

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

March 27, 2019

1:03 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chuck Kopp
Representative Adam Wool
Representative Laddie Shaw
Representative David Eastman

MEMBERS ABSENT

Representative Louise Stutes

COMMITTEE CALENDAR

PRESENTATION: ALASKA RECIDIVISM & REENTRY BY LAURA BROOKS~
DEPUTY DIRECTOR~ HEALTH & REHABILITATIVE SERVICES~ DEPARTMENT OF
CORRECTIONS

- HEARD

PRESENTATION: ALASKA DOC SANCTIONS & INCENTIVES BY MICHAEL
MATTHEWS~ RESEARCH ANALYST~ RESEARCH & RECORDS~ DEPARTMENT OF
CORRECTIONS

- HEARD

HOUSE BILL NO. 12

"An Act relating to protective orders."

- MOVED CSHB 12(JUD) OUT OF COMMITTEE

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."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 12

SHORT TITLE: PROTECTIVE ORDERS

SPONSOR(S): REPRESENTATIVE(S) KOPP

02/20/19	(H)	PREFILE RELEASED 1/7/19
02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	STA, JUD
02/28/19	(H)	STA AT 3:00 PM GRUENBERG 120
02/28/19	(H)	Heard & Held
02/28/19	(H)	MINUTE(STA)
03/07/19	(H)	STA AT 3:00 PM GRUENBERG 120
03/07/19	(H)	Moved CSHB 12(STA) Out of Committee
03/07/19	(H)	MINUTE(STA)
03/08/19	(H)	STA RPT CS(STA) 7DP
03/08/19	(H)	DP: VANCE, LEDOUX, WOOL, SHAW, STORY, FIELDS, KREISS-TOMKINS
03/18/19	(H)	JUD AT 1:30 PM GRUENBERG 120
03/18/19	(H)	Heard & Held
03/18/19	(H)	MINUTE(JUD)
03/27/19	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

LAURA BROOKS, Deputy Director
Health & Rehabilitation Services
Department of Corrections
Juneau, Alaska

POSITION STATEMENT: Presented on Alaska recidivism and reentry.

MICHAEL MATTHEWS, Research Analyst
Division of Administrative Services
Department of Corrections
Juneau, Alaska

POSITION STATEMENT: Presented on Department of Corrections sanctions and incentives.

KELLY GOODE, Deputy Commissioner
Department of Corrections
Juneau, Alaska

POSITION STATEMENT: Answered committee questions during the presentation on sanctions and incentives.

KEN TRUITT, Staff
Representative Chuck Kopp
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 12.

NANCY MEADE, General Counsel
Alaska Court System
Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 12.

ACTION NARRATIVE

[1:03:16 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Wool, Kopp, Eastman, Shaw, Claman were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

**Presentation: Alaska Recidivism & Reentry by Laura Brooks,
Deputy Director, Health & Rehabilitative Services, Department of
Corrections**

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CHAIR CLAMAN announced that the first order of business would be a presentation by Laura Brooks on Alaska Recidivism & Reentry.

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LAURA BROOKS, Deputy Director, Health & Rehabilitation Services, Department of Corrections, began her PowerPoint presentation [hard copy provided in the committee packet]. She addressed slide 2, titled "DOC at a Glance." She said Alaska is one of six states that operates a unified correctional system encompassing both prisons and jails. She noted that some DOC facilities function both as jails and prisons, which is to say they house both sentenced and unsentenced/pre-trial offenders. She said DOC operates 12 jails/prisons and 13 field probation offices in addition to overseeing 15 regional/community jails and 7 contract community residential centers (CRCs), known as "halfway houses." She also mentioned DOC's electronic monitoring program.

MS. BROOKS addressed slide 3, also titled "DOC at a Glance." She said DOC booked approximately 20,000 unique individuals into its facilities in 2018, resulting in approximately 31,000 total bookings. She shared that, as of December 31, 2018, DOC oversees 4,437 offenders in jail or prison, 69 percent of which

are felons and 45 percent of which are unsentenced. She pointed to statistics indicating that DOC oversees 3,547 offenders on probation or parole, 967 offenders on pretrial supervision, 230 offenders in CRCs, and 167 offenders on electronic monitoring.

MS. BROOKS addressed slide 4, titled "Demographics (July 1, 2018)," which featured pie graphs measuring DOC population by gender and by age. She said about 90 percent of DOC's population is male, which is typical when compared to other states. She noted that DOC's fastest-growing population is individuals 50 years-of-age and over; they make up approximately 20 percent of the total population. She added that DOC has faced significant challenges related to an increasing juvenile population.

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MS. BROOKS addressed slide 5, titled "Recidivism." She said the statutory definition of "recidivism" includes not just new crimes but also probation/parole violations. She established that a recidivist is a felon who returns to DOC custody on a felony conviction, misdemeanor conviction, or probation violation.

MS. BROOKS addressed slide 6, titled "Alaska Recidivism Rates," which featured a line graph measuring recidivism rates by calendar year. She explained that recidivism data is gathered so as to cover the three years following an individual's release; she said this is the national standard for calculating recidivism rates. She reported that recidivism in Alaska has been trending downward [to 61.33 percent for those released in 2015]. She attributed the decrease to a number of factors including an aggressive shift in recent years to evidence-based practices and assessment tools. She detailed the process through which DOC identifies moderate- and high-risk offenders who require more attention and resources. She spoke to reentry programs that have developed over the past dozen years. She also discussed community partnerships enabling DOC to oversee "warm handoffs" so that releasees receive assistance in finding employment and housing. She noted that a study of 30 states by the United States Department of Justice's Bureau of Justice Statistics established a national recidivism rate of about two-thirds. She said this means Alaska's recidivism rate is significantly below the national level.

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REPRESENTATIVE WOOL, referencing the graph, noted a steep decline beginning in calendar year 2013. He asked if this accounted for individuals released in 2016.

MS. BROOKS said the population to which he refers consists of those released in calendar year 2013. The data by which the population's recidivism rate is measured was gathered in 2016.

CHAIR CLAMAN said it helps to annotate the x-axis to account for the timespan. For example, he said, he amends "CY2015" to read "CY2015-2018" so that he remembers it reflects the post-release conduct of those released in 2015.

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REPRESENTATIVE WOOL asked if Ms. Brooks has any idea as to the causality of the drop beginning in 2013.

MS. BROOKS said she cannot speak to true causality. She noted that there was a major overhaul in DOC programming and facilities starting in 2013 and 2014. She said it was during this time that the department started looking at evidence-based practices and revised curricula.

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REPRESENTATIVE EASTMAN asked if she could provide the committee with raw recidivism numbers [as opposed to percentages]. He suggested that recidivism rates could be decreasing because, in a time of higher crime rates, criminals have a lower chance of being caught in a larger pool of criminals.

MS. BROOKS said that is not something DOC has researched. She said it is not something she can speak to.

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REPRESENTATIVE EASTMAN asked if there is any anecdotal evidence regarding what happens to inmates once released? He asked whether DOC knows if "they're going straight" or if "they're leaving town."

MS. BROOKS asked for clarification and whether he is asking about reentry planning.

REPRESENTATIVE EASTMAN rephrased his question by asking if DOC knows what happens to releasees after they leave custody.

MS. BROOKS said that depends. She noted that only about 25 percent of those released from custody end up "on paper" via probation and parole. She said DOC "[makes] referrals" for the other 75 percent of releasees but does not have someone assigned to follow those individuals.

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CHAIR CLAMAN asked for clarification regarding the 75 percent figure. He asked if those individuals released not on probation or parole include misdemeanor convicts, or just felons.

MS. BROOKS answered she believes that figure includes both felons and the misdemeanor population but would have to double-check.

CHAIR CLAMAN asked for verification that recidivism data is limited to those released on felonies. He noted that this is both practical and stipulated by statute.

MS. BROOKS answered that is correct. She said the misdemeanor population is in DOC custody for a very short period of time, which makes data collection difficult.

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MS. BROOKS addressed slide 7, titled "Recidivism - By Offense Type," which featured two pie graphs. One graph measured the reasons for reincarceration within six months while the other measured reasons for reincarceration within three years. Ms. Brooks said approximately 58 percent of those who return to custody within six months and 46 percent of those who return within three years are reincarcerated for technical violations of probation or parole. She said the most common probation violations within six months are alcohol use, drug use, and failure to report. She noted that those not accustomed to being on probation or parole are more likely to commit technical violations. She spoke to the importance of identifying signs of unwanted behavior so that controls can be tightened - which may include reincarceration - before it leads to a new crime and a new victim.

MS. BROOKS addressed slide 8, titled "Recidivism - New Crimes," which featured a line graph measuring the recidivism excluding probation/parole violations. She noted that there is still a downward trend of recidivism even when probation violations are

removed from the sample. She added that probation violations are down about 15 percent over the last four years. She said 32 percent of recidivism occurs because of the commission of new crimes, which includes both felony and misdemeanor offenses. She reported that this is down 8 percent over the past four years.

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REPRESENTATIVE KOPP, after receiving confirmation that the 2015 data point includes data through 2018, asked if there is any reason to believe the trend is continuing.

MS. BROOKS responded that DOC is continuing to improve year after year. She said DOC makes arrangements to ensure the trend continues.

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CHAIR CLAMAN noted that the graph on slide 6 included a longer timespan than the graph on slide 8. He asked whether a longer range of years for the graph on slide 8 would offer any new insight.

MS. BROOKS said DOC could run the numbers and submit the requested graph to the committee.

CHAIR CLAMAN requested that all the graphs be extended to show trend lines beginning in calendar year 2006.

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REPRESENTATIVE WOOL mused that the recidivism statistic covers a broad spectrum of acts that include relatively innocuous technical violations such as drinking in a bar. He said it is unfortunate the much-discussed recidivism rate statistic includes probation/parole violations. He noted that he has advocated for less restrictive probation/parole conditions and that adjusting those conditions could lead to a lower recidivism rate.

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REPRESENTATIVE LEDOUX asked if everybody who leaves prison on parole or probation, regardless of offense, is prohibited from drinking alcohol.

MS. BROOKS said it is a decision of the court or parole board. She said she is unsure of the formula used to levy restrictions on probationers and parolees.

CHAIR CLAMAN noted that the standard condition of parole is "obey all laws." He said a substance restriction is typically added if drugs or alcohol are likely to have been involved with the original offense.

MS. BROOKS said that is correct. She noted that 80 percent of DOC's inmate population have drug or alcohol issues. She said an alcohol restriction is a common requirement.

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MS. BROOKS addressed slide 9, titled "Felony Recidivism," which featured a line graph measuring the percentage of released felons returning to custody for a felony. She reported a decrease in felony recidivism from 25.59 percent in 2011 to 20.42 percent in 2015.

MS. BROOKS addressed slide 10, titled "Recidivism by Offense Class," which featured a table comparing recidivism rates by offense class from 2013 through 2015. She said recidivism is down in all categories except for offenses against a person and weapons offenses. She pointed to a category called "PUBLIC ORDER/ADMIN" and said it includes refusal of a DNA test, hindering the prosecution, and similar offenses. She noted that "DRIVING/TRANSPORT" and "ALCOHOL" are separated on the table, and that driving under the influence (DUI) is included in the alcohol category. She said the driving category refers to things like reckless driving, vehicular manslaughter, and driving without a license.

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REPRESENTATIVE EASTMAN asked to what Ms. Brooks attributes the disparity in recidivism trends between certain offense classes.

MS. BROOKS said it is difficult to determine causal relationships with this type of data and that more study would be required to answer the question. She referenced recent changes to programs aimed at sex offenders and suggested that those changes may have contributed to the decrease in recidivism for that category. She described the process through which DOC identifies higher-risk offenders on whom to focus resources.

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MS. BROOKS addressed slide 11, titled "Recidivism by Release and Return Offense Class," which featured a table measuring the original crimes and returned offenses of recidivists. She said the data indicates that when individuals recidivate, they tend to do so within the same offense class. For example, she said, individuals released after committing alcohol crimes are much more likely to return for an alcohol-related offense than any other category of offense. She noted that the same applies for those who commit property crimes.

MS. BROOKS addressed slide 12, titled "Recidivism by Risk Level," which featured both a table and graph measuring recidivism by risk assessment. She said that those individuals found to be higher-risk recidivate at a higher rate. She noted that the data includes probation and parole violations. She said DOC places higher controls on higher-risk individuals. She restated the importance of interceding via probation violations with medium- and maximum-risk offenders before the occurrence of new crimes and new victims.

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MS. BROOKS addressed slide 13, titled "When Are People Most Likely to Return?", which featured a table measuring recidivism rates by time since release from 2011 to 2015. She said the highest risk of recidivism is within the first six months of release, with 25 percent of releasees reincarcerated during that timespan. She said if an individual is going to recidivate, he/she is far more likely to do so within the first 12 months of release. She said this data drives the focus of DOC's reentry efforts on services for new and recent releasees.

MS. BROOKS addressed slide 14, titled "Long-Term Returns," which featured a graph measuring recidivism rates by years since release. She said that the likelihood of returning to jail decreases over time. She said the frequency of anti-social behavior decreases over time as individuals stabilize, get treatment, and learn how to conform behaviors to avoid technical violations. She said DOC cannot attribute this trend to any one reason but noted that less than 6 percent of its population returned between years 6 and 10 of release.

MS. BROOKS addressed slide 15, titled "Reentry & Public Safety." She said the current administration has made recidivism reduction a priority and sees it as an important part of

addressing public safety issues. She said there are three principles to effective intervention. The first is the identification of individuals at the greatest risk of reoffending. The second is the targeting of these individuals' criminogenic needs. The third is the tailoring of a plan to fit each offender.

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MS. BROOKS addressed slide 16, titled "A Plan to Address Needs." She explained that DOC's reentry plan begins upon admission. She described how DOC assesses an inmate's criminogenic needs throughout his/her incarceration so that a plan can be enacted upon release. She listed the dynamic criminogenic needs assessed by DOC that, when addressed, can reduce the likelihood of recidivism. These include anti-social values/belief/cognition, risky behavior, anti-social companions, anti-social personality or temperament, anger management issues, family and/or marital conflicts, substance abuse issues, employment skills, education opportunities, and pro-social leisure/recreation. She said that, once DOC has identified an inmate's criminogenic needs, it can create a personalized Offender Management Plan (OMP). She described an OMP as a roadmap to determine how to approach individuals in custody. She said an OMP document changes over time as the offender moves through programs in the system and experiences behavioral changes. She said the OMP is updated 90 days before release with an eye to transitioning the inmate into the community. She noted that an OMP follows an inmate into probation and parole so that an offender's needs remain addressed after release. She described DOC efforts to develop community supports for releasees not supervised by probation or parole officers.

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MS. BROOKS addressed slide 17, titled "Reentry & Rehabilitative Programs," which featured an exhaustive list of DOC programs. She said all of DOC's programs are aligned on the same basic premise: evidence-based practices help reduce recidivism. She noted that reentry classes help inmates form a plan for what to do once they "hit the streets." She said these classes help inmates identify key needs such as obtaining identification, healthcare, and employment. She described how faith communities and mentoring programs help connect inmates to safe, sober, social supports in the community. She noted that DOC's mental health population is among its most vulnerable. She said about 65 percent of DOC's population have a mental health diagnosis

and that these individuals are nearly twice as likely to recidivate. She spoke to the help offered to them by mental health clinicians both in custody and in preparation for reentry. She mentioned sex offender treatment programs both in custody and post-release within various communities. She described a relatively new telehealth treatment program that allows sex offenders to remain in their communities instead of requiring them to travel to a larger community like Anchorage for treatment. She spoke to substance abuse programming available to inmates and those within CRCs. She described the work done by DOC's medical social workers to address individuals with significant medical needs who will need to navigate the medical system upon reentry. She addressed medication-assisted treatment and a program that makes the drug Vivitrol available to offenders upon release.

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REPRESENTATIVE EASTMAN asked how Alaska's current incarceration rates compare to other states.

MS. BROOKS said she does not have that information with her but would get back to the committee with it.

REPRESENTATIVE EASTMAN referenced the table on slide 11. He asked whether the data represented under "returned offense" is based on arrests, charges, or convictions.

MS. BROOKS replied that it reflects convictions.

CHAIR CLAMAN noted that a probation or parole violation does not require a conviction, rather a finding that a violation that has occurred.

MS. BROOKS confirmed this. She clarified that those violators serve a sentence "on that probation violation."

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REPRESENTATIVE EASTMAN noted that recidivism rates are comprised mostly of probation/parole violations rather than the commission of new crimes. He asked whether this could be attributed to the fact that it is easier to identify a violation than to prosecute a new crime. He suggested that some recidivists may have indeed committed new crimes, but those crimes would not appear in the data because it was easier to incarcerate them on violations.

CHAIR CLAMAN noted that it has been established that the rates of probation/parole violations have been decreasing for a number of years.

MS. BROOKS confirmed this. She said DOC is seeing a downward trend in probation violations. To Representative Eastman's question, she said she cannot speak to the prosecution process for violations. She said that is a question for another department.

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REPRESENTATIVE KOPP clarified that an offender can have multiple technical violations. He listed various examples of conduct that could result in a violation. He said evidence shows that the longer a person is on probation, the more likely it is that he/she gets "caught up" in a rule violation as opposed to a new crime.

MS. BROOKS confirmed this. She noted that the table on slide 11 considers the most severe issue involving a re-offender. She clarified that when an individual recidivates on two technical violations and a new misdemeanor crime, that person is represented in the table as a misdemeanor violator.

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REPRESENTATIVE KOPP asked about DOC's partnerships with nonprofits and tribal entities with regard to reentry programs such as transitional housing, job training, and job placement.

MS. BROOKS said DOC has expanded options over recent years. She said the opportunities generated through partnerships vary community to community based on available resources. She said DOC understandably has more varied partners in Anchorage. She noted that some smaller communities come together in unique ways to address the needs of their returning citizens. She said DOC is always reaching out for new partnerships. She added that DOC recently hired a new reentry coordinator focused entirely on this topic. She noted that probation officers and correctional superintendents spend every day attempting to find the best ways to facilitate warm handoffs

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REPRESENTATIVE LEDOUX asked about the history of warm handoffs.

MS. BROOKS said warm handoffs have been happening in some DOC programs for "a long time." As an example, she pointed to decades of work by clinicians to help reintegrate DOC's mental health population. She mentioned DOC's sex offender treatment programs and noted that the goal is to ensure offenders have a safety net upon return to their communities. She said that safety net includes clergy, community elders, Village Public Safety Officers (VPSOs), and others specially trained to deal with released offenders. She connected the mission of probation officers to the idea behind a warm handoff. She said DOC has honed its focus on effective reentry in the last seven or eight years.

REPRESENTATIVE LEDOUX recalled a conversation with a person involved in a nonprofit organization focused on prisoner reentry. She said this person told her that prisoners are often released with little money and no place to go. She asked if that person was giving her incorrect information.

MS. BROOKS explained that it is not feasible for DOC to ensure a warm handoff for every releasee. She noted that DOC oversees over 17,000 releases every year. She added that some people cycle through the system so quickly that DOC is unable to provide them with a thorough release plan, and that some people who are offered a release plan elect not to take it.

REPRESENTATIVE LEDOUX asked what percentage of people released from prison get a warm handoff.

MS. BROOKS said that is not something DOC tracks.

CHAIR CLAMAN said the committee could reach out to [Partners Reentry Center] for information about its programs and how many people it serves.

REPRESENTATIVE LEDOUX said she would like to hear that.

REPRESENTATIVE EASTMAN said he would like to know what percentage of people who receive a warm handoff end up reentering the system.

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REPRESENTATIVE EASTMAN asked Ms. Brooks about the postsecondary education opportunities available to inmates. He asked if they are free.

MS. BROOKS said the education opportunities vary from facility to facility. She cited the GED program, options for obtaining a high school diploma, and opportunities to take college classes. She said she does not think there is a charge but noted she is not absolutely certain. She mentioned DOC's numerous trade training and apprenticeship programs. She said DOC recognizes it is important for individuals to have a skill and education when they are released.

REPRESENTATIVE EASTMAN asked about the process through which it is determined in which facility an inmate will be housed. He acknowledged the positives of keeping inmates close to their community and family members. He noted that it could be ineffective to send a recidivist back to a facility in which he/she was previously housed.

MS. BROOKS said DOC has a classification unit that considers a host of elements to determine placement. She noted that a unified corrections system will have certain facilities that are pretrial jails, like Fairbanks Correctional Center. She said that once an offender is sentenced, he/she could be transferred to a larger prison or, if his/her sentence is relatively short, could remain at a facility like Fairbanks Correctional Center. She noted that an inmate's security level can also impact the decision regarding where he/she is incarcerated. She said there are many variables in the classification process.

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REPRESENTATIVE KOPP addressed the topic of warm handoffs. He noted that those who are provided with reentry services have a lower recidivism rate.

Presentation: Alaska DOC Sanctions & Incentives by Michael Matthews, Research Analyst, Research & Records, Department of Corrections

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CHAIR CLAMAN announced that the next order of business would be a second presentation by DOC.

[1:53:11 PM](#)

MICHAEL MATTHEWS, Senior Research Analyst, Research & Records, Department of Corrections, introduced his PowerPoint presentation [hard copy included in the committee packet] and

said he would be discussing the recently-implemented system of sanctions and incentives.

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MR. MATTHEWS addressed slide 2, titled "Understanding the Data." He noted that the data to be presented is new and that DOC has only been collecting it for about a year. He said the data has not yet been thoroughly analyzed. He pointed out that he is a research analyst and not a practitioner or policymaker.

MR. MATTHEWS addressed slide 3, titled "Sanctions." He defined sanctions as actions by a probation officer in response to negative behavior by an offender, including violations of supervision conditions, which the probation officer wants to stop or discourage. He said from January 1, 2017, through February 5, 2019, DOC counted 21,403 sanction reports, 21,804 sanctions imposed, and 4,917 people sanctioned. He said that amounts to about 4.4 sanctions per person.

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MR. MATTHEWS addressed slide 4, also titled "Sanctions," which featured a table listing the types of sanctions and the number of times each was imposed. He said the most common sanction was a petition to revoke probation or parole (PTR).

CHAIR CLAMAN explained for the committee that a PVR [also found on the table] is a probation or parole violation report.

MR. MATTHEWS confirmed this. He said the sanctions range from a written warning to actual reincarceration.

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MR. MATTHEWS addressed slide 5, titled "Undesired Behaviors Resulting in Sanctions," which featured a pie graph measuring the frequencies of undesired behaviors resulting in sanctions. He said the most common are drug- and alcohol-related behavior. He clarified that the pie graph is his attempt at a distillation of a wider spectrum of undesired behaviors. For example, he said, the "drug/alcohol" category is comprised of positive urinalysis tests, possession of drug paraphernalia, and other related conduct.

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CHAIR CLAMAN, referring to the graph, asked, "What is a PACE violation?"

MR. MATTHEWS said, "PACE is a swift and certain violation." He said someone with undesirable behavior is quickly incarcerated.

CHAIR CLAMAN asked if PACE refers to a specific group of people on probation/parole that is more intensely supervised.

MR. MATTHEWS remarked that it is a type of supervision but said he does not know if it is more intense or not.

CHAIR CLAMAN noted that another speaker later in the meeting will be able to answer questions about PACE.

[1:57:50 PM](#)

MR. MATTHEWS addressed slide 6, titled "Incentives." He defined incentives as responses to positive, prosocial behavior that the probation officer wants to reinforce. He said verbal praise makes up about 90 percent of all incentives. He stipulated that this is new data and, after conversing with field officers, he believes it is possible it could be underreported. He noted that a lot of the incentives listed on slide 6 are ones that DOC cannot pay for. He said it would be fantastic if someone were to donate things like movie tickets or food coupons.

REPRESENTATIVE LEDOUX asked if DOC has any partnerships with private and/or nonprofit organizations to provide those incentives.

MR. MATTHEWS answered he does not know.

CHAIR CLAMAN said that question will be answered later in the meeting.

[1:59:32 PM](#)

MR. MATTHEWS addressed slide 7, titled "Earned Compliance Credit (ECC)." He explained how ECC works and that, for every month of positive behavior while on probation/parole, 30 days are deducted from supervision. He noted that once ECC is awarded, it remains even if subsequent undesired behavior is exhibited. He said that, from its inception on January 1, 2017, to March 2, 2019, 9,500 probationers and parolees have been eligible for ECC. He added that, of those eligible, 7,823 were awarded ECC at least once.

REPRESENTATIVE WOOL asked for some additional information about how ECC is doled out.

MR. MATTHEWS said it is possible for individuals to earn ECC beyond what is reflected on slide 7. He noted that the "ECC earned" category on slide 6 reflects additional ECC awarded.

CHAIR CLAMAN remarked that ECC was part of the criminal justice reform bills passed by recent legislatures. He noted that some of the crime bills introduced during the current session dial ECC back. He said, for instance, that instead of 30 days earned for 30 days of good behavior, the award could be changed to 10 days. He said Mr. Matthews is not here to answer policy questions, but rather to provide data to assist legislators in making determinations.

REPRESENTATIVE WOOL asked whether ECC gets automatically applied or if it must be manually allocated.

CHAIR CLAMAN said the next slide might help with answering that question.

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MR. MATTHEWS addressed slide 8, titled "ECC Award Rate," which featured a pie graph and table. He said the slide compares how many people were awarded ECC versus how many people were eligible but not awarded it. He said it is approximately a 50-50 split.

REPRESENTATIVE WOOL rephrased his previous question by asking whether ECC is awarded based on the discretion of the probation officer or if it is automatic as long as "you didn't screw up that month."

MR. MATTHEWS said he believes the awarding of ECC requires active participation by probation officers.

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REPRESENTATIVE EASTMAN asked for confirmation that the data reflects approximately 15,000 opportunities for ECC and approximately 7,800 credits actually awarded.

MR. MATTHEWS answered that is correct.

REPRESENTATIVE EASTMAN asked if there is a way to find out how many violent reoffenders had previously benefitted from ECC.

MR. MATTHEWS said DOC can identify the offense that caused an offender to become incarcerated and, if he/she gets released on probation, whether or not he/she earned ECC. He asked if that answers the question.

REPRESENTATIVE EASTMAN clarified that he was referring to a scenario in which someone previously in custody gets released and then recidivates on a violent offense. He asked if DOC can determine how many from that pool of people were recipients of ECC prior to reoffending.

MR. MATTHEWS, after clarifying the question, answered that DOC could determine that.

CHAIR CLAMAN suggested that a more apt question would focus not on whether a re-offending probationer earned ECC, but whether he/she had been released from supervision as a product of the ECC prior to a violent re-offense.

REPRESENTATIVE EASTMAN concurred.

MR. MATTHEWS noted that ECC has not been in effect for a long time so data on its long-range effects on recidivism will not be available for a couple years.

REPRESENTATIVE EASTMAN noted that while ECC has not been around for long, good time credit has.

[2:07:35 PM](#)

REPRESENTATIVE WOOL asked a question about the populations measured in the sanctions dataset versus the incentives dataset.

MR. MATTHEWS said each considers the same population. He said some people eligible for incentives may be ineligible for ECC, which could result in different cohorts.

REPRESENTATIVE WOOL noted that, since the populations are the same, this means that there were half as many incentives awarded as sanctions imposed. He mused that, with verbal praise making up the majority of incentives, the incentives are rather sparse.

MR. MATTHEWS answered yes. He agreed that if "verbal praise" were removed from the incentives count, it would be drastically lower.

[2:09:34 PM](#)

KELLY GOODE, Deputy Commissioner, Department of Corrections, explained that PACE stands for Probation Accountability with Certain Enforcement. She said the program identifies offenders who are more likely to violate probation and imposes stricter and more intensive supervision. She said the PACE program was modeled after [Hawaii's Opportunity Probation with Enforcement] (HOPE).

CHAIR CLAMAN asked for verification that PACE involves more intensive supervision. He suggested that even a modicum of violative conduct results in reincarceration.

MS. GOODE answered, "That is exactly correct." She noted that those involved with PACE are aware that consequences are swift.

[2:10:48 PM](#)

CHAIR CLAMAN asked about DOC efforts to include additional incentives, noting that it is a relatively recent endeavor.

MS. GOODE said she cannot answer that precisely. She said incentives are being used and that they are undoubtedly beneficial.

[2:11:23 PM](#)

REPRESENTATIVE WOOL asked what percentage of people released have an alcohol restriction.

MS. GOODE said she does not have that information at hand but could find out for the committee.

[2:11:43 PM](#)

CHAIR CLAMAN repeated Representative LeDoux's question about nonprofit and for-profit partners providing resources for use as incentives.

MS. GOODE said DOC does have partners. She said many businesses donate. She highlighted Subway's donations of gift cards. She

said other offerings vary based on the location. She stated that the probation offices appreciate those types of donations.

[2:12:37 PM](#)

REPRESENTATIVE KOPP asked if it is true that DOC is planning to allow PACE to sunset.

MS. GOODE said she is not absolutely certain about its status. She noted there were still approximately 320 people involved with PACE at the end of 2018. She mentioned that PACE is funded by a grant.

REPRESENTATIVE KOPP noted that PACE is resource-intensive both for probation officers and law enforcement but stressed that the data shows it to be very effective when adequately funded. He suggested the committee look into it.

CHAIR CLAMAN asked Ms. Goode to get that information to the committee by the end of next week so that it can inform budgetary discussions.

MS. GOODE said she would do that. She shared that the PACE program has a 55 percent success rate.

[2:15:58 PM](#)

CHAIR CLAMAN addressed the Level of Supervision/Service Inventory (LSIR) form included in the committee packet. He asked Ms. Goode to describe how the form is used.

MS. GOODE said the LSIR form is used to assess the risk of an individual so that the probation office can determine the necessary level of supervision.

CHAIR CLAMAN suggested the LSIR form is like a prerelease risk assessment tool.

MS. GOODE noted that the form is used after release in the probation office.

[2:16:25 PM](#)

CHAIR CLAMAN said DOC is supposed to issue regulations with regard to the pretrial risk assessment tool. He requested an update on the status of this process.

MS. GOODE said it has been determined that DOC under the prior administration did not complete the regulations required by Senate Bill 91 [Passed in the Twenty-Ninth Alaska State Legislature] and other criminal justice reform bills. She said DOC is currently working with the Department of Law (DOL) to ensure the process is moved forward.

CHAIR CLAMAN asked for a timeline on when she thinks the regulations will be ready for adoption.

MS. GOODE said she does not know yet but would get back to the committee once she does. She said she hopes DOC will not be forced to start over from the beginning.

CHAIR CLAMAN requested an update by the end of next week. He thanked the presenters from DOC.

HB 12-PROTECTIVE ORDERS

[2:18:16 PM](#)

CHAIR CLAMAN announced that the next order of business would be HOUSE BILL NO. 12 "An Act relating to protective orders." [Before the committee was CSHB 12(STA), version 31-LS0103\K.] He announced that the committee would take up amendments. He stated for the record that Legislative Legal Services has permission to make any technical and conforming changes to the bill.

[2:19:26 PM](#)

REPRESENTATIVE KOPP moved to adopt Amendment 1, labeled 31-LS0103\K.2, Radford, 3/18/19, which read as follows:

Page 1, line 10, following "section":
Insert ", if the petition alleges a change in circumstances since the court's previous finding"

Page 2, line 15, following "section":
Insert ", if the petition alleges a change in circumstances since the court's previous finding"

REPRESENTATIVE LEDOUX objected for purposes of discussion.

[2:20:00 PM](#)

REPRESENTATIVE KOPP explained that Amendment 1 addresses a concern raised by the court system. He said Amendment 1 relates to the issue of a person denied a protective order renewal returning immediately to the court to request reconsideration. He explained that the petitioner would have to allege a change of circumstance since the court's previous finding.

[2:21:02 PM](#)

REPRESENTATIVE EASTMAN asked if the passage of HB 12 would qualify as "a sufficient change in circumstance" for purposes of this type of request. He clarified that changes in law could be construed as a changing circumstance.

REPRESENTATIVE KOPP answered that it is conceivable, but he does not know if it is possible. He noted that the petitioner, regardless of whether his/her order has expired, would still need to establish to the court that a protective order is necessary.

CHAIR CLAMAN said Representative Eastman's query raises an interesting question about for whom the new law would qualify as a change in circumstances. He established a hypothetical in which two people - one whose protective order expired many months prior and another whose order expired a few days prior - claim the newly passed law as a change in circumstances.

[2:24:11 PM](#)

KEN TRUITT, Staff, Representative Chuck Kopp, Alaska State Legislature, said one concrete answer to that question can be found in HB 12's applicability clause on page 2 starting at line 28. He said it stipulates that, should HB 12 become law, its provisions would apply to all protective orders in effect on the date of passage and all those issued after the date of passage. He clarified that qualifying protective orders would be those within 30 days of lapsing or those that have lapsed in the past 60 days. He addressed the hypothetical scenario in which HB 12 becomes law the day after a petitioner is denied a protective order, and the petitioner returns the day after to request reconsideration. He said a solution to that situation would likely be at the discretion of the judge.

[2:25:52 PM](#)

REPRESENTATIVE LEDOUX withdrew her objection. There being no further objection, Amendment 1 was adopted.

[2:26:48 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 2, labeled 31-LS0103\K.3, Radford, 3/26/19, which read as follows:

Page 1, line 8:
Delete "or"

Page 1, line 10, following "section":
Insert "; or
(4) the petitioner appears telephonically at the protective order hearing"

REPRESENTATIVE LEDOUX objected for purposes of discussion.

REPRESENTATIVE EASTMAN said Amendment 2 would clarify that the fact a petitioner is calling in telephonically is not a reason to deny a protective order. He shared a personal experience in which he accompanied a friend to a courthouse to deal with a protective order issue. He said his friend was told by the court clerk that her request would not be accepted if she was not present in the courtroom to sign the necessary documents. He explained that his friend, not wanting to confront her abuser, left without being issued a protective order. He said that people who are not able to or do not wish to confront their abuser or attorney should not be disqualified from obtaining a protective order.

[2:28:34 PM](#)

REPRESENTATIVE KOPP shared that he has personally helped many people obtain protective orders over the phone. He said he believes there is nothing in Alaska law that prevents or discourages telephonic applications. He noted that emergency protective orders are almost always done over the phone. He stated it is his understanding that ex parte orders, which are for 20 days, are also routinely handled telephonically. He called the amendment unnecessary.

CHAIR CLAMAN asked Representative Eastman about the protective order his friend was pursuing. He asked what kind of order it was.

REPRESENTATIVE EASTMAN answered that it was a long-term order.

CHAIR CLAMAN said he is confused by Representative Eastman's anecdote because the first protective order is typically an ex parte order and requires no confrontation with the accuser.

REPRESENTATIVE EASTMAN clarified that the situation he was referring to was "a follow-up."

CHAIR CLAMAN said that there would typically be no new documents to sign for a long-term protective order because those documents get signed upon the granting of the ex parte order.

[2:30:42 PM](#)

REPRESENTATIVE EASTMAN, to Representative Kopp's comment, said he would agree with Representative Kopp's assessment of Amendment 2 if HB 12 dealt solely with ex parte protective orders. He remarked that the broader nature of HB 12 may require such an amendment.

CHAIR CLAMAN noted that telephonic appearances are allowed by the Alaska Rules of Court. He said he shares Representative Kopp's assessment that Amendment 2 is unnecessary.

REPRESENTATIVE KOPP said he would support the amendment if he felt it would do good or "enhance the process." He stated the court system currently permits telephonic appearances for emergency protective, ex parte protective orders, and long-term protective orders.

REPRESENTATIVE WOOL requested confirmation from the Alaska Court System that the amendment is not needed.

[2:32:27 PM](#)

NANCY MEADE, General Counsel, Alaska Court System, said Representative Kopp is correct that the court system routinely hears and grants protective orders through telephonic hearings.

REPRESENTATIVE EASTMAN asked, as HB 12 stands now, if the court could deny a protective order based on the circumstance of a telephonic appearance.

MS. MEADE answered that the court cannot deny a protective order just because the petitioner is appearing telephonically and not in person.

[2:33:33 PM](#)

CHAIR CLAMAN suggested that not allowing the respondent to appear at a long-term domestic violence protective order would run into constitutional issues about the confrontation clause.

MS. MEADE confirmed that the respondent is present at a long-term order hearing for due process reasons.

REPRESENTATIVE EASTMAN asked if a telephonic appearance would not be permitted for a long-term order hearing.

MS. MEADE said a respondent could appear telephonically; he/she has the right to appear. She noted that respondents sometimes do not appear at all. Similarly, she added, the petitioner can also appear telephonically at any hearing.

[2:34:53 PM](#)

REPRESENTATIVE LEDOUX said she is confused about telephonic allowances and requested clarification.

MS. MEADE apologized. She clarified that petitioners have the right to appear telephonically at any hearing for any protective order. She said respondents - those accused of committing domestic violence, stalking, or sexual assault - are not typically notified about 72-hour or short-term protective order hearings. She said respondents have a right to be "present" for long-term protective order hearings and thus receive notice because of due process requirements. She said respondents can choose to be present telephonically. She noted that respondents have the constitutional right to know a proceeding is occurring against them because it could result in a grave consequence against them.

[2:36:30 PM](#)

REPRESENTATIVE LEDOUX considered that respondents do not have the right in a long-term protective order case to confront their accusers in person, as they would in a criminal case.

MS. MEADE answered correct. She said a protective order hearing is not a criminal proceeding where the respondent is a criminal defendant, so different protections apply. She clarified that these hearings are civil proceedings. She added that due process rights apply [for the long-term order hearings] and respondents can opt to come and defend themselves. She noted that respondents can do this by telephone. She said the

respondent does not have the right to insist the petitioner appear for cross-examination.

[2:37:43 PM](#)

REPRESENTATIVE EASTMAN said he feels Amendment 2 is necessary because the language is of use to the public. He said it would reassure and encourage people who may not be able to apply for an order in person to still file the request.

[2:38:40 PM](#)

A roll call vote was taken. Representative Eastman voted in favor of Amendment 2. Representatives LeDoux, Wool, Shaw, Kopp, and Claman voted against it. Therefore, Amendment 2 was not adopted by a vote of 1-5.

[2:39:11 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 3, labeled 31-LS0103\K.4, Radford, 3/26/19, which read as follows:

Page 1, line 7:

Delete "for"

Insert "of or a contributing factor for granting"

Page 1, line 8:

Delete "or"

Page 1, line 10, following "section":

Insert "; or"

(4) the petitioner appears telephonically at the protective order hearing"

REPRESENTATIVE WOOL objected for purposes of discussion.

REPRESENTATIVE EASTMAN explained that the amendment would expand the language of HB 12 so that if an act of stalking or sexual assault "was a contributing portion of the basis for a previous protective order, that [an extension] could not be denied on those grounds." He said the amendment would further protect those in need of protective orders.

[2:40:16 PM](#)

REPRESENTATIVE KOPP opined that the amendment only adds confusion. He noted that a protective order cannot be issued

without a probable cause finding that an act of stalking or sexual assault has occurred. He pointed to the murkiness of the amendment's language.

REPRESENTATIVE SHAW said, "I read [the amendment] five times and then I got an interpretation of it, and I'm still confused."

MS. MEADE echoed the previous representatives' confusion about the intent of the amendment.

CHAIR CLAMAN asked Representative Eastman to clarify the amendment.

REPRESENTATIVE EASTMAN said he is concerned that the court could potentially deny a protective order because an act of domestic violence or stalking was a contributing factor rather than the primary factor. He clarified that the amendment essentially replaces the definite article "the" with the indefinite article "a."

[2:44:19 PM](#)

MS. MEADE restated that protective orders get issued because a court found there was "an incident" and there was "an act" of domestic violence, sexual assault, or stalking. She said the court identifies the incident that was the impetus for issuing the protective order. She said she is still unclear about what might be considered "a contributing factor."

CHAIR CLAMAN opined that Representative Eastman has "done little to lift the confusion."

REPRESENTATIVE EASTMAN reframed his explanation around a hypothetical person coming to the court to fill out a request for a protective order. He asked if that person is restricted to listing just one incident on the form, or whether the person has the right to list multiple reasons and incidences that may have piled up.

MR. MEADE said she is beginning to understand his intent. She confirmed that petitioners often list multiple incidents that they want to rely upon at the hearing. She explained that court-issued orders include checkboxes for each crime committed by the respondent. If more than one box is checked, which is to say there are multiple crimes that have provided the impetus for the order, each would be treated as a basis for the order rather

than as "a contributing factor." She said the language of HB 12 as written already covers this situation.

REPRESENTATIVE EASTMAN withdrew the motion to adopt Amendment 3.

[2:47:13 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 4, labeled 31-LS0103\K.5, Radford, 3/26/19, which read as follows:

Page 1, line 7:

Delete "for"

Insert "of or a contributing factor for granting"

Page 1, line 8:

Delete "or"

Page 1, line 10, following "section":

Insert "; or"

(4) the petitioner appears telephonically at the protective order hearing"

Page 2, line 11:

Delete "for"

Insert "of or a contributing factor for granting"

Page 2, line 12:

Delete "or"

Page 2, line 15, following "section":

Insert "; or"

(4) the petitioner appears telephonically at the protective order hearing"

REPRESENTATIVE LEDOUX objected for purposes of discussion.

REPRESENTATIVE EASTMAN said Amendment 4 combines Amendments 2 and 3 and makes them applicable to each of the protective order classes. He withdrew his motion to adopt Amendment 4, citing the committee's reluctance to adopt Amendments 2 and 3.

[2:47:44 PM](#)

REPRESENTATIVE EASTMAN moved to adopt Amendment 5, labeled 31-LS0103\K.6, Radford, 3/26/19, which read as follows:

Page 1, line 7:

Delete "for"

Insert "of or a contributing factor for granting"

Page 1, line 8:

Delete "or"

Page 1, line 10, following "section":

Insert ";

(4) the petitioner appears telephonically at the protective order hearing; or

(5) of the current geographic location of the respondent"

Page 2, line 11:

Delete "for"

Insert "of or a contributing factor for granting"

Page 2, line 12:

Delete "or"

Page 2, line 15, following "section":

Insert ";

(4) the petitioner appears telephonically at the protective order hearing; or

(5) of the current geographic location of the respondent"

REPRESENTATIVE LEDOUX objected for purposes of discussion.

REPRESENTATIVE EASTMAN said the language of Amendment 5 deals with geography. He established a scenario in which a petitioner is denied a protective order because the court believes the respondent, who has left the state, does not pose enough of a risk. He argued that, given the ease with which the respondent could travel from out of state to confront the petitioner, it is important to clarify to the court that the respondent's geographic location is not a reason to deny a protective order.

[2:49:45 PM](#)

CHAIR CLAMAN established a scenario in which a petitioner requests a 6-month protective order against a respondent who is imprisoned out of state and will continue to be incarcerated for the next year. He asked why the court should not be able to deny the request based on a lack of geographic risk.

REPRESENTATIVE EASTMAN said the amendment would not limit that situation because of the element of incarceration. He noted that the reason for the denial would not be because the respondent is out of state, but because the respondent is incarcerated. He said courts would continue to be able to deny orders for that reason.

REPRESENTATIVE KOPP characterized the amendment as "a solution in search of a problem." He noted that, to grant a protective order, the court must establish that an order is necessary to protect the safety of the petitioner. He said the court weighs factors such as the type of crime committed, the identity of the respondent, the respondent's location, and whether there is currently an investigation. He validated Representative Eastman's concerns about "a mobile society," but stressed that the court is always tasked with determining the probability of the petitioner being hurt. He suggested that the language in Amendment 5 could confuse the court and interfere with its "common sense application" of making causal determinations about a petitioner's risk status. He opined that the amendment is unnecessary.

[2:52:40 PM](#)

REPRESENTATIVE EASTMAN said if the argument holds that the court can come up with its own justification based on common sense and that it does not need the legislature to list out particulars, then there is no purpose to supporting HB 12. He insisted that there is value to putting this sort of language into statute to encourage and inform people who may pursue protective orders.

[2:53:59 PM](#)

A roll call vote was taken. Representative Eastman voted in favor of adopting Amendment 5. Representatives LeDoux, Wool, Shaw, Kopp, and Claman voted against it. Therefore, Amendment 5 was not adopted by a vote of 1-5.

[2:55:45 PM](#)

REPRESENTATIVE LEDOUX moved to report HB 12 as amended out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 12(JUD) was reported out of the House Judiciary Standing Committee.

[2:56:43 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:57 p.m.