

SENATE FINANCE COMMITTEE

May 10, 2019

9:04 a.m.

9:04:55 AM

CALL TO ORDER

Co-Chair von Imhof called the Senate Finance Committee meeting to order at 9:04 a.m.

MEMBERS PRESENT

Senator Natasha von Imhof, Co-Chair
Senator Bert Stedman, Co-Chair

Senator Click Bishop
Senator Lyman Hoffman
Senator Peter Micciche
Senator Donny Olson
Senator Mike Shower
Senator Bill Wielechowski
Senator David Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Senator Mia Costello; Senator Shelley Hughes; John Skidmore, Director, Criminal Division, Department of Law; Nancy Meade, General Counsel, Alaska Court System.

PRESENT VIA TELECONFERENCE

Major Andrew Greenstreet, Deputy Director, Alaska State Troopers; Katheryn Monfreda, Director, Division of Statewide Services, Department of Public Safety; David Kanaris, Assistant Chief, Scientific Crime Detective Lab, Department of Public Safety.

SUMMARY

CSHB 49(FIN) am

CRIMES; SENTENCING; MENT. ILLNESS; EVIDENCE

CSHB 49(FIN) am was HEARD and HELD in committee for further consideration.

#hb49

CS FOR HOUSE BILL NO. 49(FIN) am

"An Act relating to criminal law and procedure; relating to pretrial services; establishing the crime of possession of motor vehicle theft tools; relating to electronic monitoring; relating to controlled substances; relating to probation and parole; relating to sentencing; amending the definitions of 'most serious felony,' 'sex offense,' and 'sex offender'; relating to registration of sex offenders; relating to operating under the influence; relating to refusal to submit to a chemical test; relating to the duties of the commissioner of corrections; relating to testing of sexual assault examination kits; relating to reports of involuntary commitment; amending Rules 6(r)(6) and 38.2, Alaska Rules of Criminal Procedure; and providing for an effective date."

9:05:27 AM

Co-Chair von Imhof relayed that the committee would continue to consider HB 49. Mr. John Skidmore from Department of Law would discuss what was not in the bill but what was in related Senate bills on the same topic [SB 32, SB 33, SB 34, and SB 35]. She discussed other testifiers. The Department of Corrections (DOC) would discuss the financial implications of the bill and the fiscal note at the afternoon meeting and the committee would consider the financial implications of the bill.

9:08:13 AM

JOHN SKIDMORE, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, affirmed that he had previously discussed the bill up to Section 96.

Mr. Skidmore wanted to make a correction to his testimony from the previous day. He had referenced the path back to a driver's license in Section 72 and Section 73 on page 52 of the bill. There was a difference in words in lines 3 through 5. He explained the distinction in the language.

Mr. Skidmore addressed a Sectional Analysis (copy on file):

Section 96

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

Section 97-98

Requires the use of contemporaneous two-way video conferencing at all arraignments, pleas, and non-evidentiary bail hearings in misdemeanor cases and initial appearances and non-evidentiary bail reviews and arraignments in felony cases. Also allows the court to order the defendant to appear by contemporaneous two-way video conferencing at any other hearing

Section 99

Repealer section

Mr. Skidmore explained that the section pertained to a criminal history database and changed court rules to allow a prosecutor to establish a prior criminal conviction when the conviction was an element of the crime that was being indicted in front of the grand jury. The section expanded current law to include other situations where prior convictions needed to be established. The section was the same as in SB 32, the Senate version of the bill.

Mr. Skidmore detailed that Section 97 and 98. The court rule changes would make it easier to use video conferencing at certain pre-trial hearings. The language was the same as SB 32, also in committee. He detailed the pretrial enforcement division was not listed in the repealer section. The pretrial services officers would remain as a separate unit in of DOC.

[9:12:10 AM](#)

Mr. Skidmore continued to address the sectional analysis:

Section 100

Uncodified law section. Requires the commissioner of corrections to provide the report established in sec 90 by Jan 10, 2020.

Section 101

Uncodified law section. Requires the Department of Corrections to report to the legislature on pro-social programs

Section 102

Uncodified law section. Requires the Alaska Court System to transmit information regarding involuntary commitments that have occurred since October 1, 1981 to the Department of Public Safety.

Mr. Skidmore noted that Section 100 and Section 101 both dealt with a report requested of the legislature by DOC. Section 102 dealt with involuntary commitments and was potentially a data transfer provision that would allow the state to be in compliance with federal law. The information pertained to mental health commitments, and the information would be uploaded and shared to be available for firearm purchase information. The difference between HB 49 and the Senate version was the date of completion.

Mr. Skidmore continued to address the Sectional Analysis:

Section 103
Applicability section.

Section 104
Conditional effect section for court rule change.

Section 105
Immediate effective date for section 102.

Section 106
January 1, 2020 effective date for section 92-95.

Section 107
July 1, 2019 effective date for all other sections.

Co-Chair von Imhof was curious about the committee's thoughts about the date change described by Mr. Skidmore. She recalled that there had been testimony that many of the

documents in question were on microfiche and would take time to process. She asked what the committee thought about extending the time frame by one year as proposed in the bill.

Senator Wielechowski understood that if the bill only went back to 2011 versus 1982, all the documents would be electronic, and the effective date could be much sooner and there would be a savings of \$140,000.

Senator Wilson wanted to hear from the Alaska Court System (COURT) about the timeline.

Co-Chair von Imhof noted that there would be testimony from COURT. She asked Mr. Skidmore to discuss what was not in the bill, and what was in the Senate bill.

[9:16:12 AM](#)

Mr. Skidmore thought there were some differences between the related Senate bills. He thought some of the Senate bills required some additional reports from departments. He did not have positions on the sections. There were couple of items that were not addressed in the HB 49. There was no provision for how a first time Driving Under the Influence (DUI) sentence was served. He thought of the items as minor changes. He thought there could be a couple of items he had overlooked.

Mr. Skidmore thought there was an area of substantial difference in the concept of marriage defense, which could be found in HB 49 as it came over from the house and was found in SB 35. He thought there had been confusion about the concept. He wanted to clarify how the law was supposed to work around the marriage defense.

Mr. Skidmore stated that all sexual assault and sexual abuse of a minor laws were made to ensure that there was consensual sexual activity between people. The law was reflected in statutes subsections that mentioned lack of consent, the statutes that dealt with sexual abuse of a minor and was captured in statutes that dealt with an imbalance of power. The idea was captured in statutes that discussed concepts about people that were mentally incapable, incapacitated, or unaware. All three of the terms were about a person not capable of consent. Current law stated that it was permissible to engage in sexual

activity with those in the three conditions if the persons were married. He offered to provide further definitions. The concept was being debated across the country. The State of Minnesota had recently passed a bill that eliminated the marriage defense.

[9:20:51 AM](#)

Mr. Skidmore qualified that elimination of the marriage defense did not criminalize sexual activity between spouses when there was consent, regardless of whether or not one of the spouses was suffering from a mental disease or defect. The definition for "mentally incapable" described suffering from a mental disease or defect to a degree that it made the individual incapable of understanding the nature or consequences of their conduct.

Mr. Skidmore stated he was quoting AS 11.41.470.04 He continued that if the marriage defense was eliminated as proposed in SB 35, both parties would have to consent. So long as both parties' consent, the activity was legal. When someone was not capable of consenting, in those circumstances sexual activity was not permissible.

Co-Chair von Imhof asked if Mr. Skidmore was saying that the marriage defense provision was not in HB 49, but was in the Senate version of the bill.

Mr. Skidmore answered in the affirmative.

[9:23:11 AM](#)

Senator Micciche discussed the concept of consent. He discussed the marriage defense and thought it had just been eliminated in India. He shared concerns about angry children reaching out against a senior parent. He referenced hearing claims in testimony. He asked how a senior parent would be protected while behaving with the expectation of the marriage defense constraints.

Mr. Skidmore reminded that the criminal justice system had always been set up to protect people from unfair accusations. He asserted that the justice system set out that everyone was presumed innocent until proved otherwise; and that to prove otherwise, a crime must be proven beyond reasonable doubt. He walked through the elements of a scenario in which a parent and a new spouse (not the

natural spouse) were reported for illegal sexual activity. He questioned if it could be proven beyond a reasonable doubt that the parent that had some sort of mental disease or defect was rendered incapable of understanding the nature or consequences at the time of the activity.

Mr. Skidmore discussed the progressive nature of Alzheimer's Disease; the nature of which rendered people lucid during certain times, and other times not. He emphasized that the law said that if someone were to be prosecuted, it must be shown beyond a reasonable doubt that the person was incapable of understanding the consequences at the time it took place. Secondly, it must be shown that sexual activity occurred. Thirdly, it would have to be proven beyond a reasonable doubt that the other spouse knew that the spouse with the mental illness was incapable of understanding the nature and consequences at the moment.

Mr. Skidmore stated that the basic cornerstone of the justice system (reasonable doubt, presumption of innocence) were the things that provided protection because the scenarios he heard simply did not violate the law.

[9:27:51 AM](#)

Senator Micciche asked if the provision just iterated that a married person could not use marriage as a defense for what was already illegal for everyone else.

Mr. Skidmore answered in the affirmative.

Senator Wilson wanted to break the provision down into simpler terms. He discussed different scenarios that might be applicable.

Mr. Skidmore drew the distinction that the provision applied to finding a spouse in an incapacitated condition rather than causing an incapacitated condition.

[9:30:11 AM](#)

Senator Wielechowski looked at the definition of "mentally incapable." He gleaned that Mr. Skidmore was adding the term "at the time." He noted that the statute did not address "at the time."

Mr. Skidmore used the term "at the time" to help people understand what the law meant. Without the term, it would mean that a person diagnosed with Alzheimer's could not engage in sexual activity starting at the time of diagnosis. He did not believe that was what the law stated.

Senator Wielechowski thought people had concerns about the concept.

Mr. Skidmore had not seen a single case referencing the concept as described by Senator Wielechowski. He stated that in the law there was two concepts for conduct of a criminal: actus reas (the act itself) and mens rea (the mental element). The actus reas was not the act itself, but the circumstances surrounding it. He could not imagine any court interpreting the scenario that Senator Wielechowski was describing.

Senator Wielechowski pointed out that courts frequently deemed individuals mentally incapable of standing trial.

Mr. Skidmore pointed out the incompetence was a different standard than what applied in the provision being discussed. He furthered that if the courts found a person mentally incompetent, the person could be restored. Requiring a person to be mentally competent at the time of a trial was the same concept being applied to the provision.

[9:33:50 AM](#)

Senator Olson thought it was confusing to the public and that there appeared to be an overreach by the law. He shared concerns.

Mr. Skidmore had heard of concerns relating to the provision. He thought it was important to understand the law and interpret it differently. He thought misrepresentations by the legislature could affect the public.

Mr. Skidmore discussed the idea of an affirmative defense. The concept trying to be achieved was that everyone should be able to exercise autonomy for when to grant consent for sexual activity. The marriage defense stated that for certain individuals, there was no option for consent. He

asserted that the provision tried to level the playing field.

Senator Olson asked whether Mr. Skidmore was in favor of marriage as an affirmative defense.

Mr. Skidmore was not in favor of an affirmative defense and did not think it achieved what Senator Olson had described.

[9:38:17 AM](#)

Senator Bishop focused on the concept of consent while incapacitated. He discussed a hypothetical scenario of a person diagnosed with Alzheimer's that was incapacitated.

Mr. Skidmore was not an expert on Alzheimer's and only had anecdotal experience. He recognized that Alzheimer's was a progressive neuro-degenerative disease under which he doubted it was medically possible for a doctor to deem that a person would be lucid again. He thought that caretakers and spouses would be able to ascertain when the other spouse was lucid or not. He defined sexual contact.

Senator Bishop understood the definition of sexual contact but wanted to have a clear definition of incapacitation.

Mr. Skidmore reiterated that the provision dealt with "suffering from a mental disease or defect that renders a person incapable of understanding."

[9:42:04 AM](#)

Co-Chair von Imhof appreciated the conversation. She understood that the Senate version of the bill removed the marriage defense and people would be treated the same under the law, regardless of marital status. She believed the provision had been debated in the Senate State Affairs Committee. She thought Mr. Skidmore had been very clear. She asked if the committee was ready to move on to a new subject.

Senator Micciche noticed that everything in the Senate's four crime bills was a pragmatic approach to a real problem. He asked why Mr. Skidmore was bringing the marriage defense to the table.

Mr. Skidmore stated there had been cases in which a spouse alleged assault by the other spouse, and the case was unable to move forward with prosecution due to the marriage defense. He knew of cases provided directly to the Department of Law (LAW) and had also spoken to advocates from Standing Together Against Rape that had more examples.

Senator Micciche had received emails from individuals and from constituents that had issues with the problem and had been unable to prosecute a crime because of the marriage defense. He thought the elimination of the marriage defense was a pragmatic approach to a real issue.

Senator Bishop heard Mr. Skidmore say there were some minor differences between the bill and the Senate version.

Mr. Skidmore stated he had listed several differences that were minor, and had not listed the provision of marriage defense as minor.

Senator Bishop asked if HB 49 was workable for the administration.

Mr. Skidmore stated there were several components in HB 49 that the administration had significant concerns about.

Senator Bishop asked for clarification as to the minor differences and significant concerns.

Mr. Skidmore clarified that when he referred to minor, he referred to things that were not in the bill. He stated that when he referenced significant issues, he was talking about concepts in the bill that were different from the Senate concepts. He used the example of caps on technical violations, which was different in the two bills and he did not consider the issue to be minor. He listed discretionary parole eligibility as an issue that was different in the two bills.

[9:46:40 AM](#)

Senator Wielechowski had spoken with members of the House and had gleaned that the administration had agreed to the language in the bill, including the caps on technical violations and the marriage defense language.

Mr. Skidmore was not involved in any sort of discussions as described by Senator Wielechowski. He could speak to the differences in the law and where the differences were significant to LAW.

Senator Wielechowski asked who to talk to that would know what the administration supported. He had been told directly that the provisions were specifically agreed to and supported by the administration.

Mr. Skidmore stated that there were political considerations for the legislature to look at. He suggested that members talk to the person that made the statements.

Co-Chair von Imhof noted that the committee had asked Mr. Skidmore to talk about what was not included in HB 49 and other provisions in the related bills. She asked Mr. Skidmore to discuss any additional significant bill provisions that were contained in the Senate bill versions and not in HB 49.

Mr. Skidmore could not recall any additional provisions to discuss. He was certain there were other differences, but nothing he would describe as significant.

Senator Micciche asked about differences concerning violating conditions of release.

Mr. Skidmore affirmed that there was a difference on violation of conditions of release. The Senate version changed back to pre-SB 91 law. The Senate version set the period at 90 days. In the House version, the violation remained a class B misdemeanor for all offenses. The difference was in the maximum sentencing.

[9:50:12 AM](#)

Senator Micciche asked about truth in sentencing.

Mr. Skidmore relayed that the truth in sentencing was not originally found in any of the governor's bills, but had been added to SB 33 in the Senate Judiciary Committee. There were no provisions related to the subject in HB 49.

Senator Wielechowski asked if the administration supported the proposed truth in sentencing language that was in the Senate version of the bill.

Mr. Skidmore stated that the administration had not taken a position on the matter.

Senator Wielechowski asked if HB 49 effectively repealed and replaced the negative aspects of SB 91.

Mr. Skidmore had testified in the House Finance Committee that HB 49 (at the time) had effectively repealed and replaced the negative aspects of SB 91. There had been changes made to the bill on the floor, and he was unsure that he could make the same statement at present.

Senator Wielechowski asked which provisions Mr. Skidmore could recommend changing in order to effectively repeal and replace all the negative aspects of SB 91.

Mr. Skidmore stated that the two concepts that were different (after changing on the House floor) were caps on technical violations and discretionary parole; and returning the provisions to pre-SB 91 status would, in his opinion, repeal and replace the negative aspects of SB 91.

Senator Micciche asked if Mr. Skidmore supported the HB 49 sentencing changes, or if he preferred what was in the governor's bill.

Mr. Skidmore stated that the presumptive sentencing for felonies did not revert to pre-SB 91 status; however, in HB 49 adjusted the sentencing ranges upward for both A and B misdemeanors. He thought the change effectively repealed and replaced what was in SB 91. He thought the change provided an effective tool for LAW to use.

Senator Wielechowski mentioned that the governor was paying for Facebook advertisements that claimed that he had proposed legislation that would repeal SB 91 and replace the bill with common-sense crime laws that would help to make Alaska the safest state in the country. He asked if Alaska would be the safest state in the country if the bill was passed with the proposed changes to the caps and discretionary parole.

Mr. Skidmore thought that if the changes he described were made, it would provide tools for the state to try and combat the crime problem and bring down crime rates.

Senator Wielechowski asked if there was anything else that Mr. Skidmore could recommend in order to make Alaska the safest state in the country.

Mr. Skidmore had no other recommendations at present.

[9:54:25 AM](#)

Senator Micciche did not want to contradict Senator Wielechowski, but thought it was unfair to ask Mr. Skidmore how he would determine how to make Alaska the safest state in the country. He understood the question but thought it was fairer to ask if the legislation returned the pieces of legislation originally proposed by the administration. He asked Mr. Skidmore if the bill returned the tools to adequately prosecute and hold people accountable to the way crimes as they were traditionally viewed as opposed to under the enacted SB 91.

Mr. Skidmore as for clarification on the question.

Senator Micciche had not found the administration's crime bills to be overly punitive. He asked if Mr. Skidmore's preference that the bill passed with provisions in HB 49 or other bills as proposed by the governor. He asked which would be a more effective way to deal with the state's crime problem.

Mr. Skidmore stated that the governor's original proposed bills were the proposals the administration thought made sense. He acknowledged the legislative process. He emphasized that the legislature and the governor had to make the decisions. He thought he had tried to identify the areas of legislative provisions to work with and respect the legislative process.

Co-Chair von Imhof emphasized that the legislative body was independent from the executive branch. She thought there were items from previous bills that the committee might want to add to HB 49 because members felt the provisions were important. She mentioned various provisions of interest including sexual abuse of a minor, sexual assault, indecent exposure, unlawful exploitation of a minor, and distribution of child pornography. She did not think the legislature needed permission from the governor to put in provisions it wanted.

[9:58:59 AM](#)

Senator Shower discussed the bill process. He thought it was important not to rush the process. He discussed the stakeholders and associated testimony as an aggregate opinion. He questioned whether the committee wanted to pass legislation that was "good enough" rather than the best. He thought the administration was informing the body as to what tools were needed to address the crime problem in the state. He thought the bill being considered was still missing parts. He questioned whether the law had given enough tools to the appropriate agencies to get the job done.

Senator Shower continued his remarks. He was concerned that the legislature was compromising the bill. He urged patience. He thought there had been consistent feedback from agencies that they needed certain tools.

Co-Chair von Imhof thanked Senator Shower for his work on the bills.

[10:02:19 AM](#)

Co-Chair von Imhof drew attention to FN 6, OMB Component 2202.

Mr. Skidmore noted that there had been a previous fiscal note for SB 32, and it should be the same as FN 6. He informed that the note being considered was erroneous, and the committee should be considering OMB Component 4881. He clarified that the fiscal note that should be considered addressed the additional resources needed to prosecute the change in drug crimes. The note also included the recriminalization of driving with a license suspended.

Co-Chair von Imhof knew that the committee would be doing more work on the bill and thought there was a chance the fiscal notes would change.

[10:05:09 AM](#)

MAJOR ANDREW GREENSTREET, DEPUTY DIRECTOR, ALASKA STATE TROOPERS (via teleconference), expressed excitement about the bill, which would give law enforcement the tools to be more effective in responding. Additionally, he thought the bill would give the tools to assist victims of crimes and

restore the public's faith in the justice system. He thought often troopers and other law enforcement officers worked with individuals during a challenging time when the officer's response was important to the victims.

Major Greenstreet noted that HB 49 addressed property crimes, which had risen 23 percent in the previous five years. He reported getting an overwhelming sense that businesses that were being victimized were reporting thefts as frequently because of the perception that there was "no teeth" in the criminal justice system and the limited number of resources available to investigate the crimes.

Major Greenstreet continued his remarks. He thought the new tools pertaining to motor vehicle theft would give law enforcement additional options to address the crime and prevent further crime. He thought oftentimes vehicle thefts were part of drug culture. He addressed the stronger penalties for drug crimes in the bill. He thought the bill helped with the ability to address drug crimes at different levels. He approved of significant penalties for possession.

Major Greenstreet addressed the videoconferencing allowed for in the bill. He thought there was an officer safety component and thought videoconferencing would allow troopers to be more effective.

[10:09:49 AM](#)

Senator Micciche referenced changes in Soldotna. He thought that HB 49 was a significant backward move from SB 32 and SB 35, which had been passed through the Senate. He discussed drug houses in his district which had turned communities into a "zombie wasteland" where residents lived in fear daily. He asked if Major Greenstreet supported the return of the caps, reductions in violating conditions of release, and lower sentencing contained in the bill; or if his preference was to return to pre-SB 91 levels in the three areas.

Major Greenstreet clarified that he preferred stronger sentencing, and preferred the original language pertaining to violations of conditions of parole, and removal of the cap. He was a second-generation Alaskan and was a lifelong Alaskan. He had worked in law enforcement for 25 years and had worked in narcotics investigation. He was concerned

about the drug culture in the state. He wanted to support the strongest legislation to curb the drug problem in the state.

Senator Micciche thanked Major Greenstreet for his testimony.

10:13:00 AM

Senator Wielechowski acknowledged the importance of the issue. He asked if there was anything Major Greenstreet to put in the bill to make Alaska the safest state in the nation.

Major Greenstreet supported Mr. Skidmore's remarks pertaining to the marriage defense proposal. He supported the original bill and returning law to pre-SB 91 levels.

Senator Bishop associated himself with Senator Wielechowski's remarks. He referenced Senator Micciche's remarks about Soldotna. He asked if Major Greenstreet could address the problems mentioned by Senator Micciche could be solved if SB 32, SB 33, SB 34, and SB 35 were enacted in full.

Major Greenstreet thought that the bills were a start in the right direction. He discussed the importance of the state's High Intensity Drug Trafficking Area (HIDTA) designation. He asserted that the state needed good solid legislation for the HIDTA funds to be effective.

10:15:35 AM

Senator Shower discussed drug activity in the Mat-Su area. He reiterated his question of whether "good enough" was ok. He asked if Major Greenstreet would prefer the complete package of Senate crime bills, or if HB 49 was good enough. He agreed that that simply returning to pre-SB 91 laws was not sufficient. He acknowledged that putting people in jail was not going to solve the state's drug problem, and that other solutions were necessary.

Major Greenstreet discussed the drug activity in the Hatcher's Pass area. He wanted law enforcement to be as effective as possible in the area. He did not like settling for an "ok" solution and wanted to support the best legislation possible. He liked the direction that the

legislation was going. He hoped that the bill could be done better.

Co-Chair von Imhof wanted to address the fiscal notes for rape kits.

[10:18:25 AM](#)

Senator Wielechowski asked if Alaska the safest state in the country before the passage of SB 91.

Major Greenstreet affirmed that Alaska was certainly not the safest state in the country before SB 91 was passed.

Senator Wielechowski referenced Alaska's poor safety statistics and asked how it was possible to make Alaska the safest state in the nation by going back to pre-SB 91 laws.

Major Greenstreet did not know how returning to pre-SB 91 status would make the state the safest, but thought the proposed changes were better than the current law. He thought the proposed legislation was a step in the right direction.

[10:20:08 AM](#)

Co-Chair von Imhof asked about a new fiscal note from the Department of Public Safety (DPS), OMB Component 527. She asked for the sexual assault kits to be addressed.

~KATHERYN MONFREDA, DIRECTOR, DIVISION OF STATEWIDE SERVICES, DEPARTMENT OF PUBLIC SAFETY (via teleconference), stated that the crime lab was under her management. She detailed that the fiscal note requested two positions to meet the obligation of getting the backlog of sexual assault kits processed within one year.

Co-Chair von Imhof asked about the new provision in the bill regarding the sexual assault kits.

[10:21:46 AM](#)

DAVID KANARIS, ASSISTANT CHIEF, SCIENTIFIC CRIME DETECTIVE LAB, DEPARTMENT OF PUBLIC SAFETY (via teleconference), confirmed that the fiscal note requested two additional positions. He stated that there had been an increase in cases in the lab, specifically more sexual assault cases.

On average in 2018 there was 28 sexual assault cases per month, which had risen to 36 per month. Due to the provisions in the bill, the lab expected an additional 120 cases. He estimated that each position could work around 70 to 80 cases per month. The fiscal note also requested \$158,000 to outsource a number of cases.

Mr. Kanaris continued to discuss the fiscal note. He discussed the huge commitment necessary to train individuals to process cases to the Federal Bureau of Investigation standards and lab quality standards. He stated the outsourcing would be for six months.

Senator Bishop expressed concern about part of the fiscal note analysis:

"However, if the crime lab continues to see an increase in DNA case submissions as it has this fiscal year, prioritization of sexual assault cases will continue to increase over other DNA requests (such as property crimes) increasing the backlog and turnaround time of nonpriority cases."

Senator Bishop wondered if the department needed another position so that resources would not need to be diverted from lower priority requests such as property crimes.

Mr. Kanaris stated that the intent of the language was to inform the legislature what could potentially happen if there were no additional positions funded. He stated that the two requested positions were the minimum needed to stay current with the increased caseload.

[10:25:45 AM](#)

Co-Chair von Imhof noted that the fiscal note referenced the outsourcing for testing of sexual assault kits. She thought it was possible to consider outsourcing in the future in order to keep up with all the lab requests.

Senator Wilson expressed concern that the previous year the capital budget had appropriated around \$2 million for the storage and testing of sexual assault kits. He thought the funding could run out if additional funds were not appropriated. He wondered if the state wanted to continue to fund the testing of the kits on a statewide basis.

Co-Chair von Imhof asked if the expenses on the fiscal note showed the state's responsibility. She asked about the responsibility of the municipalities and boroughs. She asked if Senator Wilson was suggesting that all sexual assault kits be sent to the state to be processed in a central location.

Senator Wilson thought the language of the bill stated that the kits went to the state or an outside processor. He understood that the \$2 million previously appropriated would run out and wondered if the previous appropriation was going to be factored into the fiscal note, or if there would be an additional funding request.

Mr. Kanaris understood that the capital appropriation the previous year was to have all the historical kits processed in the state. The project had been started and the lab had sent about 600 of the kits out to be processed out of state. The project would continue on for the following two years. The fiscal note attached to the bill was forward-looking and was to fund the processing of forthcoming kits and to keep the processing within the 12-month time limit as proposed by the bill.

Senator Wilson understood that there was no cost for municipalities. He asked if the state was responsible for paying for all sexual assault exam kits statewide.

Mr. Kanaris affirmed that the state crime lab did process all sexual assault kits for the state and was the only full service crime lab in the state.

[10:30:00 AM](#)

Senator Micciche understood that there had been inadequate funding and inadequate expectations for processing that had created a backlog. He thought Mr. Kanaris had communicated that the appropriation had satisfied the funding for the backlog and the fiscal note would likely satisfy the funding going forward in accordance with the legislation.

Mr. Kanaris agreed. He clarified that the capital appropriation was not to address a lack of past funding. Rather, the backlog of kits were cases not previously submitted to the lab.

Senator Micciche was supportive of adequate funding to process the sexual assault kits. He discussed the importance of testing of sexual assault kits.

Mr. Kanaris stated that the original fiscal note for SB 20 had requested four positions with the intent of working the backlog of cases within six months' time. He expected to be able to manage processing kits in twelve months' time with two additional positions.

Senator Wilson asked if Mr. Kanaris was requesting two positions, but it was best to have four.

Mr. Kanaris expected to meet the 12-month timeline with two positions. He stated that if the legislature wanted to reduce the timeline to less than 12 months, the lab would need more positions.

[10:33:42 AM](#)

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, stated that COURT did not have a policy position on many sections of the bill. The court system was impacted by the bail provisions and pre-trial sections. She referenced Section 50, which was the statute that informed judges how to make arraignment decisions. The provision was largely a return to former law and did away with how the pre-trial risk assessment score drove the decision of the judge. She had a couple of suggestions to solve tension in some wordings.

Ms. Meade looked at page 31, which covered bail conditions. She considered page 31, line 27 through line 29, which would change what happened to the pre-trial services officer. The bill stated that the court may order a person to submit to supervision by an officer, which may include the use of electronic monitoring. She took issue with the clause "if determined necessary by the commissioner of DOC". She stated that current law dictated that it was the court that determined if a person should be under electronic monitoring. She did not know if the provision was intended or if there had been a drafting error. She noted that on line 24, it stated the court may order a person to submit to electronic monitoring. A prior version said "by a private company," which had been eliminated but she still saw tension between subsection 17 and subsection 19 and suggested the "if clause" be eliminated for clarity.

10:36:58 AM

Ms. Meade drew attention to lines 25 and 26 of the bill, which she thought was wholly unnecessary and could lead to problems. She pointed out that the timing of the provision was wrong and explained the logic. She suggested that subsection 18 be eliminated.

Ms. Meade addressed page 32, line 23; which pertained to court considerations at release. There had been discussion in the other body as to whether subsection 12 (the pre-trial risk assessment) had to be considered. She suggested minor language changes to remove obstacles from the court continuing if the pre-trial services office did not get the assessment to the court system.

Senator Wilson asked if the court would still have access to the information if the line was deleted.

Ms. Meade noted that the section was a list of "shalls," and if the wording was changed to "may" the language would have to be moved to a different section. She explained that the language was changed on the grounds that people wanted to continue to have the judge consider the pre-trial risk assessment. She clarified that a judge was not bound to follow anything in the report. She added that the bill did have the effect of removing the assessment score from being the driver of the court's decision-making; but it did stipulate that the court must look at it.

10:40:13 AM

Ms. Meade drew attention to page 33 line 19 of the bill. The provision stated that the courts bail schedule (used for minor misdemeanors) had to have a condition providing that the jail shall test the person for intoxication. Former law said the jail "may detain" a person until the person was below a .08 on the intoxication test. The bill changed the language to read "shall detail" and made it incumbent upon DOC to test every person and hold the person until the test was below .08. She wanted to bring attention to a potential change in current practice.

Senator Bishop referenced a situation in Fairbanks and asked how the potential language may have affected the outcome.

Ms. Meade clarified that she did not have a suggestion but wanted to point out that the bill made a change from "can hold them" to "have to hold them."

Senator Wielechowski asked if the provision would require DOC to test every single person who was arrested for a misdemeanor.

Ms. Meade saw that line 19 specified that DOC "shall" conduct a chemical test of a person "who is intoxicated." She supposed it would be within the discretion and judgement of the correctional office or facility to determine whether the individual fell under the terminology.

Senator Hoffman asked how many individuals would fall under the provision, and how many individuals had been released under the "may" clause.

Ms. Meade did not have the information.

Senator Hoffman thought it was important to consider how many people would be affected by the change from "may" to "shall." He thought that in the Bethel area there was overcrowded conditions in detention facilities.

[10:44:05 AM](#)

Ms. Meade had thoughts about page 37 of the bill, which discussed technical violations of probation. She thought there was probably an inadvertent drafting error. There was no longer a definition for technical petitions to revoke probation and other subsections in the provision.

Co-Chair von Imhof asked Ms. Meade if she was familiar with the provision in the Senate's version of the bill. She wondered if Ms. Meade was happier with the Senate's version pertaining to the technical violation of the caps.

Ms. Meade thought that the provision had been repealed in the Senate version. All the technical violations as discussed by Mr. Skidmore had been considered problematic by LAW and it wanted to get rid of the statute. The court did not have a position.

Ms. Meade addressed the end of the bill, and did not have a position on testing kits, or probation and parole. The

court rule amendments began in Section 96. She thought Mr. Skidmore had testified that the section would be helpful for prosecutors in grand juries. She had no knowledge of the subject as grand juries were run by district attorneys without a judge. She stated that the amendment would typically go through a court rules committee to establish recommendations for the supreme court as to whether it was an appropriate procedure. She noted that the legislature had the authority to do so with a two-thirds majority vote.

10:47:18 AM

Ms. Meade addressed Section 97 and Section 98, which had rule amendments that typically went through the criminal rules committee for consideration by the supreme court. The supreme court had a lot of interest in videoconferencing, specifically in the rules being addressed. She had worked with LAW to offer wording that might be more in keeping with the supreme court's intent. She stated that COURT did spearhead all the use of videoconferencing in the state for proceedings that took place between jails and the court and would continue to do so.

Ms. Meade addressed Section 102, which pertained to a report regarding involuntary commitments. The section did require COURT to provide to DPS information about individuals who were mentally committed since 1981. The section provided time to do so, as Ms. Meade had requested in previous testimony. She noted that the provision would create a substantial amount of work since the information was largely on microfiche. The information would be provided to DPS to put in a database so the individuals would be disqualified from gun ownership.

Senator Micciche asked about Ms. Meade's preference if the effective date was split between readily available data and microfiche data.

Ms. Meade stated that a different version of the bill had an effective date of January 1, 2011; which did not have a fiscal impact because the cases would be on Court View and the staff would be able to absorb the extra work. Between 2002 and 2011, courts were being phased into Court View. She discussed the amount of work relative to how far back in time the records went.

Senator Micciche asked for information on the impact of different effective dates.

Co-Chair von Imhof wanted to know the necessity of having records from 2010 and prior. She asked how data going back to 1982 would enhance a case.

Ms. Meade clarified that COURT had not sought the provision; but DPS wanted the information going back to 1981 and had asked for the information in the past. The information had been required starting in 2014 and COURT had provided it. Without authority, COURT would not disclose the confidential documents.

[10:51:55 AM](#)

Co-Chair von Imhof stated that the committee would resume in the afternoon to hear further testimony.

Co-Chair von Imhof wanted to address FN 18 from the Alaska Court System, OMB Component 768. The note was published May 8, 2019 for \$1,276,000. She asked if the fiscal note was updated.

Ms. Meade answered in the affirmative. She noted that LAW was seeking five new attorneys and four new staff positions. The department had also added a request for two temporary judges to cover all the new anticipated drug cases. The judges would travel the state to cover the increased workload and would need two travelling court clerks. The other part of the fiscal note covered two clerical positions to open the additional felony cases and upload information to Court View. The cost of complying with the report on mental commitments would be hiring two (range 14A) employees to look at old files.

Co-Chair von Imhof discussed the agenda for the afternoon.

CSHB 49(FIN) am was HEARD and HELD in committee for further consideration.

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ADJOURNMENT

[10:54:47 AM](#)

The meeting was adjourned at 10:54 a.m.