deemed sufficient for courts to exercise discretion appropriately.

Mr. Skidmore reported that Sections 60 and 61 of the legislation addressed Class A and B felonies. For Class A felonies, SB 91 the sentencing range had been reduced by 2 years - from 5 to 8 years to 3 to 6 years for a first time felony. The CS would increase the sentencing range to 4 to 7 years for a first offense. He stated that the pattern was repeated for a second and third offense.

Mr. Skidmore addressed Class B felonies. For Class B felonies, SB 91 the sentencing range had been reduced from 1 to 3 years to 0 to 2 years for a first time offense. The CS would return the sentencing range to 1 to 3 years. The CS would increase the sentencing from 2 to 5 years to 2 to 6 years for a second offense and from 4 to 10 years to 5 to 10 years for a third offense. Those changes concluded the significant deviations in presumptive sentencing for felonies from the governor's bills.

Vice-Chair Ortiz asked if the proposed adjustments had been made with the goal of deterring crime.

Mr. Skidmore asked if Vice-Chair Ortiz was referring to adjustments in the CS or prior adjustments.

Vice-Chair Ortiz clarified he was asking about proposed adjustments in the CS.

Mr. Skidmore answered that national studies demonstrated for the last 30 years crime rates had been reduced by increasing incarceration. The bill focused on Class A and B felonies (the more serious offenses), not the Class C felonies (lower level offenses). The bill aimed to do what proponents of SB 91 wanted, which was to focus resources on the most serious offenses. He explained that SB 91 had reduced all felony sentencing, excluding sex offenses and murder. The CS would focus resources on the most significant crimes - Class A and B felonies - to combat the escalation in crime rates.

2:56:54 PM

Vice-Chair Ortiz surmised the answer to his question was yes and it was the belief of the administration and/or the prosecution that increasing sentences for "these types of felonies" acted as a deterrent to crime.

Mr. Skidmore agreed.

Representative Josephson highlighted that when the legislature had restored first-time Class C felonies in November 2017 (through a floor amendment), it had brought the offense at parity with the first-time Class B felony offense. He understood it was allowable but did not create the normal gradation.

Mr. Skidmore affirmed.

Mr. Skidmore turned to misdemeanor sentencing; Class A and B misdemeanors were the two sentencing levels. He explained that prior to SB 91 the ranges had been 0 to 365 days for a Class A misdemeanor and 0 to 90 days for a Class A misdemeanor. Under SB 91, a large portion of Class A misdemeanors had been reduced to a new presumptive range of 0 to 30 days. The previous version of HB 49 had proposed to increase the range to 0 to 90 days. The CS would return the sentencing range to its pre-SB 91 range of 0 to 365 days.

Mr. Skidmore addressed sentencing for Class B misdemeanors. The provision had not been altered from the original HB 49 and would increase the sentencing range from the current 0 to 10 days to 0 to 30 days (prior to SB 91 the range had been 0 to 90 days). He pointed out the change was a difference between the governor's bills and the CS.

Co-Chair Wilson asked for the section references.

Mr. Skidmore replied Sections 64 and 65.

2:59:35 PM

Mr. Skidmore reviewed presumptive sentencing for sex offenses in Section 66. He referred back to the Williams case he had mentioned early on in the meeting that the legislative intent addressed. He explained there was a sentencing range for a first offense. The CS clarified that any prior felony counted as a prior felony for presumptive sentencing in sex cases. In the Williams case the court

specified that the law was written in such a way that an offense could be elevated to a higher sentencing level if a prior felony was a sex offense only. For example, if a person was convicted of sexual assault and they had a prior burglary felony, the burglary could not result in an increased sentence. He stated [that for sentencing purposes] it was as though the prior felony did not exist. He stressed it did not matter if it was burglary, a physical assault, arson, or other. Only sex offenses would elevate the presumptive sentencing. He underscored that when the law had passed, it had not been what the legislature had been told. The CS would mean prior felonies of any kind would trigger an increased presumptive range for a sex offense.

3:01:55 PM

Mr. Skidmore turned to a path to restore a driver's license that was suspended or canceled due to a felony DUI. Under current law, an individual's license was suspended or revoked permanently for committing a felony DUI. The provision would allow a person to obtain a driver's license if they had been convicted of a felony DUI that was not associated with a crime against a person (e.g. vehicular assault), their license had been revoked for 10 years and in the preceding 10 years the person had not committed a new criminal offense. It was the same provision in HB 49 from the House Judiciary Committee.

Co-Chair Wilson asked if the provision was in Section 74.

Mr. Skidmore affirmed. He referenced Sections 74 and 75 related to felony DUI and felony refusal respectively; both used the term criminal offense (any criminal offense applied). Statutes also specified there were certain crimes where a person would not have the ability to obtain their license. He detailed that the crimes included murder under AS 11.41.200 to AS 11.41.210 and other crimes in AS 11.41.280 and AS 11.41.281. He shared that the provision had not been included in the governor's bills, but it was included in the CS and in other bills under consideration by the House and Senate. He added that the administration supported the concept.

Co-Chair Wilson believed an individual was required to go through some type of treatment as well. She pointed to Section 74, page 51 of the bill.

3:05:10 PM

Mr. Skidmore replied by reading the requirements listed in the bill (Section 74, page 51):

> (1) may restore the driver's license if
> (A) the license has been revoked for a period of at least 10 years;
> (B) the person has not been convicted of a criminal offense in the 10 years preceding the request for restoration of the license; and
> (C) the person provides proof of financial responsibility

Mr. Skidmore believed the concept mentioned by Co-Chair Wilson was in subsection (2):

> (2) shall restore the driver's license if
> (A) the person has been granted limited license privileges under AS 28.15.201(g) and has successfully driven under that limited license for three years without having the limited license privileges revoked;
> (B) the person has successfully completed a court-ordered treatment program under AS 28.35.028 or a rehabilitative treatment program under AS 28.15.201(h)

Co-Chair Wilson asked if an individual would try to get their limited license in year 7 or 10.

Mr. Skidmore clarified it had been some time since he had studied all of the statutes. He believed limited licenses were provided under particular circumstances as outlined under subsections (1) and (2) [of Section 74]. There were two paths an individual could take: subsection (1) addressed the 10-year timeframe and subsection (2) addressed what an eligible person would have to do to get their limited license restored.

Co-Chair Wilson asked for verification that the first path pertained only to the 10-year timeframe.

Mr. Skidmore affirmed.

Co-Chair Wilson considered the second path.

Mr. Skidmore interjected that the second path was available when a person had [successfully driven under the limited license for] three years.

Co-Chair Wilson needed more clarification.

Mr. Skidmore queried if Co-Chair Wilson was asking when a person was eligible for a limited license.

Co-Chair Wilson replied in the affirmative. She observed that Ms. Mead was available to answer the question.

Ms. Mead confirmed that under [Section 74] subsection (o)(1) if 10 years had passed and no other crime had been committed, a person was eligible to have their license restored by the Division of Motor Vehicles (DMV). Subsection (2) had been added in SB 91 because the bill had added a means for individuals in therapeutic court to get a limited driver's license if they participated successfully in therapeutic court for at least 6 months or had graduated and they fulfilled other responsibilities (e.g. the ability to show proof of insurance). She continued that SB 91 also added a provision allowing individuals in locations without a therapeutic court to seek a sobriety hearing that required a person to show they had been sober for 18 months and that they had been through a treatment program that mirrored or imitated the requirements of therapeutic court. The outlined options reflected the two avenues individuals could obtain a limited driver's license after a felony DUI. She noted that an individual could have their full license restored if they had been successful under the limited license for three years.

3:09:01 PM

Co-Chair Wilson referenced the DMV's administrative process. She asked if the DMV could still require certain things to be on a person's car (e.g. a breathalyzer or other). She was trying to determine how or if the statutory requirements connected with the DMV process.

Ms. Mead answered that after a felony DUI part of the required judgement included a fine and jailtime. Additionally, if and when an individual got their license back, they were required to use an ignition interlock device for a set period of time. The timeframe varied

depending on which felony DUI it was [i.e. first offense or other]. Individuals who were eligible to have their license restored would still have the ignition interlock device for the court ordered timeframe specified when they had received their sentence.

Co-Chair Wilson asked for verification the order came through the court and not the DMV.

Ms. Mead confirmed that the order was required to come from the court at the time of sentencing.

Mr. Skidmore moved to the topic of out of state sex offender registration.

Vice-Chair Ortiz asked if Mr. Skidmore had covered the provision pertaining to driving with a license suspended/revoked/canceled.

Mr. Skidmore answered that he had accidentally skipped the provision in Section 73 of the legislation.

Vice-Chair Ortiz asked if the provision pertaining to driving with a license suspended/revoked/canceled related directly to the previous provision regarding a driver's license after a felony DUI. He considered that the bill returned driving with a license suspended (DWLS) to a crime. He asked if the clock would be reset at another 10 years if a person caught driving without a license had previously been convicted of a felony DUI.

Mr. Skidmore replied affirmatively. He relayed that driving with a license suspended/revoked/canceled had been a crime in 2015. He detailed the crime fell under two categories: 1) a license could be suspended/revoked/canceled by the court because of a DUI, and 2) a license could be suspended/revoked/canceled because of points, a person had not paid for insurance, and for numerous other administrative reasons. Under SB 91, the revocation based on a DUI remained a crime, but all of the other revocations had been turned into violations. The CS would return driving with a license suspended/revoked/canceled to a crime. Under SB 91, the mandatory minimum sentencing was 10 days with 10 days suspended for a first offense and 20 days with 10 days suspended. There had been other provisions for DUIs and numerous cascading provisions. Additionally, there

had been issues related to a mandatory fine and community work service.

Mr. Skidmore explained that Section 73 of the CS would return all DWLS to a crime, but it would limit sentencing to 10 days with 10 days suspended or the mandatory minimum of 10 days for a subsequent offense. He referenced the question from Vice-Chair Ortiz and confirmed that driving with a license suspended/revoked/canceled would be a new crime, which would require the 10 years to start over.

3:13:30 PM

Vice-Chair Ortiz remarked that a DUI is a very serious crime, yet he believed there was a recognition that when possible, individuals should have options to get to work and be more self-sustaining. He thought there was a sense the state needed to provide a pathway for that possibility. He asked if adopting the provision [returning driving with a license suspended/revoked/canceled to a crime] would create a barrier that may go against the intent to create a path forward for individuals.

Co-Chair Wilson asked which section Vice-Chair Ortiz was referring to.

Vice-Chair Ortiz replied he was referring to the section on driving with a license suspended/revoked/canceled.

Co-Chair Wilson interjected it was Section 73.

Vice-Chair Ortiz explained he was trying to connect it to the overall goal of enabling an individual to get their license restored after 10 years under the section on driver's license after a felony DUI. He noted he was referring to a document [provided by DOL titled "Draft CS HB 49" (copy on file)]. He clarified that returning driving with a license suspended/revoked/canceled to a crime would reset the clock. He asked if the change raised the bar to a level that all parties believed was reasonable.

Mr. Skidmore answered that recriminalizing the DWLS meant there would be enforcement when individuals drove with a license suspended/revoked/canceled because they did not have insurance or other. He explained the change would only impact the path above if a person violated the law.

Co-Chair Wilson asked if the governor had put forward the provision to return driving with a license suspended/revoked/canceled to a crime.

Mr. Skidmore replied that the provision had been added by the Senate; it had not been included in any of the governor's original bills.

3:16:33 PM

Representative Josephson addressed Section 73 of the bill. He noted that Mr. Skidmore had put the DWLS crime into two categories: 1) resulting from a DUI or 2) resulting from all other reasons. Previous to SB 91, if a person drove in the 90-day window that was typical of a first DUI offense, there was a 10-day jailtime imposed. He asked for verification the provision was not restored in the CS; there was not a suspended sentence if a person drove a car while being suspended for a DUI.

Mr. Skidmore replied that the statute was AS 28.15.291. The subsection Representative Josephson was referring to under the previous law was (b)(1)(d). The penalty had been a minimum of 30 days in jail and a fine of $1,000.

Representative Josephson recalled a 10-day provision.

Mr. Skidmore answered that the 10-day provision had been for a subsequent offense. He explained the sentence had been 20 days with 10 days suspended if a person had previously been convicted of DWLS. Whereas, the DUI had resulted in a 30-day penalty.

Representative Merrick asked how returning driving with license suspended/revoked/canceled to a crime may be a tool for law enforcement regarding "revolving door" issues (picking up someone who may have normally been let go).

Mr. Skidmore answered that DWLS had been a significant issue in many places around the state including Fairbanks, Mat-Su, and the Kenai Peninsula. The issue had accounted for approximately 17 percent of the misdemeanor caseload in 2015. There were a substantial number of individuals who came into contact with law enforcement because of the issue. He elaborated that when people came into contact with law enforcement it could also mean that law enforcement ended up discovering additional information. He

would not categorize it as a tool, but he agreed that when someone was stopped for DWLS it could result in officers finding additional information and could lead to other charges.

Representative Merrick noted that based on Mr. Skidmore's prior testimony she had been under the impression that there were certain offenses that law enforcement could not necessarily book a person for (e.g. drug possession), but the provision under discussion would enable an officer to book a person even if the other possession was not considered a crime.

Mr. Skidmore replied that in the particular case, if a person was driving with a license suspended/revoked/canceled and it was a crime, whether or not law enforcement would arrest the individual was a discretionary call for the officer. He clarified that the officer would have the ability to make an arrest, whereas they would not have the ability to arrest a person if the offense was classified as a violation.

3:21:00 PM

Co-Chair Wilson asked if the number would decrease if individuals had the incentive to get their license back. She reasoned that if an individual was told they would never get their license back, they really had nothing to lose. She thought that the addition of the provision may provide incentive. She asked if the two items were connected.

Mr. Skidmore responded that he did not know the statistics breakdown of what portion of the 17 percent of the caseload (around 2,500 cases) were the result of a permanent license revocation from a felony DUI. He confirmed there would be an impact, but he did not know the percentage.

Co-Chair Wilson noted that sometimes it was necessary to provide people with hope to get something back. She noted there were not other types of transportation in some areas of the state depending on where a person could afford to live. She noted that there were numerous people in Fairbanks driving with a suspended license. She believed many of the situations were related to DUIs.

3:22:14 PM

Representative Knopp asked if the language regarding licenses added to SB 32 in the Senate was original or modified.

Mr. Skidmore responded that the language in the CS was identical to the language in the bill in the Senate.

Mr. Skidmore moved to Sections 69 through 72 pertaining to out of state sex offender registration. He detailed that Alaska's sex offender registration laws only required an individual to register in Alaska if they came from another state that required an individual to register if the crime an individual was convicted of in another state had similar elements to the crime in Alaska. He explained it was one of three ways people addressed sex offender registration between different states. The second option was to compare the facts of the offense in the other state to the elements of the offense in the receiving state. The third was proposed in the CS and required an individual to register in Alaska if they were required to register in another state. The state did not want Alaska to be a place for people to go to avoid sex offender registration requirements. He reminded committee members that Alaska led the nation in sex assaults. He stressed that the state did not want to encourage anyone to come to Alaska to avoid registration requirements in other states.

3:24:41 PM

Mr. Skidmore moved to earned compliance credits (ECC). He explained that ECC provided an option to reduce the length of an individual's probation or parole. He noted the concept had not existed prior to SB 91. The CS would maintain ECC, but at a reduced level. He detailed that the reduction to a person's period of probation or parole would be at one-third instead of the current 30 days for 30 days. He explained that the 30 days for 30 days had resulted in substantial litigation over how to calculate the 30 days. Under the CS, an individual would start probation or parole and would automatically be told what their release date would be. For example, if a person was given three years of probation or parole, they would be informed they would be released after two years; if they committed a violation, the state would start to claw back some of the ECC. The change from one-to-one to one-to-three put the state in compliance with recently adopted federal ECC law.

Additionally, the change would align Alaska with a number of other states. He noted that some states used the one-to-one structure, but more states used the one-to-three structure. Second, the change altered the language of the statute to help eliminate some of the litigation issues over time accounting of 30 days for 30 days.

Vice-Chair Ortiz considered that the change would align the state with federal ECC guidelines. He addressed the complexity in calculating the time under current law. He asked if it was possible to eliminate the calculation problems if the time was cut to one-half instead of one-third. He wondered if there was data driving the proposed change.

Mr. Skidmore affirmed there were two different concepts trying to be achieved in the sections. He noted that probation was found in Sections 76 and 77 and parole was found in Sections 89 and 90. He addressed the concept between reducing ECCs to one-third or one-half and confirmed that reducing the ECC to one-half would eliminate the time accounting problem. He relayed that the choice between one-third and one-half was a policy decision for the legislature. He did not know there was data showing whether one was better than the other.

3:29:02 PM

Representative Merrick asked about the recidivism rate for people behind bars.

Mr. Skidmore replied that the overall national data listed the recidivism rate at about 68 percent. The most recent data he had seen for Alaska showed a rate of 61 percent. He noted the category was broad and all encompassing.

Representative Merrick clarified that she referring to people in jail.

Mr. Skidmore replied that he had misunderstood the question. The information he had provided pertained to individuals who had been released from jail. The recidivism rate for people in jail was extremely low. He noted there were people who committed crimes in jail, but the rate was very low.

Representative Merrick asked for verification that receiving ECCs at a rate of one-third instead of one-half would keep the rate down.

Mr. Skidmore responded that the concept of probation and parole pertained to individuals no longer in custody. The one-third versus one-half applied to individuals out of custody.

3:30:43 PM

Co-Chair Wilson noted that data showed that if someone had issues on probation and parole it was typically on the front end rather than the backend. She referred to SB 91 and thought that part of idea of the 30 credits was about rewarding someone for doing well along the way. She noted that the change in the CS did the opposite where the amount [of time served on probation and parole] would continually increase if someone committed a violation. She asked if it took someone awhile on the front end to get their life together, they may have already extended their time out. She reiterated that data showed people tended to have issues at the start of probation or parole.

Mr. Skidmore confirmed the data indicated that the larger number of violations occurred more frequently within the first six months. He reminded the committee that the national data showed the recidivism rate went from 68 percent to 97 to 83 as time went on. He agreed that people did continue to commit violations, but the vast majority occurred in the first six months. He addressed Co-Chair Wilson's concern that the proposed change would eliminate the incentive. He did not know how the incentive would be impacted. He explained that an individual would still receive credit. They would begin with one-third; if they offended in the first several months it would result in less credit.

Co-Chair Wilson considered that the situation was like a situation involving young children. She explained there were individuals who had never been structured until being in prison. She thought many individuals believed they would be fine upon release because they had not known anything else for some time. She thought the purpose of the 30 days was to give incentive. She believed the change went in the opposite direction by giving an individual a reward ahead of time with the assumption they would have no issues along

the way. She stated that the data showed issues typically occurred at the beginning of a person's time [on probation or parole]. She felt it seemed like a person could end up losing all of their credit because it took them time to get the system. She thought it was the opposite of what they had tried to do with the 30 day option. She did not understand why there was not an electronic data program that could give or not give the 30 days. She imagined the state would end up with the same problem if an individual committed a violation and a probation or parole officer had to add time back to their probation or parole. She believed there would still be an accounting nightmare.

3:34:32 PM

Mr. Skidmore replied that he was not an expert on time accounting for DOC.

Co-Chair Wilson did not understand the time accounting aspect. She liked the reward concept under the 30-day option that provided incentive for an individual. She believed there were many good parole and probation officers; however, she noted that sometimes it was the luck of the draw for a person to get someone who was much better and understanding versus someone who was a stickler and gave individuals violations for any little thing. She was concerned about getting away from a structured plan to an unstructured plan. She stated it was a policy call for the legislature. She explained that she did not like the 30-day credit at first, but had learned that for individuals needing structure, it seemed to work much better. She thought if the time accounting was the only problem, it could be addressed somehow.

Mr. Skidmore clarified that he had not stated DOC had any difficulty counting. He had indicated there was substantial litigation where people wanted to argue about how the system worked and operated. The issue was more about the litigation than time accounting.

Co-Chair Wilson pointed out that the litigation had to do with counting.

Mr. Skidmore answered that the litigation had to do with arguing about how the statutory and regulatory language was applied.

Co-Chair Wilson preferred to look at clarifying the provision versus eliminating it.

Representative Sullivan-Leonard asked if DOC would present to the committee in the future.

Co-Chair Wilson asked if Representative Sullivan-Leonard was interested in data on the particular issue or overall.

Representative Sullivan-Leonard replied that she would like more overall information.

3:37:17 PM

Co-Chair Wilson asked to hear from DOC. She asked if clarifying the provision could solve the issue instead of completely changing the program.

Ms. Winkelman answered that she did not know that the timeframe made a difference. There was an ease in the one-third language versus the one-half language. She stated the option fell in line with how DOC treated good time. She knew there had been countless litigation issues in regard to the calculation. She highlighted issues such as defining what compliance was. She elaborated that if an individual lived in a community where something was unavailable, they were not complying by their conditions of probation. She questioned whether the individual would earn compliance credits and they would be kept on probation longer or be off sooner. The idea of frontloading the one-third off from the beginning allowed individuals to know the system believed in their ability to do well. When a violation rose to the level of the courts, similar to a disciplinary process in an institution, time would be added back on. The idea was to mirror the system.

Ms. Winkelman did not know that it was necessarily a calculation issue, as it was about defining the period of compliance. If someone was noncompliant with their probationary period at the beginning of the month, DOC lost the "carrot/stick" for the rest of the month versus dealing with a violation on a case by case basis.

Co-Chair Wilson thought there could still be the same counting issue [under the proposed provision in the CS]. She pointed out there would be a process to determine whether something was a violation and a person could argue

with credit time given or taken away. She asked if it the language could be changed to clarify. She believed there would be an argument over whether something was a true violation. Additionally, whether the amount of time lost fit the violation.

Ms. Winkelman answered that if the bill passed, DOC would write policies and regulations to adhere to the new law. She did not yet know what the policies or regulations would look like.

Co-Chair Wilson clarified she was asking whether the current law could be fixed to make the system clearer. Alternatively, she wondered if it would continue to be litigated from within. She wanted to avoid changing the policy and ending up in a different type of litigation. She thought it came down to whether a violation was committed and whether the penalty fit the violation (whether on the front or back end). She did not expect the department to have an answer on hand.

3:40:32 PM

Mr. Skidmore moved to parole eligibility in Sections 80 through 82. He noted that parole eligibility and subsequent provisions including parole release presumptions and parole application fell under Sections 79 through 85. Parole options included mandatory or good time and discretionary parole. He explained that discretionary parole was not automatic and involved applying to the Parole Board to be released. He explained that in 2015, prior to criminal justice reform, discretionary parole was limited to certain offenses, and based on certain criminal histories a person was not eligible to apply. Limitations included non-sex Class A felonies including robbery, assault I, arson I, escape 1, misconduct involving a weapon I; Class B felonies if the person had one or more prior felony convictions; Class C felonies if the person had two or more prior felony convictions; and Class B and C sex felonies (sexual assault 2, sexual abuse of a minor 2, distribution of child pornography).

Mr. Skidmore continued that in 2016 with criminal justice reform, all of the offenders included in the list above became eligible to apply for discretionary parole. The CS would return to the system prior to 2016 that restricted eligibility for discretionary parole.

Mr. Skidmore moved to parole release presumptions. Prior to SB 91, the Parole Board comprised of five individuals, would exercise its discretion and evaluate each applicant to determine whether the person was a good candidate. He elaborated that based on the preponderance of the evidence, the board would decide an individual was a good candidate for release. He highlighted that the presumption had been changed under SB 91; the bill had instructed the board to presume that everyone was a good candidate for release. He noted that individuals no longer had to apply for release. He stressed that individuals were not released only if there was clear and convincing evidence showing they were not a good candidate for release. He stated the change had inverted the whole system on its head.

Mr. Skidmore shared that he had heard Mr. Edwards (executive director of the Parole Board) testify previously that the board had a fairly good success rate with the individuals it chose to release on discretionary parole. He underscored that the success rate had been established pre-SB 91. He did not believe all of the data was available on the success rate post-SB 91 because it took at least three years to look at the recidivism rate. He reiterated that instead of picking a good candidate, the Parole Board was currently instructed to presume everyone was to be released; individuals were not released only if there was clear and convincing evidence that they were not a good candidate.

Mr. Skidmore stressed the change was a very different exercising of the board's discretion. The presumption had changed, the number of offenses eligible for discretionary parole had expanded, no one was required to apply for parole anymore. Under current law, once a person was eligible for parole there was an automatic parole hearing. He expressed doubt that the system was working as well as it had in the past. The CS would revert all three concepts back to pre-SB 91 status. He encouraged members to direct questions on how the system functioned to Mr. Edwards.

Representative Sullivan-Leonard asked to hear from Mr. Edwards regarding the parole release process.

Co-Chair Wilson asked Mr. Edwards to address parole release presumptions and what tool the CS would return to the Parole Board.

Mr. Edwards confirmed the accuracy of Mr. Skidmore's description of the current law. He reported there was currently a presumed presumption of release. He stated it was geared towards Class A, B, and C felonies; if a person met certain criteria (i.e. compliance with a case plan) and complied with all facility rules, the board was directed to presume release unless there was clear and convincing evidence at the time of the hearing that an individual posed a risk. The board felt that the current law was overly restrictive. He noted that a case plan was comprised of things like an individual's compliance with substance abuse treatment or mental health counseling. He continued that if an individual completed substance abuse treatment while in custody, the board would consider that in its decision.

Mr. Edwards expressed frustration on behalf of the board that the current law took away its discretion. One of the key factors in the board's release decision making was the discretion of whether to release or not release an individual from discretionary parole. He detailed that pre-SB 91 the Parole Board convened 200 to 300 hearings per calendar year. In 2018, the board convened just under 1,000 discretionary parole hearings. He stressed there had been a significant expanse of cases eligible for parole in addition to mandated release hearings. The number of hearings had increased by over 180 percent, which was a significant number the board had to accommodate. He reported that the Parole Board concurred with the proposed changes in the law to revert closer to the law prior to SB 91.

3:49:10 PM

Vice-Chair Ortiz asked if returning the discretion to the Parole Board was based on evidence that taking away discretion had caused problems and/or higher rates of recidivism. He wondered if the decision was data-based.

Co-Chair Wilson asked Mr. Edwards to address the question. She thought he had indicated the board's extra workload was substantial.

Mr. Edwards answered that he did not know if there was data that analyzed the process of the presumed release section in statute.

Co-Chair Wilson asked what the Parole Board had seen change and how its workload had been impacted when its discretion had been removed. She wondered how the proposed change would impact the board's workload.

Mr. Edwards answered that the proposed changes would reduce the Parole Board's workload. He explained that when the board convened a hearing under the presumed release statute for an eligible individual who had committed a Class A felony, the board discussed whether the individual was in compliance with the case plan and facility rules and regulations. He stated that the discussions should occur, and the board often talked about the issues in each of its hearings. The board also talked about the presumed release or clear and convincing evidence of a risk. The board considered the risk and whether an individual was a repeat offender who frequently returned to prison for new crimes. The board would continue to have the discussions even if the requirement was removed, but it would reduce the number of hearings the board convened annually.

Co-Chair Wilson stated her understanding that currently people could apply for probation or parole even if they were not eligible. She thought the change would mean the board could decide whether a person was eligible prior to taking any action. She explained that the committee was trying to better understand how the caseload portion would change.

3:53:10 PM

Mr. Skidmore believed a question that would be enlightening for the committee was to inquire about the average number of people released on parole prior to SB 91 versus after SB 91 and what type of offenses individuals were released on pre-SB 91 and post-SB 91. He thought the answers should give the committee a sense of the effect of the changes. He did not believe answers about recidivism would be available yet. He reported that the administration had analyzed how the types of crimes involved and the individuals who were being released had changed and whether the change was good or bad.

Representative Carpenter asked Mr. Edwards to address the concept of parole for a person who had not yet completed treatment and had reached discretionary parole. He asked if the Parole Board took that into consideration and opted not

to release a person if their court ordered treatment had not been completed.

Mr. Edwards replied that when an individual became eligible [for discretionary parole], the Parole Board convened a hearing and the individual was either on the front, middle, or back end of their treatment program. He reported that in most cases the board mandated the completion of treatment prior to release. The board may agree to release an individual from parole in four months' time, but only upon successful completion of treatment. He shared that the scenario was independent of a court order. He explained it was different from scenarios where a judge gave a court order for an individual to complete treatment while incarcerated. He clarified that he was only speaking about general discretionary parole applicants in midst of a treatment program. He informed the committee that in almost every scenario the board would mandate the individual to complete treatment prior to release.

3:55:44 PM

Representative Josephson asked if there had been situations in where the Parole Board found that a person could be likely to reoffend, but because the board had not been able to meet the clear and convincing standard it had granted discretion.

Mr. Edwards answered that he did not have an example on hand. He would have to discuss the issue with the board and look at the difference between 51 percent and 99 percent. He reported the board would err on the side of public safety and caution.

Representative Josephson thought the Parole Board had to write an order where it either found or did not find clear and convincing evidence. He thought it would be litigate-able otherwise.

Mr. Edwards agreed that the board explained its findings and what evidence was used in writing when deciding to deny discretionary parole. The board also explained what an individual needed to do to mitigate the risk while they were incarcerated pending their release to mandatory parole. The board was legally required to put the findings and explanations in a letter.

3:57:41 PM

Vice-Chair Ortiz asked if the Parole Board decided whether there was clear and convincing evidence.

Mr. Edwards answered in the affirmative.

Vice-Chair Johnston asked if "this" was in the repealer section.

Mr. Skidmore asked what Vice-Chair Johnston was referring to.

Vice-Chair Johnston clarified she was asking about parole release presumptions.

Mr. Skidmore responded there were sections of the repealer that implicated the concepts. There were also other sections in the bill that were implicated.

Vic-Chair Johnston referred to section 96, line 20 and thought it appeared to be repealing all of the pretrial risk assessment tools. She asked if it was a clerical error.

Mr. Skidmore replied that line 20 of the repealer section related to the Pretrial Enforcement Division (AS 33.07). He explained that the division was folded into [the division of] probation and parole, which was addressed in the sections. He thought the pretrial risk assessment tool was mentioned in those sections because they were originally the ones exercising it. He clarified that it was not repealed to get rid of the risk assessment tool; it was repealed because of folding in the pretrial supervision into probation and parole.

Vice-Chair Johnston asked for verification that the bill did not repeal the assessment tool.

Mr. Skidmore confirmed that the bill did not repeal the assessment tool. The point of the bill was to keep the assessment tool, but it would not be found in the sections under discussion.

Co-Chair Wilson asked for verification that DOC had already put pretrial, probation, and parole into one section. She asked to hear from DOC.

4:00:50 PM

Ms. Winkelman responded that there were two separate divisions. She explained that she oversaw both divisions that each had a deputy director. She explained that pretrial service officers were probation officers by statute. She clarified that probation officers under the Division of Probation and Parole only had authority in superior court, whereas, pretrial service officers had authority in superior and district courts.

Representative Josephson observed that the risk assessment was located in AS 12.30.006 and AS 12.30.011 and not the repealers.

4:01:50 PM

Mr. Skidmore talked about the use of criminal history in the grand jury process to establish an element of a crime (Section 93). Currently, when a prior conviction for a felony DUI was an element of the offense, prosecutors were allowed to use an Alaska Public Safety Information Network (APSIN) printout showing an individual's criminal justice history. The printout could serve as the basis to move a case beyond grand jury to trial. The prosecutor would need to provide a certified copy at that time. He explained that if a crime presented to a grand jury was something other than a felony DUI, prosecutors were required to obtain the certified judgement at the time of the grand jury. The CS would adjust the rule to allow prosecutors to use the same process for any crime in which a prior crime was an element of the offense.

Mr. Skidmore moved to Section 94 and 95 regarding the increased use of video teleconferencing. He relayed the sections included adjustments to court rules. The provisions gave courts greater discretion to use video-teleconferencing in pretrial hearings. He believed Section 94 was predominately a conforming language amendment. The more substantive change was in Section 95.

Co-Chair Wilson moved to a provision related to involuntary commitments and asked Ms. Mead to explain what the October 1, 1981 date would do compared to 2011. She clarified that the provision would require the Court System to transmit information regarding involuntary commitments that had

occurred since October 1, 1981 to the Department of Public Safety.

Ms. Mead was looking at Section 98 of the CS. She understood the provision to require the court to transmit the information required for all orders issued after January 1, 2011.

Co-Chair Wilson asked Ms. Mead to explain why the date was January 1, 2011.

Ms. Mead answered that January 1, 2011 was the date after which all court records were available electronically and retrievable electronically. Previously, some records were on CourtView and some were not and prior to that time no records were on CourtView. The change to 2011 meant the court could comply with the provision fairly easily and without a fiscal impact.

Co-Chair Wilson asked what the cost would be to go back to 1981.

Ms. Mead responded that the cost would be approximately $141,000 and would require the Court System to hire a couple of staff to do the work for a year. She explained that the records from that time were on microfiche and it would require going through 20,500 potential records that may have the information.

4:05:56 PM

Representative Knopp stated that the purpose of a grand jury was to consider the prosecutory evidence to decide whether there was enough to forward charges against a person. He was concerned about the use of a person's prior rap sheet. He believed the focus should be on the evidence in the particular case. He asked when there was an element of an offense that required proof of a prior conviction.

Mr. Skidmore responded that the types of crimes included a felon in possession of a firearm; it would be necessary to demonstrate the offender had a prior felony. In cases of recidivist theft, it would be necessary to show the prior crimes of theft to elevate the crime. Additionally, in cases of recidivist assaults, it was necessary to show the prior assaults to charge the higher level of assaults. He explained that if the CS passed, the provision would apply

to drug offenses that became a Class C felony, which required establishing past misdemeanor convictions for drug possession. The rap sheet (contained in the APSIN system) was the mechanism that prosecutors and law enforcement used to determine when someone had a prior criminal history. He explained that after grand jury, at the time of trial, it would be necessary for the prosecutor to have a certified copy of the judgement to admit during trial. He clarified that no one would be convicted based on the concept, but it would allow the ability to conduct a grand jury, which was the early stage of a prosecution.

4:07:53 PM

Representative Knopp understood about needing to prove prior offenses to include an aggravator in a charge. He asked for verification that the APSIN sheet would not be used to show a pattern if a crime did not require proof of a prior offense.

Mr. Skidmore agreed. He stated that using a person's prior history in the scenario provided by Representative Knopp would be improper and would violate the rules of evidence and cause a host of other problems. He suggested that the provision only allowed the use of a person's prior criminal history when it was an element of the offense that needed to be proven.

Representative Josephson addressed the provision on involuntary commitment. He noted that Ms. Mead had highlighted that the lookback period in the memo summarizing the bill [DOL document titled "Draft CS HB 49" (copy on file)] was different than the bill. He referenced a bill sponsored by Representative Pruitt that had passed the legislature 57 to nothing in a previous session. He stated it was conceptually supported by the National Rifle Association. He considered whether an agency could help to fund the effort. He thought it appeared to be a remarkable moment where there was widespread agreement about wanting to know who had been involuntarily committed and not had the finding removed, to prevent them from doing massive harm on a large scale (as had been experienced nationally). He asked whether the undertaking became more manageable if resources could be found to help the Court System.

Ms. Mead responded it was a policy call for the legislature. The provision was an attempt to be more

fiscally responsible with respect to the bill. She informed the committee that any of the information provided by the court on individuals committed in the 1980s and 1990s would be disqualified from possessing or purchasing firearms. She reiterated it was a policy call for the legislature to decide whether it wanted the court to pull records from the 1980s and provide them to DPS and the FBI to disqualify the individuals from possessing firearms. She shared that the Court System was able to do that. She believed the 2011 forward date was an effort to be more fiscally responsible. She stated it would be up to the legislature whether it was worth the investment.

Ms. Mead understood from DPS that it may have funds to undertake the effort; however, it was not sufficient to cancel a fiscal note because it was not certain enough. She elaborated that regardless of the funds, it was a substantial amount of work that the Court System could not put on a fiscal note. For example, the court's staff would have to identify all of the microfiche files that could be anywhere; the work would have to be done by court staff and not someone outside the agency. She stated the work was substantial and it was in the legislature's purview to make the determination.

4:11:40 PM

Co-Chair Wilson thanked Mr. Skidmore for his presentation. She indicated that the next portion of the meeting would be to give agencies an opportunity to discuss how the bill would work.

Mr. Skidmore noted there was one additional provision on sexual assault examination kits (Section 92) that was not included on the DOL document. He reported that the provision was also in the House Judiciary Committee version of HB 49.

Co-Chair Wilson moved to the Court System.

4:12:38 PM

Ms. Mead indicated that the Court System would leave the policy decisions in the bill to the legislature. The primary changes for the Court System resulting from the bill pertained to bail decision making. She reported that it did not matter to the court fiscally or operationally

whether a sentence range was 5 to 7 years or 6 to 8 years; the court could apply the ranges as written in statutes. In general, the bill would not be difficult for the court to implement or comply with. She would talk with Mr. Skidmore about the pretrial assessment tool because she was not understanding that the tool and supervision were to remain in the law despite the repealers. She would try to get a better understanding of the proposal.

Co-Chair Wilson had heard that some judges used the risk assessment tool and others did not. She asked if the tool would still exist under the CS, but in an advisory capacity. She asked if Ms. Mead was questioning whether the bill would completely repeal the tool.

Ms. Mead replied that she was questioning whether the assessment tool was repealed in the CS. She noted the repealer section of the bill showed the tool was repealed. She also saw under the bail decision making section (page 34, lines 6 to 7) that the court may consider the risk assessment score. However, she did not see in the DOC provisions in Title 33 that the department would continue to do the risk assessments and supervision. She was not seeing the tool added to the probation officers' duties either. She thought perhaps the issue could be addressed in drafting. She noted she had only seen the CS for a couple of hours, but she was seeing a bit of a disconnect.

Co-Chair Wilson appreciated the comments and would make sure to get the issue on the record.

4:14:57 PM

Co-Chair Wilson invited the Department of Public Safety to address the committee and discuss how the bill would hopefully help the troopers.

KELLY HOWELL, SPECIAL ASSISTANT and LEGISLATIVE LIAISON, DIVISION OF ADMINISTRATIVE SERVICES, DEPARTMENT OF PUBLIC SAFETY, indicated that the bill would positively impact public safety and crime in Alaska. She communicated there were other testifiers available online to provide a boots-on-the-ground perspective of how the provisions in the bill would impact public safety.

4:16:13 PM

ANDREW GREENSTREET, DEPUTY DIRECTOR, ALASKA STATE TROOPERS DIVISION, DEPARTMENT OF PUBLIC SAFETY (via teleconference), expressed excitement about the bill and what it would offer to law enforcement. He reported that the legislation would provide troopers with the tools to be effective. He firmly believed the bill would restore the trust in the criminal justice system. When troopers responded to investigations, they had opportunities to meet with victims of crimes and often the interaction occurred on the worst day of a person's life. He explained that victims relied on the troopers and what they had to say about the criminal justice system and the investigation itself. Under SB 91, he had seen the ability to reassure victims in their time of need degrade over time. He was excited about the potential and what it could mean for law enforcement and the victims they interacted with.

Mr. Greenstreet noted that if the bill passed, the state may see an increase in crime because more crime would be reported. He shared that many individuals such as contractors had told him they did not call the troopers any longer because they had lost faith in the criminal justice system. He communicated that the situation was disheartening to the law enforcement community. He stressed that officers put on a uniform every day to do their part and seek justice. He reported that when law enforcement was not effective, it negatively impacted their morale. Officers wondered why they were putting themselves in danger if they were just arresting the same criminals repeatedly. He reiterated his support for the bill.

4:18:50 PM

Representative Carpenter had heard some anecdotal evidence that under the current system, if an officer saw drug paraphernalia after stopping an individual in a vehicle, they would seize it and let the person go. He asked if changes in the bill would result in an immediate increase in the number of people being taken to corrections facilities.

Mr. Greenstreet answered that there could be an increase. He had spent most of his career in narcotics investigation and reported that SB 91 had significantly hampered efforts related to drug possession. He explained that under a system without strong repercussions, when there was evidence of possession or distribution, defendants were

unwilling to cooperate with any investigation. He explained that while law enforcement may not be interested in the user, it was certainly interested in the distributors. He elaborated that if there was no incentive to work with law enforcement, it impeded the ability for law enforcement to continue an investigation up to the supply.

Representative Sullivan-Leonard did not see anything in the legislation regarding vehicle theft. She asked if the bill would assist the troopers with the high rate of vehicle theft.

Mr. Greenstreet answered that he had not had an opportunity to thoroughly review the bill and was not well versed on that particular portion. He deferred to Mr. Skidmore.

4:21:11 PM

Ms. Howell indicated there was a provision regarding possession of motor vehicle theft tools. She suggested that perhaps Major Greenstreet could speak to how the provision would help. She thought he could speak to one of the crimes associated with vehicle theft and how it tied into some of the drug crimes.

Mr. Greenstreet answered that the additional tools to enable law enforcement to work investigations would be beneficial. He did not recall a vehicle theft that had not involved drugs.

Representative Carpenter asked whether vehicle theft was a felony or misdemeanor.

Co-Chair Wilson did not think the answer to the question was easily answered; it depended on the situation and value involved.

4:22:49 PM
AT EASE

4:23:25 PM
RECONVENED

Representative Carpenter asked whether vehicle theft was a felony or misdemeanor.

Mr. Skidmore replied that a vehicle theft had been and would continue to be a Class C felony.

Representative Knopp mentioned special provision for an auto theft. He thought sentencing had been increased for Class C felonies. He did not recall whether misdemeanors had been changed to felonies or the felony sentence had been increased for the crime. He noted that he had spoken with Mr. Skidmore recently about the impact to car theft crimes.

Mr. Skidmore agreed that originally under SB 91, a Class C felony for vehicle theft had probation only. He explained it had created substantial problems when trying to combat vehicle theft. He elucidated that the issue had been addressed in SB 54 in October 2017, where a first time offense had been returned to a presumptive range of 0 to 2 years.

Representative Josephson believed that any frustrations with vehicle theft after the passage of SB 54 were a result of a lack in police and resources issue. He explained that the law, interest, and desire to deal with the problem all existed. He thought it was a matter of having enough people to enforce the law.

4:26:03 PM

Mr. Skidmore answered there was nothing in the current law that dramatically changed vehicle theft. The only thing that changed was that repeated offenses for a Class C felony had the lower presumptive ranges, but not by a substantial amount. The key for Class C felonies was the first time presumptive range, which had been restored in SB 54. He agreed that if a significant concern continued about vehicle theft, it was a community by community issue of prioritizing the issue and directing resources in that direction.

Co-Chair Wilson asked Major Greenstreet to discuss vehicle theft and drug use. She noted that he had discussed that vehicle theft typically involved drugs or other issues. She asked if individuals were usually arrested on one or multiple charges. She highlighted situations where a perpetrator broke into a person's home or vehicle.

Mr. Greenstreet reported that in his experience vehicle theft was part and parcel to the drug culture.

Co-Chair Wilson asked for verification that someone would most likely be brought in on multiple charges, not just a vehicle charge.

Mr. Greenstreet answered affirmatively. He confirmed that a standalone charge was seldom; there were typically myriad other charges that accompanied the crime.

4:28:06 PM

Representative Josephson recalled that it was tricky to prosecute vehicle theft in situations where hand-me-down vehicles were passed from "bad person A to bad person B." He asked if there was a remedy that would be helpful.

Mr. Skidmore reported that Representative Josephson had accurately described the struggle with the elements of vehicle theft and the way people attempted to defend against the cases. He was not prepared at present to offer language or concepts to address the issue. He highlighted the issue mentioned by Major Greenstreet that when law enforcement found people in stolen vehicles and there was evidence of drug use, the changes in the CS would give law enforcement additional tools to more effectively respond to the situations.

Co-Chair Wilson invited Kathryn Monfreda to provide comments to the committee.

4:29:45 PM

KATHRYN MONFREDA, DIRECTOR, STATEWIDE SERVICES, DEPARTMENT OF PUBLIC SAFETY (via teleconference), addressed issues DPS had experienced with out of state offenders moving to Alaska. There were currently just over 3,500 individuals on the public sex offender registry website; about 2,600 of the individuals were registered and out on the street, and about 900 were either in jail or had clearly shown they had left the state. She detailed that of the 2,600 on the street about 475 had committed their offenses out of state and subsequently moved to Alaska. Since a supreme court hearing in August 2018, DPS had notified 22 offenders specific to the offense found by the supreme court to not be registerable sex offenses - those individuals no longer

had to register as long as they lived or worked in Alaska. The department was taking any other requests for reviews on a case by case basis to determine if they met the criteria for registration under the court ruling.

Ms. Monfreda reported that DPS knew there were people moving to Alaska [who had committed a sex offense in another state]. She reported that Mr. Skidmore had indicated the state received about 8 to 10 calls per month asking if they would have to register if they moved to Alaska. The department declined to analyze the individuals' cases on a case by case basis. The department informed individuals they needed to register and DPS would make a determination once the individual moved to Alaska. The department hoped it dissuaded some individuals from moving to Alaska. She reported that the department informed about 20 people per year who had moved to Alaska that they did not have to register once they got to Alaska.

Co-Chair Wilson thanked Ms. Monfreda for her comments.

Ms. Monfreda asked if the committee wanted to hear anything about mental commitments.

Co-Chair Wilson affirmed.

Ms. Monfreda reported that DPS was receiving about 165 to 200 cases of involuntary commitments per year from the court system. She relayed the number was on the low side compared to the rest of the country. The federal government had made a substantial amount of money available to states and territories in an effort to get people who were legally unauthorized to possess firearms from being able to possess firearms. As of December 2018, states had entered over 5 million mental commitments into the system; Alaska had about 780 records as of December 31 that represented 440 people.

Ms. Monfreda continued that the number put Alaska low on the list of contributing to the section of the National Instant Criminal Background Check System (NICS) indices (only behind the territories and three other states). She reported that getting the commitments back to 2011 would be very beneficial. She pointed out that the individuals were currently barred from legally possessing firearms; passing the law would not make it legal for the individuals to possess firearms, but it would get the individuals in the

system, which would prevent them from buying a firearm if they attempted to do so.

Co-Chair Wilson asked if the federal government had gone back as far.

Ms. Monfreda answered in the affirmative. She reported that most states were going back as far as possible.

Co-Chair Wilson asked if the federal government kept track of the information as well.

Ms. Monfreda replied that records entered into the NICS indices were entered by the states; the FBI retained the information as long as the states retained the information.

4:34:28 PM

Vice-Chair Johnston asked if Ms. Monfreda was aware of any federal funding the state may not be taking advantage of to go as far back as possible.

Ms. Monfreda reported a $25 million grant opportunity had become available about two weeks earlier to enable states to get the records into the system. She detailed there was a special emphasis on mental health records, and it was available for all states to pursue.

Co-Chair Wilson requested the information on the grant.

Vice-Chair Johnston remarked on the importance of ensuring the state's data was robust.

Co-Chair Wilson remarked it was another policy call.

4:35:27 PM

Co-Chair Wilson asked to hear from the Office of Public Advocacy (OPA).

JAMES STINSON, DIRECTOR, OFFICE OF PUBLIC ADVOCACY, DEPARTMENT OF ADMINISTRATION (via teleconference), thought the bill did a pretty good job trying to balance numerous interests. He characterized criminal justice as an art versus a science. He focused his comments on issues he saw with recriminalizing driving with license being suspended or revoked (DWLR). He reported that one of the things that

could happen was that individuals could get sucked into a DWLR black hole. He provided a scenario where a person lost their license for failing to pay child support. He noted that Alaska was a very difficult state to not drive in and under the scenario the individual continued to drive.

Mr. Stinson detailed that when a person received a DWLR, there was a mandatory 90-day license revocation even under a first offense. He explained that the situation could go on and on if they continued to drive to work and were occasionally stopped. He elaborated that the individual began racking up jailtime. In his previous experience as a municipal prosecutor, it had been an odd feeling going to some of the change of plea hearings and seeing someone on their fifth or sixth DWLR get sentenced to six or more months in jail. Comparatively, a person on a third misdemeanor assault (even a domestic violence assault), was potentially receiving less jailtime.

Mr. Stinson stated the issue was a tricky and political; people did not like the idea of people driving with a license revoked. He understood the issue and noted that people did not like being hit by someone with a revoked license. However, he believed it was important to recognize that someone who did not have a license, could be not violating traffic laws, could get pulled over, could get so behind the curve they had stacked up license revocations, and they were trying to make ends meet. He questioned whether it was conduct that should be criminalized as a Class A misdemeanor with a sentence of up to one year in jail, or criminalized with a cap, or singled out in certain instances. He noted the issue could also happen when someone got their first DUI and could not afford an ignition interlock device or SR-22 insurance. He noted the person may wait until their mandatory OUI [operating under the influence] revocation was over; once the individual's OUI revocation was over, they could drive and get a standard driving with license revoked.

Mr. Stinson did not have a perfect solution, but he believed it was important to question, in a time with limited financial resources, if the state wanted to potentially send individuals to jail for six months or longer as they stacked up driving offenses. He stated if the answer was yes, that was fine, but he wanted the legislature to be cognizant of the issue that could create

a disproportioned affect in a person's life who was really doing nothing else but driving.

Representative LeBon asked for verification that a person who had been stopped up to five times without a license would not have auto and liability insurance.

Mr. Stinson replied that it was not necessarily true. He detailed that a person could own a vehicle and have insurance without having a valid driver's license. He added it was possible a person could be driving someone else's car that had insurance coverage. There was a separate offense of driving without insurance, which he believed it was a violation that had been criminal prior to SB 91 or another time. He remarked that someone with a license could be driving without insurance and vice versa. He stated that the scenario presented by Representative LeBon may be common, but there were plenty of drivers with licenses who also drove without insurance.

4:40:20 PM

Representative LeBon provided a scenario where an individual with an insured vehicle knowingly loaned it to a person with a revoked license. He asked if the insured individual's insurance company would consider the situation covered.

Mr. Stinson answered that he could not necessarily provide an answer. He relayed that run of the mill taxpayers had uninsured coverage that covered getting into an accident with an uninsured driver regardless of the status of the person's license. He noted there were policies that had broader coverage than others, but he did not know how an insurance company would react to the situation.

Co-Chair Wilson stated she was fairly certain an insurance company would not like the situation.

Mr. Stinson agreed.

Representative Josephson thought Mr. Stinson made a pretty good argument on DWLR. He was more troubled about someone with a DUI driving during the 90-day window of suspension rather than someone who exceeded their points. He could see making the latter an infraction or violation and the former

something more stringent. He asked for Mr. Stinson's feedback.

Mr. Stinson answered that the issue outlined by Representative Josephson became muddled. He suggested that usually when someone was charged with a DUI their license was administratively revoked by DMV within a week. He elaborated that usually by the time a person had been sentenced for a DUI, their mandatory revocation period may have wound down significantly. After the 90 days was up, the individual was no longer on active DUI revocation under a first offense. He noted the length of time was longer for subsequent offenses. Once a person was out of the 90-day window, if they were stopped, they would be charged with a regular DWLR.

Mr. Stinson reported that the situation became more muddled because a person with a first DUI offense was required to get an ignition interlock device installed on their vehicle for the first six months. He explained that if the person did not have the device installed and waited until their 90-day license revocation was over, the individual would receive a standard DWLR (requiring mandatory community work service but no jailtime). He furthered that if a person had an ignition interlock in their vehicle and then drove a vehicle without the device (e.g. a friend's car), they would be exposed to the same mandatory minimum jailtime associated with an active OUI revocation. He reported that the way the statute worked could be confusing. Ultimately, an individual could rack up DWLRs under the two different scenarios and it became a question of whether or not a person would get the mandatory jailtime.

4:44:03 PM

BETH GOLDSTEIN, ACTING PUBLIC DEFENDER, DEPARTMENT OF ADMINISTRATION (via teleconference), drew attention to Sections 4 and 5 and reported the agency had a concern regarding the removal of the defense of marriage act. She stated that the bill did not limit the charging or conviction in the way described by Mr. Skidmore with respect to the person not being able to say no. She explained that a person with dementia could speak and make their wishes known. She noted she had previously testified on the subject to the Senate.

Ms. Goldstein explained that with respect to dementia, the concern was a situation where a spouse had guardianship over another spouse. She explained that dementia was not static; there could be clarity for days or weeks. She continued that spouses may decide within the context of their relationship and the spouse may have the ability to give consent during that time. However, days later the individual may not remember. She believed the law would result in substantial litigation around whether or not a person was able to give consent even though they had something like dementia. Additionally, the wording removed in the HB 145 version had a section on the mental incapability of the offender. She noted it was not included in the language in the CS for HB 49.

Ms. Goldstein explained that OPA had wards who had guardianships and many times those wards married one another. The court had determined they did not have the capacity to handle aspects of their lives and need a guardian (capacity at times could equate to mentally incapable); the question became whether a person with an IQ of 59 could understand and consent even though they may be mentally incapable. She questioned where the legislation left the situations where two wards were married, both of which who may be mentally incapable under the law. She explained that one or both could potentially be charged at some point, depending on the factual circumstances. The agency had concerns with the specific sections of the bill and with the elimination of the marriage defense for the particular situations.

4:47:22 PM

Ms. Goldstein moved on to discuss Section 44 and 45 pertaining to the recidivist [indecipherable] statute. The agency was concerned that the statute still appeared to capture misdemeanor marijuana prior convictions. She pointed out that the state had decriminalized much of that possession, but the bill would still capture individuals prior to the decriminalization if they possessed the substances under the section.

Co-Chair Wilson asked for clarification. She asked whether capturing was good or bad.

Ms. Goldstein explained that the agency viewed the situation as negative. She explained that currently a

person would not necessarily be charged with the same amount of marijuana or obtaining that marijuana, whereas, they had been charged with simple possession of marijuana eight to ten years earlier, which had been decriminalized later on. She stated the bill would mean the individual would be charged with a felony based on those prior convictions.

Representative Josephson asked which page and line she was referring to.

Co-Chair Wilson pointed to pages 25 and 26, Sections 44 and 45 of the legislation.

Representative Josephson asked what needed to be changed.

Ms. Goldstein supported the lookback period, but believed the bill needed to exclude the basic misdemeanor marijuana convictions.

Vice-Chair Johnston thought the language had been included in HB 145. She asked if the language in HB 145 would take care of the issue.

Ms. Goldstein reported that she had the same concern with HB 145. She had brought the issue to the attention of the House Judiciary Committee, but the language had not been changed.

Vice-Chair Ortiz asked Ms. Goldstein if she had concerns with Section 55, page 34 that would repeal the caps on the sanctions for technical violations (currently 3, 5, and 10 days).

Ms. Goldstein responded that her concern with the section was from a fiscal perspective. She reported that the section would result in more contested revocation hearings. She had spoken to attorneys and the Public Defender Agency and reported that currently when an individual violated and knew precisely how much time they would get, many times they made the decision to do the time and not contest. She elaborated that an individual knew they would come in and get three days, they served the time, and no hearing was necessary. She explained that without a cap an individual would not know what they may be sentenced to, meaning there would be a higher likelihood an individual would contest

the revocations, which would result in increased litigation.

4:51:04 PM
AT EASE

5:02:13 PM
RECONVENED

Co-Chair Wilson indicated the committee would continue hearing input from the Department of Corrections.

Ms. Winkelman thanked the committee for the opportunity to provide commentary on the bill. She reported that DOC believed the bill would give it the tools to enhance public safety. From a community supervision perspective, longer periods on supervision would increase public safety and help guide offenders on their way to rehabilitation. She elaborated that supervision was a cost-effective way to keep offenders away from drugs and alcohol and victims. She referenced earlier testimony by Mr. Skidmore that SB 91 had changed the criminal justice system across the board - it had reclassified crimes, reduced sentences, reduced probationary periods, added earned compliance credits, and mandatory early termination.

Ms. Winkelman explained the changes had reduced periods of incarceration and the bill had taken a "cookie cutter" approach to human beings in the criminal justice system. She highlighted the complexity of the system and offenders should be dealt with on a case by case basis. She communicated the department's support of the provisions in HB 49 pertaining to rehabilitation and increased public safety. Although earned compliance credits were altered in the bill, the credits would be left in place, which the department felt was beneficial. She noted that the system would continue to have SEJs [suspended entry of judgements] as well as early termination and pretrial supervision.

Ms. Winkelman reported that individuals would continue to be released into the community in pretrial status and the bill would give courts the option for pretrial officers to provide supervision. She addressed the provision related to discretionary parole eligibility. She reported that limiting discretionary parole eligibility would impact public safety. She referenced Mr. Edwards testimony about the increase in hearings due to the expanded eligibility

(from around 200 up to 1,000). She explained that when individuals were released on discretionary parole they went to supervision. She detailed that in the past, discretionary parole had been reserved for elite individuals who had completed significant programming and were at the tail end [of their time]. She furthered that the discretionary parole system had become a reckless disregard where DOC had found many people were not ready for parole and much of its absconder population had increased.

Ms. Winkelman had heard feedback from staff that it was almost impossible, due to the volume of discretionary parole, to assess risk on the applicants. The reports had become streamlined and simplified instead of a robust application process. The department believed the bill was a movement towards a balanced system that relied on the officers to inform the courts and parole board of conduct of the offenders and would return the discretion back to the court to impose what was relative to the violation or the offender. She noted that the bill would still provide the opportunity for rehabilitation for those who wanted to engage in the process through early compliance credits, early termination (that would no longer be mandatory), SEJs, and pretrial supervision.

Co-Chair Wilson indicated the committee would move to fiscal notes. She thanked Ms. Winkelman for her testimony.

5:07:15 PM

SYLVAN ROBB, ADMINISTRATIVE SERVICES DIRECTOR, DEPARTMENT OF CORRECTIONS, OFFICE OF MANAGEMENT AND BUDGET, introduced herself.

Co-Chair Wilson reported that the committee would begin with OMB Component Number 698 for administration and support, information technology under DOC.

Ms. Robb pointed out that the DOC fiscal notes followed fiscal notes from the Department of Administration (DOA) in the packets. She believed note under discussion was the third in the packet.

Co-Chair Wilson clarified that the fiscal notes were marked draft. She explained that the notes only went through FY 20 because it was almost impossible to understand the impact

after that time. She reported that the governor's plan was to talk about more treatment next session. She hoped that if treatment options became more successful, there would be less recidivism and safer places. The fiscal notes would be considered one-time increments, which meant the discussion would occur next session about whatever bill ultimately passed.

5:08:38 PM

Vice-Chair Ortiz asked if the fiscal notes should be considered implementation costs or ongoing costs.

Co-Chair Wilson replied that most of the costs were related to implementation. She would not characterize all of the costs as ongoing because the bill was the first step in the project. She believed the committee had done an excellent job talking about the other parts and pieces associated with the topic. The bill was about making sure crime stopped, aligning punishment to fit the crime, and reducing recidivism via providing options to enable individuals to successfully get their lives back together. She noted the bill was much different than others because typically costs were ongoing, and programs did not change. She believed the bill was just the beginning of changes that would impact public safety. She added that the bill was the first step, but treatment was just as important and was not included in the bill.

Ms. Robb began with fiscal note with OMB Component Number 698. She explained that the note included money to enable DOC to hire a contractor to make the necessary changes to the departments database the Alaska Corrections Offender Management System (ACOMS). The note pertained to the proposed changes to the earned compliance credit. She detailed that the programmers who worked on and maintained the system did not have the capacity to make the change, especially under the timeframe required by the bill's effective date.

Co-Chair Wilson reported the committee would review the fiscal note labeled OMB Component Number 2952.

Ms. Robb spoke to the fiscal note and explained that DOC calculated cost with its cost of care (calculated annually) of $168.74 per day. She detailed that $36.86 of the per day cost was directed at healthcare. The fiscal note reflected

the $36.86 per day for inmates who would exceed the current capacity of the system projected by the department based on changes in the bill. The was $2.7 million.

Co-Chair Wilson asked if 204 inmates would exceed the correctional institutions' current capacity.

Ms. Robb replied in the affirmative. She elaborated that the department's projection was for an additional 554 inmates based on the proposed legislation.

Co-Chair Wilson wondered where the 554 number was reflected. She pointed out that the fiscal note only showed a projection of 204.

Ms. Robb answered that DOC currently had capacity for an additional 350 inmates, which left 204 remaining.

Representative LeBon asked if the fiscal note assumed that the Palmer facility would reopen.

Ms. Robb responded that the note did not assume the reopening of the Palmer facility. The fiscal note was a projection based on historical data. She explained that if the bill passed and the projected increase in inmates came to fruition, it would not happen simultaneously. She stated that if facilities moved toward their current capacity, there would be a reassessment at that time.

Representative LeBon asked if there was a fiscal note reflecting the costs of reopening the Palmer facility.

Ms. Robb responded in the negative.

Representative Knopp understood things were a work in progress. He noted that the original HB 49 had included a fiscal note of $42 million. He had not reviewed that fiscal note, but he assumed it had reflected reopening the Palmer Correctional Center. He stated there had been numerous versions of the bill and he recalled a later total of approximately $22 million. He observed that the CS incorporated numerous aspects of all of the other crime bills. He had heard prior presentations that in a couple of years the state would incarcerate 500 additional people. He was surprised the fiscal notes did not reflect that information. He asked for comment from DOC.

5:14:56 PM
AT EASE

5:17:43 PM
RECONVENED

Co-Chair Wilson invited Kelly Goode with DOC to the table. She believed there was some misunderstanding about some of the numbers. She noted there were other avenues besides [reopening] the Palmer facility or sending inmates out of state.

KELLY GOODE, DEPUTY COMMISSIONER DEPT OF CORRECTIONS, communicated that she would respond to the question from Representative Knopp and would also provide some overview. She explained that the fiscal note looked different because the department was anticipating a little over 500 new inmates over the course of a year. The department anticipated it would have a little over 350 beds in its current facilities. She noted the remaining 200 inmates would not be incarcerated all at one time. She added there was legislative intent asking DOC to place individuals as best as it could in community residential centers (CRCs) and on electronic monitoring (EM); that number being requested was currently over 200. The department believed that DOC would be able to meet the numbers projected in the fiscal note over the course of a year.

5:19:28 PM

Representative Knopp remarked that the first fiscal note he had seen for the original HB 49 had a fiscal note of $42 million. He asked if that number included reopening the Palmer Correctional Center.

Ms. Goode responded in the negative. She noted the complexity of the situation and explained that the issue was based on the time the fiscal notes had been created in the system, when a budget had been in progress and other things had been occurring. She detailed that the cost of care projected in the $42 million was the full $168 per inmate because DOC initially believed it would be above capacity for any additional inmates projected. She elaborated that the department had determined its capacity would only be exceeded by 200 [if there was an increase of 500 inmates]. The 350 inmates had been calculated on the marginal rate; the full $168.74 was applied to the 200

inmates over capacity. The change had resulted in a significant difference in the fiscal note.

5:20:41 PM

Representative Knopp recalled that the previous week there had only been 170 empty [correctional facility] beds. He asked if the number had changed to 350 open beds. Alternatively, he wondered if 350 was a projection for the future.

Ms. Goode responded that there had been significant discussion about projecting. She stated that unfortunately DOC did not have a crystal ball and corrections was a bit of a moving target. The department wanted to ensure the committee was confident in the numbers DOC put forward in its fiscal notes. She explained the department had previously been using an average over a quarter, but the average in the fiscal note used the calendar year 2018 for clarity. The institution population was an average from 2018.

Co-Chair Wilson remarked on the department's ability to utilize CRCs and EM, which had been included in the operating budget based on current regulation. She clarified it was not an over-crowding issue. She reported that DOC had a process to identify inmates who did or did not qualify [for CRCs or EM]. She reported that DOC believed as new inmates came in and out of its facilities that the department would be able to better utilize the options.

5:22:03 PM

Representative Josephson asked what DOC's total fiscal notes had been under the governor's crime package (SB 32 to 36 or HB 49 to 53).

Co-Chair Wilson interjected that the committee would not revisit old fiscal notes. She pointed out that the past DOC fiscal notes had used the $168 rate instead of the marginal rate. She stated that the current notes before the committee were accurate for the CS. She stated that trying to make a comparison to other bills that had many differences from the CS would be unfair to the department. She understood moving between the different bills had been confusing. She assured the committee that the numbers were as accurate as possible. She noted that the prison

population was changing daily. Additionally, DOC was doing new contracts for CRCs, which would make a difference. She hoped the state would be able to get some of the treatment going before waiting until policy change next year.

Vice-Chair Johnston pointed out that the fiscal notes were marked "draft." She assumed the information was a work in progress because the CS had just been released the previous evening.

Ms. Goode agreed. She explained that DOC only had a set number of hours to look at the provisions and pull the fiscal notes together. She remarked that Ms. Robb had worked numerous hours on the notes. The department wanted to ensure that it caught any potential errors.

Co-Chair Wilson emphasized that fiscal notes were always drafts "when we have a bill that is like this." She reminded the committee that the bill stiffened much of the law, but individuals currently being charged and incarcerated would fall underneath the old program. She explained it would take awhile before some of the longer [prison] stays in the new program, which made it difficult to determine [what the fiscal cost would be]. She noted that the new commissioner and deputy commissioner were bringing their own touch to DOC and she looked forward to hearing what the department was able to do during the interim.

5:24:17 PM

Co-Chair Wilson moved to the fiscal note with OMB Component Number 1381 for population management, institution director's office, totaling $15.580 million for FY 20.

Ms. Robb relayed that the fiscal note included the bulk of the costs related to DOC. The note was based on data pulled from ACOMS. She remarked that the bill would make many changes that would impact the corrections population including increased sentences for Class A and B felonies. She reported there were 5,000 individuals charged with a Class A misdemeanor annually. Additionally, the bill would increase sentencing for Class B misdemeanors, remove credit for time spent on EM during pretrial status. She reported that the eligibility changes for discretionary parole would have a large impact on the department, as people would be required to stay longer before they had the opportunity to

be on discretionary parole. She relayed that some of the changes had a very small impact in terms of the additional time individuals would be with corrections; in some cases, it would only be a couple of extra days. However, when applying that to thousands of people it would add up. In other cases, such as discretionary parole, the impact on jailtime would be significant.

Co-Chair Wilson appreciated that pages 2 through 4 of the fiscal note corresponded to bill sections. She stated that determining whether the costs were a good way to spend the state's money was a policy call for the legislature. She moved to fiscal note OMB Component Number of 695 for the Parole Board.

Ms. Robb addressed the zero fiscal note and explained that the Parole Board anticipated the ability to move forward with existing resources as it related to changes in the bill.

Co-Chair Wilson considered that the bill could lessen the caseload of the Parole Board. She asked for verification the agency was not paid more when its caseload was heavy. She thought they received a set fee and characterized members as somewhat voluntary. She thought it was the reason there were not any projected savings on the note and believed savings would really be in the form of timing for the Parole Board.

Ms. Robb agreed. She explained that the board had absorbed the extreme increase Mr. Edwards had spoken about earlier in the meeting. She noted that the increase had been a strain on the system; the changes proposed in the CS would return the workload to a more reasonable level.

Co-Chair Wilson recommended committee members talk to board members. She remarked the board put a significant time in for the state and she believed it was one of the hardest working groups.

5:28:13 PM

Co-Chair Wilson moved to fiscal note OMB Component Number 2826, for population management, statewide probation and parole, totaling $546,000.

Ms. Robb relayed there had been a recent change in law related to SB 91 that limited the caseload for probation officers. She believed the effective date had been January 1, 2019. She explained that the changes in the CS would increase the probation caseloads above the statutory limit. To account for the increase, the bill would add a probation officer in Anchorage, Juneau, Ketchikan, Kodiak, and Kotzebue.

Co-Chair Wilson expressed confusion about the fiscal note. She stated the note pertained to earned compliance credits; individuals currently received 30 days for every 30 days [a person went without a violation]. A change under the CS would mean individuals received a reduction [to probation or parole] ahead of time instead. She wondered why the change would result in more individuals receiving the credit. She thought the fiscal note should be zero.

Ms. Goode commented that she would like to review the note and review it with the committee at a later time.

Co-Chair Wilson agreed. She did not see where there would be an increase in individuals unless people were going to spend their entire time on probation.

Ms. Goode agreed.

Co-Chair Wilson invited Ms. Meade to speak to the OMB Component Number 768 totaling $1,136,500.

5:30:15 PM

Ms. Mead noted that she had discussed some of the provisions of the fiscal note in connection with other bills that had gone through the committee. The changes in the bill that would impact the Court System included the reclassification of many drug offenses and increased sentences. She detailed that it was mostly the impact from reclassifying the drug offenses that resulted in DOL's fiscal note seeking six new prosecutors to start prosecuting felony drug offenses that had been unprosecuted over the past few years. With six new prosecutors the Court System would need the resources to handle the cases the prosecutors would bring; therefore, the fiscal note sought the equivalent of two full-time pro-tem judges (retired judges who would come back to handle the increased caseload) who would travel around the state (a small travel

budget was included). Additionally, an in-court clerk would accompany the judges, which would result in travel costs as well. Secondly, the fiscal note reflects an addition of five new clerical positions in response to the agency's requests for attorneys and clerical staff. She explained that if 750 new drug cases, the courts needed the resources to handle the cases and enter the data into CourtView. The third component of the fiscal note was attributable to the increased use of videoconferencing as reflected in the legislative intent in the two court rule changes. The courts had been doing videoconferencing with existing staff, but there were substantial associated costs. The courts would also seek one trial court statewide coordinator and one technical person to fix any videoconferencing equipment problems in any court facilities.

Co-Chair Wilson asked if the need for two retired [pro tem] judges was for catchup purposes. She surmised it did not sound like the positions would be permanent.

Ms. Mead indicated that the cost was included through the life of the fiscal note. The Court System had opted to use pro tem judges because a new judge would be incredibly expensive. The idea was to handle the additional caseload with lower cost positions who were also able to travel (full-time judges were assigned to a judicial district). She anticipated sustaining the positions for as long as necessary. She clarified the two judges would be needed to handle the anticipated 750 new case filings that would come with the legislation.

Co-Chair Wilson remarked that she had been confused by the proposal to use retired judges; she thought it meant the positions would not be permanent.

Ms. Mead responded that the positions would be fungible. For example, some of the retired judges would work for two months and another person would come in for another six months. She explained that sometimes a retired judge wanted to work for a limited time period or location. The funding would allow the Court System to utilize whomever was available for whatever term was available; the hope would be to avoid a gap in coverage.

Co-Chair Wilson communicated her hope there would be a financial savings with the use of videoconferencing. She understood it may not be in courts.

Ms. Mead confirmed that the savings did not help the Court System. In theory, videoconferencing would help DPS because it was statutorily responsible for transporting prisoners to court hearings. She expounded that DPS could save money by not having to transport as many people; she deferred to DPS to explain how or why the change would have a fiscal impact on the department.

Co-Chair Wilson was trying to figure out how the videoconferencing would work. She did not want the courts to have the equipment set up but have no desire to utilize it.

Ms. Mead replied the courts would respect the legislative intent asking the Court System to try to use videoconferencing more. In order to try to use it more, improved troubleshooting was necessary. For example, one of the reasons the equipment may not be used was due to an equipment failure. She elaborated it would be necessary to have someone look globally at the program, where the equipment existed, and what the barriers were, to determine how to adjust the systems to remove barriers.

5:35:14 PM

Representative Carpenter stated there were other branches of government with videoconferencing systems and people who maintained them. He hoped the state would have the ability to find synergy between videoconferencing systems and individuals who managed them instead of having systems siloed within each branch or portion of the government. He thought the problem may be solved in a different manner.

Co-Chair Wilson agreed. She did not know whether the concept needed to be in statute or would merely require everyone working together. She suggested finding out where the equipment was located and what needed to be upgraded. She thought it may just be a needed operating cost increase.

Ms. Mead relayed that the Court System personnel handled all the videoconferencing used for court hearings even within the DOC facilities. She explained that DOC did not

dedicate its staff resources to the troubleshooting. The work was not siloed - Court System staff went to DOC facilities to set up, troubleshoot, and maintain the equipment.

Co-Chair Wilson wondered why DOC was requesting money for ten additional people for videoconferencing if it was the court's responsibility.

Ms. Mead replied that it was not necessarily the court's responsibility to do videoconferencing, but it had taken the task on because it had an interest in increasing efficiencies in pretrial proceedings. She believed the request for ten additional DOC staff was because DOC needed to supervise defendants in its facility who were in a room on the videoconference equipment talking to the courthouse.

Representative Carpenter believed the ten employees were correctional officers and not specifically related to videoconferencing equipment.

Co-Chair Wilson noted that she had not recalled what the ten positions would do because they had been removed from the budget.

5:37:41 PM

Co-Chair Wilson relayed that the Department of Law would be reviewing its fiscal note, OMB Component Number 2202 totaling $1,488,100 with 13 new full-time positions.

Mr. Skidmore explained that the DOL fiscal note focused on two components of HB 49. The first component was drug offenses. He reported that when SB 91 had passed, drug prosecutions had dropped by over 700 per year. He explained that by returning the law to its previous state (even under the recidivist approach to possession where the first to offenses were misdemeanors), DOL anticipated an increase of approximately 700 or more given the opioid epidemic. The fiscal note included 5 prosecutors and support staff. The additional prosecutor and support staff were related to the driving while license suspended/canceled/revoked. He noted that the offense previously accounted for 17 percent of the misdemeanor caseload. He acknowledged the number was large, but the department believed it could handle it with the additional resources because the cases were not labor intensive. The department did not anticipate substantial

work, but there was some associated with the 2,000 cases. The remainder of the fiscal note described what was going on in the bill - the department did not anticipate the need for any additional resources. The cases and changes to sentencing, probation, or various other items were all being worked on by the department; the bill merely adjusted the tools to increase the department's efficacy.

Co-Chair Wilson observed that pretrial, probation, and parole were divided out on pages 3 and 4 of the fiscal note. She asked if there was a way to break the information out further to see the fiscal impact of the changes in the bill.

Mr. Skidmore clarified that the needed positions were related to changes in drug statutes and in the driving while license suspended/canceled/revoked. The remainder of the note described changes, but none of those additional changes resulted in a fiscal request from DOL.

Co-Chair Wilson asked if the money would be divided equally between the two components.

Mr. Skidmore replied in the negative. He explained that the note included five prosecutors and associated support staff for drugs and one prosecutor and support staff for driving while license suspended/canceled/revoked. He clarified that in the latter case, support staff was needed to handle the volume.

Co-Chair Wilson highlighted OMB Component Number 512, a zero fiscal note for the Alaska State Troopers, prisoner transportation and OMB Component Number 3200 for statewide support, criminal justice information systems program. She invited DPS to review the notes.

Ms. Howell began with the zero fiscal note, OMB component number 3200 for the criminal justice information systems program. The note related to sections of the bill dealing with sex offender registration requirement changes and information related to the transmission of mental health records from the Court System to DPS. The department anticipated the number of sex offenders that would be required to register in Alaska would be manageable and it was not requesting additional staffing. She noted that Ms. Monfreda had testified there were about 20 to 22 individuals who had to register in another state, but the

department had determined they did not have to register in Alaska because their crime had not been similar to one requiring registration in Alaska. The bill required DPS to adopt regulations to further clarify the process for determining the duration of registration for those individuals; the estimated timeframe for the adoption of the regulations was 12 months (included in the note).

Ms. Howell addressed the portion of the note related to the Court System transmitting records to DPS to include in the national instant check system. She reported the Court System was currently transmitting the records to DPS from October 2014 forward. The bill would move the date to January 1, 2011 forward, which would allow more records to be provided to DPS and federal databases. The work required to enter the information into databases could be handled with existing resources. She clarified that records being put into the system were for individuals who were currently federally prohibited from possessing firearms. The change in the bill did not impact a person's ability to own or purchase a firearm. The change would enable DPS to give the information to the databases to give the ability to make accurate determinations. She added that the department could handle the change with existing resources.

5:45:23 PM

Representative Josephson asked about the funding source for the sexual assault kit portion of the bill. He asked if the cost was reflected in a separate fiscal note.

Ms. Howell relayed that the bill before the committee included a provision requiring law enforcement agencies to submit sexual assault kits within six months of collection to the crime lab. The department's policy was for troopers to submit the kits within 30 days after collection. There would be no fiscal impact to DPS related to the bill provision.

Representative Josephson thought Representative Geran Tarr's bill would clean up kits that had not been tested. He assumed there were associated expenses.

Ms. Howell answered that HB 20 had more provisions included that required kits to be submitted to the lab and tested within a certain timeframe and that victims be notified

when tests were complete. She reported that the provisions were not included in the CS for HB 49.

Co-Chair Wilson clarified that she was not certain the provisions were supposed to be left out of the bill and noted the issue would be reviewed. She acknowledged the importance of testing the kits. She wondered if individuals could be charged a fee to register as a sex offender.

Ms. Howell replied that it was within the discretion of the legislature to include a fee; DPS did not currently have the authority to charge fees to register sex offenders.

Co-Chair Wilson thought it was a concept that should be considered.

Ms. Howell spoke to fiscal note OMB Component Number 512 for the Alaska State Troopers, prisoner transportation. She addressed cost savings associated with increasing the use of videoconferencing for pretrial hearings. She detailed that DPS was statutorily responsible for transporting prisoners. She noted it was the discretion of the court and DPS had very little control over which prisoners were transported and when. The department aimed to create efficiencies in terms of transporting as many prisoners as possible at one time via car, prisoner transport vans, or aircraft.

Ms. Howell shared that the legislature's recommendation to increase the use of videoconferencing would result in some cost savings, but because the department was transporting prisoners regardless, it was not possible to anticipate what the cost savings, if any, would be. She reiterated who was transported and when, was out of the department's control. She added that the provision created efficiencies in terms of manpower and resource allocation. The provision also helped mitigate any risk to law enforcement or the defendants as they were being transported. There were some very positive things that would result from the provision, but a cost savings was not one of them.

Co-Chair Wilson relayed that the Department of Administration would be reviewing its fiscal note, OMB Component Number 43, legal and advocacy services, Office of Public Advocacy totaling $694,700.

Mr. Stinson reviewed fiscal note for the Office of Public Advocacy. He reported the two main drivers of the fiscal note related to the increased drug prosecutions. He noted that Mr. Skidmore had made it clear the administration intended to take prosecuting drug crimes very seriously, which was in line with the governor's mission. The note also accounted for the increased prosecution of driving with license revoked (which had previously been reduced to a violation). There were a number of changes to the bill that would likely increase litigation and the strain on the defense side more than the prosecution side.

Mr. Stinson believed much of the bill was about giving more tools to prosecutors and law enforcement. He pointed out that it could make defending the cases much more difficult. For example, it was more difficult to defend a client in custody. There would be more attorney time taken doing jail visits and things of that nature. He detailed that petitions to revoke probation were more likely to be contested. The easiest things to monetize were the increase in felony prosecutions and the increase in driving with license revoked prosecutions.

Co-Chair Wilson asked if the five full-time positions were all attorneys or included support staff.

Mr. Stinson responded that there were three attorneys and two support staff. He elucidated that OPA's structure was a series of independent law firms. He explained the structure enabled the agency to internalize conflicts. He detailed that if there was a conflict with the public defenders it came to OPA. While there may be a conflict with an individual OPA unit, the agency was still able to place the case within OPA. He relayed that the agency had to rely on contractors to some degree, but he was working hard to find efficiencies. Ultimately, the agency would need three attorneys given that structure. He did not know with certainty where they would be placed, but he assumed it would probably be Fairbanks, Palmer, and Anchorage. He noted that one of the positions could go to Kenai instead of one of the other locations.

Co-Chair Wilson appreciated that OPA was using its resources the best it could. She moved on to fiscal note OMB Component Number 1631, legal and advocacy services, Public Defender Agency, totaling $1,300,900.

5:52:33 PM

Ms. Goldstein echoed Mr. Stinson's statement that the bill was in line with the governor's mission and the increased defense cost that would create numerous things the agency could not monetize; however, it was able to monetize the increased felony drug crimes and the driving with license revoked crimes. The agency was requesting ten positions. Five of the positions were for attorneys based on the anticipation that 600 of the 750 projected new cases would go to the Public Defender's Office. She explained that the American Bar Association set a standard of 150 felony cases per attorney per year, which put the agency at four attorneys for the felony drug cases. The agency also anticipated the need for one attorney for cases pertaining to driving without a license. She expounded that because the agency was more centralized, it was requesting additional support staff. She explained that the agency was a paperless office and saved cost by archiving its records electronically. With increased cases the agency would need another centralized person and four support staff for the felonies.

Co-Chair Wilson asked if the agency kept track of repeat offenders served by the agency.

Ms. Goldstein responded that the agency may have the ability to keep track of individuals coming in - it had a new database as of August [2018] and it was able to track things it could not track in the past. However, repeat individuals going through the system may not all stay with the Public Defender Office because it may have represented them in a previous case, but may no longer have the ability to represent the individual due to conflict issues. She explained it would be necessary for the agency to work with OPA to track the repeat offenders.

Co-Chair Wilson asked Ms. Goldstein to look into the issue. She asked for the most recent change in statute pertaining to a person's eligibility for a free attorney.

Ms. Goldstein answered that she did not know the most recent time the statute had been reviewed. In the past couple of sessions, the topic had been discussed in terms of whether fees could be increased.

Co-Chair Wilson asked for verification that just because a person had used a public defender due to a criminal offense, did not mean they would automatically conflict them out to OPA [in the future].

Ms. Goldstein agreed. She explained that more often than not, when a public defender had represented an individual previously, they would be able to represent the individual again in the future. The driver of the conflict process pertained primarily to witnesses involved in cases and whether the agency had represented one of the witnesses in a new case (meaning the agency would likely not be able to represent the person in a future case).

Co-Chair Wilson indicated there were no additional fiscal notes that she was aware of.

Vice-Chair Ortiz calculated that the total for all of the fiscal notes equaled approximately $23.5 million or so. He acknowledged the significance of the figure and remarked it was a statement about priorities and where the state's dwindling resources would be spent. He was puzzled by the amount in comparison to the Senate versions totaling $43 million. He remarked that the current bill included parts of the Senate bills and additions from other bills.

Co-Chair Wilson explained that the DOC marginal rate was not used in the other fiscal notes. She detailed that in previous fiscal notes DOC had multiplied all of the new inmates by the larger amount. She highlighted the significant difference between $48 and $187 [per day per person], which accounted for the majority of the difference in the fiscal notes. Additionally, all of the provisions in the governor's bills were not included in the CS. She reported that the CS was a compromise bill. She considered the money put into the bill and the expected outcome. She pointed out that the bill was the first step. She understood that with no treatment and a place for someone to go when released from jail with a support system, it was likely they would end up back in jail. She stated it was a money issue, but it was also about quality of life and public safety.

5:58:30 PM

Vice-Chair Ortiz thought the process was happening very quickly and he spoke to the importance of feeling confident

about the financial numbers and impact of any bill the committee adopted.

Co-Chair Wilson underscored that the fiscal notes reviewed during the meeting were draft versions. She reported the committee would receive final fiscal notes prior to reporting the bill out of committee. She indicated amendments were due Sunday by 4:00 p.m. to Legislative Legal Services. She hoped to hear amendments on Monday at 9:00 a.m. She encouraged members to review the fiscal notes. She highlighted the offense of driving with a suspended license and considered whether a citation or criminalization was the right course of action and what it would cost.

Representative Josephson asked if the amendment deadline could be to Legislative Legal Services.

Co-Chair Wilson replied the deadline was 4:00 p.m. on Sunday to Legislative Legal Services. She thanked Legislative Legal for all of their efforts to make sure the committee had the CS to review in the current from. She clarified she was not intending to rush the committee. She highlighted that the content included in the bill had been discussed over the past ten days.

Representative Knopp asked about Co-Chair Wilson's plan for public testimony.

Co-Chair Wilson answered that the committee had previously held public testimony for HB 49. She reported that public testimony would not be reopened. She believed the public would be emailing committee members.

Representative Sullivan-Leonard asked if public testimony could be heard again.

Co-Chair Wilson would take the request under consideration depending on the schedule for the week.

6:01:57 PM
AT EASE

6:21:56 PM
RECONVENED

Co-Chair Wilson asked Mr. Skidmore to review the repealers.

Mr. Skidmore directed committee members to page 63, Section 96, lines 16 through 21 of the CS. He began with AS 11.41.432(a)(2) regarding the marriage defense. He explained that the bill would repeal the section that dealt with the defense as it applied to several statutes; it did not repeal the concept of the other person that was mentally incapable. The bill would repeal the following language "married to the person and neither party has filed with the court for separation, divorce, or dissolution of marriage." The bill would change subsection (b) to insert the desired language. He clarified that the language "if the offender was mentally incapable" was still included in the statute under subsection (a)(1).

Mr. Skidmore highlighted the additional repealers including, AS 11.46.980(d) and AS 11.46.982 related to inflation proofing; AS 11.56.330(a)(3) dealing with escape (escape had been changed from a Class A misdemeanor to a Class C felony; the offense had been inserted in the Class C felony statute and was being deleted from the Class A misdemeanor statute); AS 11.71.030(a)(1) through (a)(8) related to misconduct involving a controlled substance for the distribution of drugs (the bill moved the offenses from a Class B or C felony to Class A or B felonies); AS 12.25.180(b)(3) was an authorization to arrest for the violation of conditions of release (the bill changed the offense back to a crime and the section was no longer necessary); AS 12.30.055(b) dealing with the ability to hold someone on bail for a petition to revoke probation (the technical cap setting a limit for how long a person could be held was repealed and the section was no longer necessary); AS 12.155.110(c) through (h) dealt with the caps on technical violations in the sentencing provision (the elimination of the cap meant the sections could be deleted); and, AS 12.55.135(l) dealt with misdemeanor sentencing and set it at 5, 10 and 15 days for theft in the fourth degree (the subsection was eliminated and whatever the legislature set the range at would apply to theft in the fourth degree).

6:27:12 PM

Mr. Skidmore continued to review the repealer section of the bill including AS 12.55.135(n) that limited the misdemeanor penalty for controlled substances to zero days in jail (the limit on the sentence that could be imposed

would be eliminated); 12.55.135(o) was an aggravating factor necessary to exceed a presumptive range found in the misdemeanor statutes of current law (the section would be eliminated when the law was returned to [jailtime] of zero to 365 days); 12.55.135(p) established the aggravating factors used in the misdemeanor sentencing (the subsection was no longer needed); and, AS 33.07.010, AS 33.07.020, AS 33.07.030, AS 33.07.040, and AS 33.07.090 established the Pretrial Enforcement Division (the responsibilities of the division were being shifted to probation and parole). He noted that one of the statues may have described the risk assessment tool. He reported that the tool was referenced in other places in statute. He explained that in the bill cleanup process they could move the statute referring to the risk assessment tool to another location.

Mr. Skidmore reviewed the remainder of the repealers including AS 33.16.100(f) that dealt with the presumption of release (the offense was returned to its previous state); AS 33.16.215 related to technical caps for parole (the caps were repealed); AS 33.16.220(j) pertained to a parole hearing having to occur within 15 days for a technical violation (the technical violation had been eliminated and the subsection was no longer needed); AS 33.16.240(h) specified a parolee could be released if they had met the 3, 5, or 10-day technical cap (the technical cap was deleted and the provision was no longer needed); and, AS 33.20.010 related to good time if a person was sentenced to less than 10 days on a technical violation (technical violations had been eliminated and the section was no longer necessary).

6:31:10 PM

Representative Josephson addressed the AS 33.07 repealers. He expressed confusion about the administration's position on the Pretrial Enforcement Division. He had heard that it would be a standalone entity as envisioned, but he had also heard it would become a subset or additional probation officers. He asked for detail.

Mr. Skidmore responded that the 30 to 60 PCNs under Pretrial Enforcement Division were being shifted to the Division of Probation and Parole. The responsibilities of supervision pretrial were shifted and added to the responsibilities described for probation and parole officers in the statutes in the CS. He clarified that the

division would be dissolved in terms of a separate division with separate management. The responsibilities would remain, and the people would be the same, but the bill would shift its location in statute.

Representative Josephson asked for confirmation that the principle behind the Pretrial Enforcement Division would remain. He stated his understanding that employees would be in the field monitoring individuals on their conditions of release.

Mr. Skidmore confirmed that it was the precise intent as drafted in statute.

Co-Chair Wilson indicated the repealers had been reviewed, the sectional had been presented, and public testimony had been heard. She remarked that the bill was a compromise bill with parts of the governor's bills included. She reviewed the amendment process and reported the committee would receive final fiscal notes on Monday. She emphasized that the bill was the first step in criminal justice reform pertaining to jailtime. The second step would focus on treatment and what happened within communities with reentry programs.

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

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ADJOURNMENT

6:34:50 PM

The meeting was adjourned at 6:34 p.m.