

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 27, 2019

1:10 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Gabrielle LeDoux, Vice Chair
Representative Chuck Kopp
Representative Louise Stutes
Representative Adam Wool (appeared telephonically)
Representative Laddie Shaw
Representative David Eastman

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 49

SHORT TITLE: CRIMES; SENTENCING; MENT. ILLNESS; EVIDENCE

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

02/20/19	(H)	READ THE FIRST TIME - REFERRALS
02/20/19	(H)	JUD, FIN
03/22/19	(H)	JUD AT 1:30 PM GRUENBERG 120
03/22/19	(H)	Heard & Held
03/22/19	(H)	MINUTE(JUD)
03/25/19	(H)	JUD AT 1:00 PM GRUENBERG 120
03/25/19	(H)	Heard & Held
03/25/19	(H)	MINUTE(JUD)
03/27/19	(H)	JUD AT 1:00 PM GRUENBERG 120
03/27/19	(H)	Scheduled but Not Heard
04/27/19	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

LIZZIE KUBITZ, Staff
Representative Matt Claman
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Introduced and explained the proposed Committee Substitute to HB 49.

KATHY SWANSON
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 49.

BOB SWANSON
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 49.

DON HABEGER, Community Coordinator
Juneau Reentry Coalition
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 49.

NOAH WILLIAMS
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 49.

NOLA LAMKEN
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on HB 49.

MICHAEL BERGER
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 49.

SID ATWOOD, Board Member
Advisory Board on Alcoholism and Drug Abuse
Department of Health and Social Services
Anchorage, Alaska

POSITION STATEMENT: Testified on his own behalf during the hearing on HB 49.

KARA NELSON
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 49.

PHIL SHANAHAN

Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 49.

JEANNE GERHARDT-CYRUS

Kiana, Alaska

POSITION STATEMENT: Testified during the hearing on HB 49.

NORIA CLARK

Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on HB 49.

ACTION NARRATIVE

[1:10:18 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting back to order at 1:10 p.m. Representatives LeDoux, Eastman, Stutes, Shaw, and Claman were present at the call to order. Representatives Wool (telephonically) and Kopp arrived as the meeting was in progress. [The meeting had been recessed at 3:24 p.m. on April 26, 2019.]

HB 49-CRIMES; SENTENCING; MENT. ILLNESS; EVIDENCE

[1:11:07 PM](#)

CHAIR CLAMAN announced that the only order of business would be 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." He introduced his staff, Lizzie Kubitz, to explain a proposed committee substitute (CS).

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LIZZIE KUBITZ, Staff, Representative Matt Claman, Alaska State Legislature, introduced and presented a sectional analysis of the proposed CS to HB 49, Version 31-GH1029\M (Version M). She paraphrased from the sectional analysis document [included in committee packet], which read as follows [original punctuation provided]:

House Bill 49
Sectional Analysis – Version M
Prepared by the House Judiciary Committee

Section 1

AS 11.41.110(a) - Murder in the second degree.
Conforming amendment. Amends AS 11.41.110(a) to reflect the changes made in Section 26.

Section 2

AS 11.41.150(a) - Murder of an unborn child.
Conforming amendment. Amends AS 11.41.150(a) to reflect the changes made in Section 26.

Section 3

AS 11.41.432(a) - Defenses.
Removes marriage as a defense if the person engages in sexual activity with their spouse when they know their spouse is incapacitated or unaware that the sexual act is being committed.

Because of the complex legal and factual issues that may arise, the defense of marriage still applies in situations where a spouse is the caretaker of their partner who is "mentally incompetent" with dementia or Alzheimer's, or is mentally ill, but still consents to the contact.

A person who is incapacitated or unaware that a sexual act is being committed is legally and factually unable to consent to sexual activity. In most other circumstances, unless specifically excluded by statute or case law, consent remains a defense to sexual assault.

Section 4

AS 11.41.452(a) - Online enticement of a minor.
Removes the word "online" from the crime of "online enticement" criminalizing any enticement of a minor regardless of whether the enticement occurs "online."

Section 5

AS 11.41.452(d) - Online enticement of a minor.
Removes the word "online" from the crime of "online enticement" and makes solicitation of a minor for sex a class B felony.

Section 6

AS 11.41.452(e) - Online enticement of a minor.

Removes the words "online enticement" from the crime of "enticement of a minor."

Section 7

AS 11.46.130(a) - Theft in the second degree.

Conforming amendment. Amends AS 11.46.130(a) to reflect the changes made in Section 14.

Removes inflation adjustment.

Sections 8 -13

AS 11.46.140(a), -.150(a), -.220(c), -.260(b), -.270(b), -.280(d) Removes inflation adjustment from property crime statutes.

Section 14

AS 11.46.285 - Fraudulent use of an access device or identification document.

Amends AS 11.46.285, the statute related to fraudulent use of an access device, to include theft of an identification document. This clarification addresses a gap in the statute identified in *Kankanton v. State*, 342 P.3d 840 (Alaska Ct. App. 2015). With the amendment, the offense will include fraudulent use of both an access device and an identification document.

The amendment also restructures the offense levels to a class B felony if the theft using an access device or identification document is \$25,000 or more, a class C felony if the theft is \$75 or more and less than \$25,000, and a class A misdemeanor if the theft is less than \$75. These financial levels for Fraudulent Use of an Access Device or Identification Document are different from the financial levels for Theft in the Second Degree (AS 11.46.130: \$750 to \$25,000), Theft in the Third Degree (AS 11.46.140: \$250 to \$750), and Theft in the Fourth Degree (AS 11.46.150: less than \$250) because the impact on the victim of identity theft is more serious than the effect on a victim of theft. In addition, the requirement of proof of intent to defraud in AS 11.46.285 is a more serious culpability than intent to deprive another of property in AS 11.46.100.

Removes inflation adjustment.

Section 15

AS 11.46.295 - *Prior convictions.*

Amends the application of "prior convictions" to apply to theft in the third degree in determining the existence of prior convictions in the recidivist theft statutes.

Section 16

AS 11.46.360(a) - *Vehicle theft in the first degree.*
Removes inflation adjustment.

Section 17

AS 11.46.370 - *Possession of motor vehicle theft tools.*

Adds a new section establishing the crime of possession of motor vehicle theft tools as a class A misdemeanor.

The new crime is similar to AS 11.46.315—Possession of burglary tools, which is also a class A misdemeanor.

In addition to mechanical tools used to unlock a motor vehicle, the amendment includes an "electronic unlocking device" as a motor vehicle theft tool. "Electronic unlocking devices" are devices used to capture the electronic signals from key fobs and other electronic locking systems to unlock a motor vehicle without permission. The amendment does not include a screwdriver as a motor vehicle theft tool, just as a screwdriver is not a burglary tool in AS 11.46.315.

Sections 18-23

AS 11.46.482(a), -.484(a), -.486(a), -.530(b), -.620(d), -.730(c) Removes inflation adjustment from property crime statutes.

Section 24

AS 11.46.980 - *Determination of value; aggregation of amounts.*

Adds a new subsection (e) that allows prosecutors to aggregate crimes under theft in the second degree if they occur within 180 days, the amount is more than \$750 and less than \$25,000, and the property or services are taken from one or more persons or commercial establishments.

Under current law, the prosecution aggregates the theft amounts when it can prove that the defendant(s) committed the criminal acts "under one course of

conduct." AS 11.47.980(c), see *Buckwalter v. State*, 23 P.3d 81 (Alaska Ct. App. 2001). This amendment to the statutes does not require proof of a single course of conduct and, instead, requires proof that the crimes occurred within 180 days and were from one or more persons or commercial establishments.

Section 25

AS 11.56.810(a) - Terroristic threatening in the second degree.

Amends the second degree terroristic threatening statute to cover an individual who knowingly threatens to commit a crime against a person or property and recklessly disregards the risk that the threats will cause the evacuation of a building, will cause serious public inconvenience, or will place the public or a substantial group of the public in fear of serious physical injury. The amended statute covers real threats of violence as well as false threats.

Terroristic threatening in the second degree is directed at threats that, if carried out, are likely to affect a substantial number of people. Threats to schools, trains, buses, airplanes, businesses, and offices are examples reflected in tragic events over the past 25-30 years. The amendment addresses conduct that is usually different from assault in the third degree, AS 11.41.220(a)(1)(A), which addresses a person placing another person "in fear of imminent serious physical injury by means of a dangerous instrument," and AS 11.41.220(a)(2), which addresses "repeated threats to cause death or serious physical injury to another person." Both terroristic threatening in the second degree and assault in the third degree are class C felonies.

Section 26

AS 11.71.025 - Misconduct involving a controlled substance in the second degree.

Creates an additional tier of drug offense (a class A felony) for possession with intent to manufacture or deliver large quantities of schedule IA controlled substances, which include opiates and heroin, and schedule IIA controlled substances, which include methamphetamines. The higher felony level for this controlled substance offense is directed at dealers and distributors, and not at the possession level. In

Alaska, the federal government prosecutes the majority of large quantity drug dealers. The penalties in federal court for similar quantities are greater than the penalties in this amendment. This class A felony offense would give state prosecutors an option for prosecuting large-quantity drug dealers when federal prosecutors may decline the case.

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Section 27

AS 11.71.030(a) - Misconduct involving a controlled substance in the second degree.

Conforming amendment. Amends AS 11.71.030(a) to reflect the changes made in Section 26.

Section 28

AS 11.71.030(d) - Misconduct involving a controlled substance in the second degree.

Conforming amendment. Amends AS 11.71.030(d) to reflect the changes made in Section 26.

Section 29

AS 11.71.040(a) - Misconduct involving a controlled substance in the third degree.

Conforming amendment. Amends AS 11.71.040(a) to reflect the changes made in Section 26.

Amends subsection (a) by establishing a basis to prosecute repeat offenders of possession of any amount of schedule IA or IIA controlled substances (opiates, heroin, and methamphetamine) at the class C felony level. Specifically, a person commits a felony if they possess any amount of a schedule IA or IIA drug and they have been previously convicted two or more times of drug possession of a schedule IA or IIA controlled substance, either as a felony or as a misdemeanor as described in the statute. Also provides a 10 year "look back" for prior misdemeanor drug possession convictions for drug offenses.

Confirms that certain possession felonies are not affected by this new provision: felony possession of heroin/opiates near a school (AS 11.71.030(a)(3)) and felony possession of date rape drugs (AS 11.71.040(a)(3)).

Section 30

AS 11.71.040(d) - Misconduct involving a controlled substance in the fourth degree.

Conforming amendment. Amends AS 11.71.040(d) to reflect the changes made in Section 26.

Section 31

AS 11.71.050 - Misconduct involving a controlled substance in the fifth degree.

Two conforming amendments. First, the bill amends AS 11.71.050 to reflect the changes made in Section 26. Second, the bill amends AS 11.71.050(a)(4) by adding the new paragraph of Section 29 above (AS 11.71.040(a)(12)) into the list of exemptions of what constitutes misdemeanor drug possession.

Section 32

AS 11.71.060 - Misconduct involving a controlled substance in the sixth degree.

Conforming amendment. Amends AS 11.71.060 to reflect the changes made in Section 26.

Section 33

AS 11.71.311(a) - Restriction on prosecution for certain persons in connection with a drug overdose.

Two conforming amendments. First, the bill amends AS 11.71.311(a) to reflect the changes made in Section 26.

Second, the bill amends AS 11.71.311(a) by adding the new paragraphs of Section 26 (AS 11.71.025) and Section 34 (AS 11.71.040(a)(12)) into the list of crimes that may not be prosecuted if that person sought in good faith either medical or law enforcement aide for another person they believed to be having a drug overdose.

Section 34

AS 12.55.015 - Authorized sentences; forfeiture.

Amends AS 12.55.015 by adding a new subsection specifying that in the cases of domestic violence or sex crimes, there is a presumption by the court of a no contact order.

Section 35

AS 12.55.027 - Credit for time spent toward service of a sentence of imprisonment.

Adds a new subsection (a) to read: "A court may only grant credit for time spent toward service of a sentence of imprisonment under this section if the court finds that the sentence, including any credit toward the sentence of imprisonment, meets the requirements of AS 12.55.005."

The reason to add the new subsection (a) to AS 12.55.027 is to make sure that all parties understand that the court has discretion in determining whether to grant credit for time spent on electronic monitoring or in treatment toward service of a sentence. Specifically, before granting any credit, the court must consider and apply the sentencing criteria set forth in AS 12.55.005 and announced by the Alaska Supreme Court in *State v. Chaney*, 477 P.2d 441 (Alaska 1970) to the question of whether to grant credit for time spent on electronic monitoring or a treatment program.

Section 36

AS 12.55.125(d) - Sentences of imprisonment for felonies.

Increases presumptive sentencing range for first-time class B felony offenders from 0 to 2 years to 90 days to 2 years. Adds enhanced felony sentences for making or possessing with intent to manufacture methamphetamine in a home or lodging where children live or engaging children in the manufacture of methamphetamine.

Section 37

AS 12.55.135(a) - Sentences of imprisonment for misdemeanors.

Increases the maximum sentence for some class A misdemeanors from 30 to 90 days. The amendment is intended to give judges greater discretion in sentencing individuals convicted of misdemeanor charges.

Section 38

AS 12.55.135(b) - Sentences of imprisonment for misdemeanors.

Increases the maximum sentence for some class B misdemeanors from 10 to 30 days. The amendment is intended to give judges greater discretion in sentencing individuals convicted of misdemeanor charges.

Section 39

AS 12.55.135(n) - Sentences of imprisonment for misdemeanors.

Conforming amendment. Amends AS 12.55.135(n) to reflect the changes made in Section 26.

Section 40

AS 12.55.185(16) - Definitions.

Conforming amendment. Amends AS 12.55.185(16) to add viewing or production of an indecent picture under AS 11.61.123(f)(1) or (2) to the definition of "sexual felony."

Inclusion of this section is a drafting error that will be the subject of an amendment.

Section 41

AS 12.61.050 - Automated victim notification system.

Amends AS 12.61.050 by adding a new subsection directing the Department of Corrections to include in the Victim Notification System that victims of domestic violence or sexual offenses shall be informed of their rights to secure a protective order and that certain state victim resources are available to them.

Section 42

AS 12.63.010(d) - Registration of sex offenders and related requirements.

Conforming amendment. Amends AS 12.63.010(d) to reflect the changes made in Section 44.

Section 43

AS 12.63.010 - Registration of sex offenders and related requirements.

Clarifies that a person may petition the Department of Public Safety for removal from the registry if the petitioner submits proof acceptable to the department that the facts underlying the conviction in another jurisdiction do not constitute a sex offense or child kidnapping in Alaska.

Currently, in at least 13 states, an indecent exposure conviction for public urination can trigger sex offender registration requirements. Of those states, two limit registration to those who committed the act in view of a minor. This amendment is intended to provide an option to petition the department to "opt-

out" of registering if the conduct would not be a sex crime in Alaska.

Section 44

AS 12.63.020 - Duration of sex offender or child kidnapper duty to register.

Clarifies that a person who is convicted of an offense as an adult and required to register as a sex offender or child kidnapper in another jurisdiction is also required to register as a sex offender in Alaska.

Section 45

AS 12.63.100(6) - Definitions.

Adds a person who is convicted of an offense as an adult and required to register as a sex offender or child kidnapper in another jurisdiction to the definition of "sex offender or child kidnapper."

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Section 46

AS 18.65.087(d) - Central registry of sex offenders.

Requires the Department of Public Safety to review procedures and adopt regulations to allow individuals with sex offense convictions in another state to petition for removal from the registry because the facts underlying the out-of-state conviction do not constitute a sex offense in Alaska.

Section 47

AS 18.65.087(j) - Central registry of sex offenders.

Conforming amendment. Amends AS 18.65.087 to reflect the change made in Section 45.

Section 48

AS 28.35.030(k) - Operating a vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage, inhalant, or controlled substance.

Repeals requirement that a person serve their sentence for a first DUI on electronic monitoring or house arrest. Returns discretion to the Commissioner of Corrections to place the person on electronic monitoring at a private residence or at a community residential center.

Section 49

AS 28.35.032(o) - Refusal to submit to chemical test.

The same changes in section 48 are made in section 49 to the statute governing refusal to submit to a chemical test.

Section 50

AS 33.07.020 - Duties of commissioner; pretrial services.

Requires the risk assessment tool be verified by peer review.

Section 51

AS 33.07.020 - Duties of commissioner; pretrial services.

Adds a new subsection (b) requiring validation of the risk assessment tool be subject to peer review.

Section 52

AS 33.30.011(a) - Duties of commissioner.

Changes the minimum term of imprisonment for which the Department of Corrections must conduct a risk assessment and prepare a written case plan for sentenced individuals to 90 days.

Requires the Department of Corrections to coordinate with community reentry coalitions or other providers of reentry services when developing a written reentry plan for prisoners.

Creates a new subsection that requires regular reports on offender management plan implementation that includes the number of prisoners provided written case plans, the number of written case plans initiated within the preceding year, and the number of written case plans that were updated in the preceding year.

Section 53

AS 34.03.360(7) - Definitions.

Conforming amendment. Amends AS 34.03.360(7) to reflect the changes made in Section 26.

Section 54

AS 44.19.647(a) - Annual report and recommendations.

Adds a requirement that the Alaska Judicial Council include the data collected by the Department of Law as described in Section 56 in their annual report.

Additionally, it adds a requirement that the Alaska Judicial Council include "the number of crime victims

that participated in the prosecution of and court process relating to the offense in which the person was a victim." Inclusion of this section appears to be a drafting error that will be the subject of an amendment. It should appear in Section 56, which relates to the Department of Law's reporting requirements.

Section 55

AS 44.23.020 - Duties; and powers; waiver of immunity.
Adds a new subsection (k) that requires the Department of Law to develop a method to track certain information and to report about sex offense complaints and disposition of those cases.

Section 56

AS 44.23.040 - Records, reports, and recommendations on uniform laws.
Adds a new subsection (b) that requires the Department of Law to gather and report data to the Alaska Judicial Council on felony sex offenses including the number reported but not referred for prosecution, the number referred for prosecution that were not prosecuted, and the number prosecuted that resulted in a conviction of a crime other than a sex offense.

Section 57

AS 44.41.065 - Sexual assault examination kits.
Adds a new section AS 44.41.065 to: (1) require that within 30 days after collection of a sexual assault kit, it is sent to an accredited lab or Department of Public Safety operated laboratory facility; (2) ensure that the sexual assault kit undergoes testing within one year of the laboratory receiving the kit; and (3) within two weeks following completion of testing, reasonable effort will be made to notify the victim that testing occurred. Failure to meet this timeline will not cause a case to be dismissed and if a case is resolved prior to testing, it is no longer required.

Section 58

AS 44.41.070(a) - Report on untested sexual assault examination kits.
Requires the Department of Public Safety to include additional data about which kits were ineligible for testing and why.

Section 59

AS 44.41.070(b) - Report on untested sexual assault examination kits.

Conforming amendment. Amends AS 44.41.070(b) to reflect change made in Section 57.

Section 60

AS 44.41.070(e) - Report on untested sexual assault examination kits.

Adds a new subsection (e) that includes the definitions of why a sexual assault kit may be ineligible for testing: it is scientifically unviable, is ineligible for CODIS (Combined DNA Index System, a national program that links crimes to DNA), or is an anonymous kit.

Section 61

AS 47.12.315(a) - Public disclosure of information in department records relating to certain minors.
Conforming amendment. Amends AS 47.12.315(a) to reflect the changes made in Section 26.

Section 62

Court Rule Change.

Allows a person's rap sheet to be used at grand jury to prove the existence of prior convictions when prior convictions are an element of the offense.

Section 63

Repealer Section.

Section 64

Applicability Section.

Section 65 *Uncodified Law.*

Conforming amendment. On or before January 10, 2020, the Commissioner of Corrections shall provide a report to the legislature as described under AS 33.30.011(a)(12), enacted by Section 52.

Section 66

Conditional Effect.

Section 62 of this Act takes effect only if Section 62 of this Act receives the two-third majority vote of each house.

Section 67

Effective Date.

This Act takes effect July 1, 2019.

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The committee took an at-ease from 1:26 p.m. to 1:33 p.m.

[1:33:36 PM](#)

REPRESENTATIVE STUTES moved to adopt the proposed CS to HB 49, Version 31-GH1029\M, as the working document.

REPRESENTATIVE EASTMAN objected. He asked why the CS would remove section 49 from the original bill. He noted that it deals with the subject of involuntary commitment.

CHAIR CLAMAN said the issues of involuntary commitment are complex and probably require more attention than can be given considering the time constraints of the current session.

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REPRESENTATIVE KOPP noted that HB 49 is one of the bills introduced by the House Rules Standing Committee on behalf of Governor Michael J. Dunleavy. He said Version M contains sections from the governor's bill as well as approximately a dozen sections addressing requests made by the law enforcement community. He said there will be more amendments. He remarked that "we need a vehicle" to address crime and said Version M is a good starting point.

REPRESENTATIVE LEDOUX said she is probably going to vote to adopt Version M as the working document because, "I can do the counting, and if we delay it, it's going to move on Monday anyway, so there's no point in delaying the discussion."

REPRESENTATIVE EASTMAN said he assumes telephonic voting is permitted today.

CHAIR CLAMAN said, "yes, in committees." He said he confirmed it with Legislative Legal Services during the at-ease.

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REPRESENTATIVE EASTMAN said he is concerned that, by adopting Version M, the committee would be creating "another

monstrosity." He clarified that by "another monstrosity" he means another bill of over 40 pages that will be categorized as an "omnibus crime bill." He said there are already too many of those. He opined that one such bill is too many. He said he thought a lesson had been learned after Senate Bill 91 [passed in the Twenty-Ninth Alaska State Legislature] and the subsequent fallout. He said he would be a "no" vote because he sees that Version M contains provisions from other bills, resulting in duplication, resulting in "another monstrosity."

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A roll call vote was taken. Representatives Kopp, Stutes, LeDoux, Shaw, and Claman voted in favor of adopting Version M as the working document. Representative Eastman voted against it. Therefore, Version M was adopted as the working document by a vote of 6-1.

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CHAIR CLAMAN opened public testimony on HB 49.

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KATHY SWANSON, who resides in Juneau, told an anecdote about being the victim of a burglary. She said it took two weeks to get a detective on the case. She invited committee members to see what the burglars did to her home, noting that she has not yet returned to her bedroom in the two months since the burglary. She informed the committee that a number of firearms had been stolen. She said, "You are not doing your jobs." She claimed that half the people in Juneau who are victims of burglary do not even bother to report the crime. She said it is not "compassion" to allow people to shoot up drugs, discard their needles in playgrounds, and enable their behavior by releasing them pre-trial. She said it is common sense not to incentivize bad behavior. She stated that it is only a matter of time until "we have a real tragedy on our hands." She said the value of the property stolen from her was \$30,000 and that it is not covered by insurance. She spoke to the sentimental value of other items stolen from her. She said she will continue to try to recover her stolen possessions. She commented that HB 145 was "watered-down." She told an anecdote about a child who found a loaded pistol in his backyard. She asked the committee to return to putting people in jail. She said if someone cannot post bail, then he/she should remain in jail until his/her court date.

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BOB SWANSON identified himself as the husband of the previous testifier. He stated that Senate Bill 91, as a social experiment, has not worked. He said the man who burglarized his home is out of jail on pre-trial supervision with electronic monitoring yet is still robbing houses. He said he is in favor of HB 49. He identified himself as a substance abuse counselor. He stressed that there needs to be consequences tied to recovery. He said, "The first step in that intervention can be prison." He added that there needs to be a consequence to the crime of theft and associated crimes related to drug use. He recounted an incident earlier in the week in which he and his wife saw two people rob a truck. He described calling the police and waiting, but the police never arrived. He said this showed him that criminals are emboldened. He called that "egregious." He claimed that half the crime in Juneau goes unreported in the Juneau Empire. He opined that the [City and Borough of] Juneau (CBJ) and the State of Alaska (SOA) does not really know how much crime occurs. He said he understands that there is a cost associated with incarceration. He noted that no one can give him "any data on property theft and damage." He said he supports anything that contains serious consequences for crime and can provide people the help they need when they enter recovery.

CHAIR CLAMAN asked what kind of substance abuse counseling he provides. He asked if it was alcohol or drugs or both.

MR. SWANSON said he focuses on both alcohol and drugs. He paraphrased a Mark Twain quote: "There's two things ... people should never be let known how they are made, and that would be laws and sausage."

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DON HABEGER Community Coordinator, Juneau Reentry Coalition, said the mission of the Juneau Reentry Coalition (JREC) is to promote community safety by identifying and implementing strategies that increase reentry success for those returning to the community after release from incarceration. He stated that HB 49's approach to community safety is a "broad brush stroke" that includes increased lengths of incarceration. He noted that one of the fiscal notes provided by the Department of Corrections (DOC) estimates the cost impacts of those increased lengths to be \$37.5 million in the first year and \$41 million in

out years. He called the approach "expensive" and said it seemingly ignores the issue of prison population growth beyond SOA's current holding capacity. He said HB 49 does not seem to address the need for new facilities to accommodate that growth, other than to offer an out-of-state prison solution. He remarked that one consequence of an out-of-state prison solution is the likely breakdown of pro-social community connections. He said it would also likely disrupt the community reentry process and result in a sustained community recidivism rate. He added that it would also sustain issues pertaining to high rates of community crime. He said JREC supports addressing the community's public safety issues through a continued emphasis on access to mental health, housing, employment training, and other services and treatments that aid reentry success. He said JREC supports a more targeted approach to adding tools for law enforcement. He added that JREC would prefer to avoid a "broad brush" approach such as the one presented in HB 49.

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NOAH WILLIAMS shared an anecdote about a friend who was raped in 2017. He said his friend filed a report, and was administered a rape kit, but "never saw her case get justice." He added that his friend's rapist continued to harass her afterward. He said he empathizes with the urge to enact harsher criminal penalties, noting that he believes his friend's rapist should be incarcerated for a very long time. He said he appreciates some of the provisions of HB 49, such as the provision that mandates that victims of sex crimes be informed of their rights and the provision that requires testing of rape kits within a short time period.

MR. WILLIAMS said that, historically, tough-on-crime laws which focus on harsher sentences have not worked. He said SOA tried that approach in the 1980s and the nation as a whole tried it in the 1990s. He remarked that the most brutal criminal gangs came to Alaska after Alaskan prisoners were sent to out-of-state prisons. He asked that the committee focus on providing resources to district attorneys to ensure that the threat of confirmed punishment exists as a disincentive to crime. He remarked, "If people believe that they are likely to be caught and prosecuted successfully, they are less likely to commit crimes versus if they believe they are not likely to be prosecuted successfully." He restated his request that the committee focus on providing resources to district attorneys so that "these convictions go through."

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REPRESENTATIVE EASTMAN asked how Mr. Williams recommends the committee go about determining how severe a sentence should be.

MR. WILLIAMS said he is not a criminal justice expert and he is not specifically advocating against making sentences more severe for the most heinous crimes. He said he wants to see "the majority of the effort" put into ensuring convictions happen. He stated that he has witnessed many instances in which a person avoided punishment because his/her conviction "did not go through." He said he would rather that those people were successfully prosecuted. He reiterated that he is not necessarily opposed to the issue of stiffer sentencing, but that he wants a keener focus placed on ensuring that convictions happen.

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NOLA LAMKEN said she is very concerned about the privatization of criminal justice because she does not believe the private sector has any interest in justice. She opined that crime requires gradations of convictions so that people cannot just shrug off the crimes they commit. She advocated for deterring repeat offenders with higher grades of punishment. She also advocated for jails to provide inmates with "some glimpse of some other way of life." She said she does not want prisoners to be sent to out-of-state prisons where they can be exposed to "an even more criminal element" and lose hope. She stressed that even the most "hardcore" inmates are still human beings and it has been proven that rehabilitation is possible, and they can be helped to recognize their own humanity. She stressed that prisoners cannot be expected to reform if they are treated too heavy-handedly. She advocated for "show[ing] them a different way." She stressed the need to back up the police departments in court. She reiterated that she does not want criminals to be able to shrug off their crimes and restated her opposition to the privatization of criminal justice.

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MICHAEL BERGER said he is "against the changes that the proposed bill is for." He noted that he "did 20-plus years on the installment plan in prison in Alaska and in two other states." He clarified that nobody who is incarcerated is forced to join a prison gang. He said that prisoners being sent out of state was "the worst thing to happen" not because of prison gangs, but

because of poor supervision. He noted that the out-of-state prisons employed corrections officers who made only \$11 per hour. He advocated against making things harsher on criminals, rather he encouraged the committee to look toward education "a lot earlier in life." He said that, by the time a person is incarcerated, it is probably too late. He recommended an early intervention approach. He stressed that substance abuse is an important issue. He claimed that 98 or 99 percent of people who commit crimes or are put in prison have substance abuse problems. He said the current state of treatment is not helping that. He said a better education system earlier in life would be the best way to create solutions for the future. He remarked that the issue of lengthier sentences versus reduced sentences does not adequately address problems related to crime.

[1:56:32 PM](#)

SID ATWOOD, Board Member, Advisory Board on Alcoholism and Drug Abuse, Department of Health and Social Services, said he is testifying on his own behalf. He stressed that Senate Bill 91 did have some positive effect. He highlighted the 5 percent drop in recidivism since its passage. He said the problems with Senate Bill 91 need to be corrected. He noted that, when it was passed, SOA did not "have places for people to go" nor necessary programs in place. He stated that the goal is to save lives and lower the crime rate. He said to accomplish that goal, SOA needs to ensure that people do not recidivate. He shared his life experience with alcohol abuse and incarceration. He said the thing that turned his life around was not the cycle of prosecution and incarceration, but rather having a support system and participating in a spiritual fellowship. He opined that therapy and treatment can save money. He advocated for spending money on therapy and treatment rather than on jails, and particularly out-of-state jails.

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KARA NELSON said she was generally opposed to the crime bills but found it honorable that time was being taken to ensure the best is done for Alaska. She said she opposes HB 49 though noted that she has not been able to familiarize herself with the changes that have been made to the bill. She identified herself as a woman in long-term recovery who has not taken a drink or done drugs since June 1, 2011. She said she was formerly incarcerated. She added that she is a mother, a life-long Alaskan, and a survivor of various violent crimes. She said she is also a survivor of the punitive measures for treating

substance use disorders during incarceration, probation, and parole. She said this allows her to be an expert on issues related to criminal justice reform. She said she can harness her dark and ugly experiences to help create solutions and help bring freedom to others. She clarified that she is not against a safer Alaska. She emphasized that she has three adult children who must navigate having grown up with two parents who were in a punitive cycle trying to get help for their substance abuse disorders. She advocated for "smart justice" that successfully holds people accountable while not "putting everything" on DOC. She said, "I hope that we continue to understand that what we have been doing for decades isn't working." She said it would be insane to keep doing the same thing and expect different results.

[2:01:50 PM](#)

CHAIR CLAMAN asked about Ms. Nelson's involvement with Haven House Juneau.

MS. NELSON said she was the Director of Haven House Juneau for five years.

CHAIR CLAMAN asked her to tell the committee about Haven House Juneau for the benefit of those who are newer to the legislature.

MS. NELSON said Haven House Juneau is a faith-based recovery residence for women returning from incarceration. She said Haven House Juneau works "very closely with probation and parole" and with the new sanctions put into place with the passage of Senate Bill 91. She said Haven House Juneau addresses issues related to families affected by incarceration and provides services related to recovery, reentry, employment, education, and peer support. She noted that Haven House Juneau extends its services to "any and everyone who needs help," not just those residing in the home.

CHAIR CLAMAN asked whether the reforms enacted through the passage of Senate Bill 91 bettered Haven House Juneau and the services it provides.

MS. NELSON said that is correct.

[2:03:44 PM](#)

PHIL SHANAHAN said he has different thoughts about Version M than he did about the originally filed version of HB 49. He noted that the Alaska Criminal Justice Commission put a lot of effort into research and using evidence-based approaches in dealing with criminal justice reform efforts. He stated that Alaska is not alone in seeking criminal justice reform and noted that other states have seen success. He stressed that the process requires patience and minor adjustments. He said reform cannot be done perfectly the first time and that it is bigger than just Senate Bill 91. He said the approach he saw in the original version of HB 49 was essentially to return to past norms that resulted in higher recidivism rates, high crime rates, and people being incarcerated away from their families. He stressed the importance of rehabilitation and recovery efforts. He noted that substance abuse treatment is crucial. He said there was an expectation with Senate Bill 91 that more money would be spent on treatment and getting people help. He stated that he does not think that ever happened or was allowed the time to happen. He requested that the committee and the legislature continue to fix what needs to be fixed. He stressed that he does not want criminal justice reform repealed and things returned to what had not worked over many decades. He advocated for a more economical method to making society safer.

[2:06:46 PM](#)

JEANNE GERHARDT-CYRUS said she is testifying as a parent and community member. She said she does a lot of work in the field. She said something she often hears is that [DOC] is the biggest provider of mental health services in Alaska. She said that needs to be turned around so that mental health services are more community oriented. She said the highest percentage of those incarcerated are people with behavioral health issues, traumatic brain injuries, or with fetal alcohol exposure. She said that, under HB 49, those people are who would be incarcerated longer and sent out of state more, even though they are the people who require the most help in moving through the criminal justice system. She said those people need treatment that is appropriate to meet their needs. She said different approaches are needed for people whose brains work differently. She said it sounds like HB 49 would increase the cost of warehousing people and punishing people for having disabilities. She said, "I think we need to get away from that." She said the increase in violent crimes in Alaska can be traced back before Senate Bill 91. She stressed that SOA needs to invest in fully implementing the changes espoused in Senate Bill 91 so that it can move away from just incarcerating people longer. She added

that she is against privatization. She said she wants SOA to put money toward helping people become contributing members of society.

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NORIA CLARK said she is conflicted about HB 49. She noted that she understands the perspective of previous speakers who spoke against prison privatization and who advocated for mental health treatment. She said it would not be a good thing for DOC to continue to be the government entity in charge of handling mental health issues. She expressed concerns about privatized mental health institutions.

MS. CLARK said it is important to achieve balance. She expressed doubts that the state is currently saving money on corrections. She expressed that sometimes people - even those with mental health disabilities - need to be incarcerated. She advocated for protecting law-abiding citizens even if it comes at the expense of offenders. She also advocated for working toward finding a way to benefit prisoners who need help. She stressed the importance of collaboration to find a solution.

MS. CLARK apologized for being angry and aggressive to Chair Claman in a previous testimony. She said that, even though she and Chair Claman do not see eye-to-eye on every issue, she believes they both try to improve Alaska. She called Alaska the best state in the nation. She expressed appreciation that the committee members are working toward protecting Alaska.

CHAIR CLAMAN thanked her for her apology. He said he shares her commitment to putting Alaska first.

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CHAIR CLAMAN closed public testimony on HB 49. He announced that the committee would hold HB 49 for further review.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:16 p.m.