

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

February 6, 2019

12:04 p.m.

MEMBERS PRESENT

Senator Shelley Hughes, Chair
Senator Lora Reinbold, Vice Chair
Senator Mike Shower
Senator Peter Micciche
Senator Jesse Kiehl

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Andy Josephson

COMMITTEE CALENDAR

SENATE BILL NO. 32

"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 AND HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 32

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

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

01/23/19	(S)	READ THE FIRST TIME - REFERRALS
01/23/19	(S)	JUD, FIN
02/06/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

KEVIN CLARKSON, Attorney General Designee

Department of Law
Anchorage, Alaska

POSITION STATEMENT: Presented SB 32 on behalf of Governor Dunleavy.

NANCY DAHLSTROM, Commissioner Designee
Department of Corrections
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of SB 32.

AMANDA PRICE, Commissioner Designee
Department of Public Safety
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of SB 32.

ROBERT HENDERSON, Assistant Attorney General
Criminal Division, Central Office
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Presented the sectional analysis for SB 32.

MICHAEL DUXBURY, Deputy Commissioner
Office of the Commissioner
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 32.

ACTION NARRATIVE

[1:32:49 PM](#)

CHAIR SHELLEY HUGHES called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Kiehl, Micciche, Reinbold and Chair Hughes. Senator Shower arrived shortly thereafter.

SB 32-CRIMES; SENTENCING; MENT. ILLNESS; EVIDENCE

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CHAIR HUGHES announced that the only order of business would be SENATE BILL NO. 32, "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."

[1:33:36 PM](#)

CHAIR HUGHES asked Commissioners designee Clarkson, Dahlstrom, and Price to provide an overview and reasons for the bill. Many members have reviewed crime statistics that indicate crime is on the rise. The committee needs an update on the overall status of crime and for the departments to articulate the reasons the committee will be addressing crime with through the governor's four crime bill. These bills are intended to reduce crime and make Alaska a safer place. She remarked that this is a serious matter and the committee will deliberate on the crime bills to "get it right," which Alaskans deserve. She further acknowledged the committee must understand the changes being made given the complexity of criminal law.

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SENATOR SHOWER joined the meeting.

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KEVIN CLARKSON, Attorney General Designee, Department of Law, offered to give a broad overview of SB 32 and the reasons this bill accomplishes good things for Alaska. He said SB 32 is the first of four bills designed to reset the stage and give judges, prosecutors, and law enforcement the tools they need to respond to and address the state's rising crime trends. He said [Senate Bill 91] eliminated too many tools. Senate Bill 91 also severely limited the amount of discretion judges had when imposing a sentence. He emphasized the importance of focusing on the victim and the community and not solely on the offender and rehabilitation.

He said that Senate Bill 91 focused on reducing overall prison sentences and created systems to supervise and treat offenders in the community and not within a correctional facility. Although admirable, being focused on rehabilitation alone ignores other important sentencing goals. By Alaska Supreme Court decision, and by statute, during sentencing a trial judge considers multiple factors, including some that focused on victims and the community.

For example, judges were to consider the comparative seriousness of the offense, the prior criminal history of the offender, the need to protect the public by confining the offender, the harm incurred by the victim and the danger posed to the public, deterrence of the offender and others, the expression of community condemnation of the offense, and restoration for victims and the community. He emphasized that all of these factors were to be considered. He said that SB 32 focuses on crime, classification, and sentencing.

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ATTORNEY GENERAL DESIGNEE CLARKSON said first, SB 32 will strengthen Alaska's drug laws. Drug seizures are increasing each year and the amount of illegal drugs feeding the opioid epidemic is unacceptable. With respect to drug possession, SB 32 makes it a felony to possess the most dangerous drugs, including heroin, methamphetamine, and cocaine. This change of classification will help incentivize drug treatment, he said

He said secondly, with respect to drug trafficking, SB 32 would return the distribution of the most dangerous drugs to class A and B felonies, increased from the current class B and C felony levels established by Senate Bill 91. Further, SB 32 would remove quantity as an element of trafficking. Currently, drug traffickers can deliberately minimize the amount of drugs in their possession to avoid apprehension. He said, "If they're trafficking drugs, they're trafficking drugs." These changes will ensure that judges can impose significant periods of incarceration for those engaging in drug trafficking, he said.

ATTORNEY GENERAL DESIGNEE CLARKSON said that third, with respect to methamphetamine manufacturing and distribution, SB 32 would reenact the enhanced sentencing provisions necessary to combat the manufacture and distribution of methamphetamine in Alaska. It would also enhance sentences in situations in which methamphetamine is being manufactured in close proximity to children. This bill will strengthen Alaska's criminal code by returning all sentencing ranges to pre-Senate Bill 91 levels for felonies and misdemeanors to ensure that judges can impose the appropriate sentence under the circumstances for each case.

ATTORNEY GENERAL DESIGNEE CLARKSON said SB 32 will also create a new crime of terroristic threatening. The bill would create a generalized threat statute to enable law enforcement to act sooner when a person threatens to harm others. For example, these provisions would apply in the case of a school shooting, he said. Current law has a significant gap within it that makes it difficult to intervene before the person actually takes a substantial step to carry out the harm that the person intended.

He said that SB 32 will create a separate criminal felony offense for the unauthorized removal of an electronic monitoring ankle bracelet during pretrial or when in custody on a misdemeanor offense. The bill will make it a class A misdemeanor for a person to refuse to provide a DNA [blood or oral] sample upon arrest. This will ensure that DNA samples can be entered

into the [NCSL] DNA database and potentially solve other crimes, such as when DNA assisted prosecutors to solve the Bonnie Craig murder. It would also increase the maximum level of general probation to ensure that offenders are sufficiently monitored.

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ATTORNEY GENERAL DESIGNEE CLARKSON summarized that the governor's crime package resets the stage on criminal justice reform. He remarked that Alaskans cannot continue down the path of Senate Bill 91 with rising crime rates in all categories. The state must be responsive to the public and to the victims of crime and SB 32 is the first step in that process.

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AMANDA PRICE, Commissioner Designee, Department of Public Safety, agreed that crime rates are rising in Alaska. She said that SB 32 serves to give the department, Alaska State Troopers (AST) and law enforcement across the state the tools they need to do their job and keep our communities safer. Mr. Clarkson mentioned that SB 32 enacts a generalized threat statute, which is a critical tool for law enforcement to intervene at the inception of the real threat of harm. She said she is glad to be part of the public safety team. She offered her belief that the inter-departmental collaboration on these bills will serve to inform the committee effectively.

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NANCY DAHLSTROM, Commissioner Designee, Department of Corrections said she is pleased to be part of the public safety team. She said that SB 32 will remedy some current problems. The goal is to keep everyone safe. She said she was especially pleased that removing an electronic monitor will become a felony, which she hoped would be a deterrent.

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SENATOR REINBOLD asked for further clarification how tampering with electronic monitoring devices or not plugging them in would be handled.

ATTORNEY GENERAL DESIGNEE CLARKSON deferred to Deputy General Rob Henderson to respond.

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CHAIR HUGHES asked whether the public safety team has heard their staff express frustrations. She asked for further clarification on how this bill will help solve some issues, such

as restoring tools and resources to judges, prosecutors, and law enforcement officers.

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COMMISSIONER DESIGNEE DAHLSTROM offered her belief that the crime bills will give employees the tools to do their jobs. The proposed changes will also give first time offenders a chance to realize they have other options, that they can get help and move in a more positive direction, she said. She pointed out that correctional and parole officers have felt constrained due to weakened criminal laws.

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COMMISSIONER DESIGNEE PRICE said that troopers provide a "face" that the public responds and interacts with on a daily basis. She stated that troopers experience frustration and distress when they cannot make arrests, especially when the public expects them to do so. In those instances, the public trust is completely eradicated, she said. This not only affects communities, but it also makes it difficult for the state to hire and retain talented law enforcement officers. She was unsure if the state could link the exodus of non-retirement separations to specific bills, but anecdotally she suggested it is one factor.

She outlined aspects of SB 32 that provide strong tools for law enforcement, including the generalized threat statute. This authority will allow law enforcement to respond to threats. Further, it will give the Alaska Court System (ACS) the ability to transmit information to prohibit those with involuntary commitments from access to firearms. This transfer of information could prevent access to lethal weapons by those who may wish to harm themselves, she said. She offered her belief that these tools will improve public safety and law enforcement morale.

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ATTORNEY GENERAL DESIGNEE CLARKSON said that the combination of Senate Bill 91 and the budget cuts the Department of Law experienced in the criminal division had an impact on morale. He related his understanding that prosecutors felt constrained, that they were deprived of resources, and the "catch and release" dynamic was extremely frustrating. He said that this bill supports prosecutors with resources so they can accomplish their mission and protect the public.

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SENATOR SHOWER said he tracks the Uniform Crime Reports (UCR) and has done so for a number of years. He has twice been a victim of a crime in his own house so he can relate to people's frustration. He stated that crime has been high in Alaska for some time, that Senate Bill 91 is not the cause of much of the crime, but it has contributed to some of the spikes. For example, "catch and release" inability to prosecute, lowering felonies to misdemeanors, and misdemeanors to violations, he said. He said the bill has had an adverse impact and the mantra of the people is that the bill should be repealed. The omnibus bill was part of the downfall of Senate Bill 91, that it tried to accomplish too much too soon, and it had too many unintended consequences, he said. He asked whether the governor's four crime bills will effectively repeal and replace Senate Bill 91.

COMMISSIONER DESIGNEE DAHLSTROM said that the four bills will attack the problems and will answer the public's demands. Some good provisions in Senate Bill 91 are being retained in the process. For example, provisions that increase the sentencing time for crimes such as murder. She related that two previously passed crime bills corrected some issues and those will remain in law.

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ATTORNEY GENERAL DESIGNEE CLARKSON agreed that breaking the bills into four categories, sex offenses, pretrial and bail, classification and sentencing, and probation and parole will give the legislature and the people a more palatable package and allow them to see how the problems in Senate Bill 91 are being addressed. He agreed that Senate Bill 91 did not create all the problems. However, it was an exacerbator and it made the problems the state has been experiencing much worse.

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COMMISSIONER DESIGNEE PRICE said that the governor has never wavered from his commitment to the public, that he will seek a repeal and replacement of Senate Bill 91. She said she believes the effect of this bill and the subsequent crime bills will successfully meet that obligation.

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SENATOR MICCICHE requested that at some point the administration provide an analysis of the four bills to demonstrate to the public the specific areas that have been addressed. He said he noticed several gaps. One gap is that revoked license provisions were not changed from a violation to a crime. There may be others, too. He said that this will return drug distribution to

class A and B felonies which are pre-Senate Bill 91 levels. He asked whether the administration was looking at ways to impact some drugs, such as opioids and methamphetamines. He suggested there were two ways to negatively impact the market. One is to address demand, and the other is deterrence by reducing the supply. He asked whether the administration was open to changes to the bill to address these issues.

ATTORNEY GENERAL KEVIN CLARKSON answered yes, that these bills represent a starting point and the governor welcomes the legislature's work.

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CHAIR HUGHES provided some statistics Mr. Clarkson gave at the press conference on the crime bills. She said that between 2013 and 2017, the state saw a 34 percent increase in violent crimes, 22 percent increase in property theft, and 24 percent overall increase in crime. She said that SB 91 was at the tail end since much of it was not implemented. She cautioned that much work needs to be done, that the public needs to understand a simple repeal would still result in an upward trend on crime. She offered her belief that this bill is a good start towards a downward trend in crime.

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SENATOR MICCICHE asked for further clarification on the logic for the four crime bills.

ATTORNEY GENERAL DESIGNEE CLARKSON said they were broken into natural categories for the criminal justice system. He noted the categories of pretrial and bail services, classification and sentencing, and probation and parole. Sex offenses seemed like its own category, so it is the fourth category. He suggested that one issue with Senate Bill 91, was that it was hard to keep track of what changes were being made.

CHAIR HUGHES said it was difficult for the public and for legislators, too.

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SENATOR KIEHL asked a broad stroke question about the approach. Several members have mentioned that crime has been on the rise. He stated that in the past few years, Senate Bill 54 and House Bill 312 rolled back pieces Senate Bill 91. He referred to the fiscal note of approximately \$40 million each year. He asked what makes the administration think this approach will change things.

ATTORNEY GENERAL DESIGNEE CLARKSON said no one can guarantee that these changes will reduce crime rates. The prosecutors' experience has been that the upward crime trends are continuing. It is not simply during the timeframe of 2013-2017, but crime rates in Alaska are on the rise. The state needs to do something, the public wants something done, and rolling back to pre-Senate Bill 91 seemed appropriate. The governor has sensed that the public did not want to continue to be a Guinea pig and wait to discover if Senate Bill 91 will have the intended effects it is supposed to have. He said he thinks the state needs to act now to roll back to [pre-Senate Bill 91], and then rethink what changes need to be made.

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SENATOR KIEHL said he is not asking for guarantees, given that this deals with human behavior, but he would like some reasonable likelihood that crime will decrease. He said has no objection to spending funds if the state thinks it will reduce crime. He recalled Mr. Clarkson mentioned that Senate Bill 91 increased the penalties for violent crime and violent crimes are on the rise. The one thing the public likes less than being a Guinea pig is throwing money at a problem with no expectation that it will work. He was looking forward to any changes that need to be made to the law that will work and will drive down crime. He expressed concern that the state will just throw money at the problem. He said that will be his focus as the committee reviews SB 32 and the other crime bills.

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CHAIR HUGHES said perhaps the deputy commissioners who have been here the past few years could speak to what has happened, that it was not just anecdotal. She said that newspapers reported that some offenders were released and repeated offenses on the same day as release. She offered her belief if people are put behind bars that communities will be safer. She agreed there will be a cost to do so. The state can work to lower the recidivism rate by the things it does behind the bars, which she has discussed with Commissioner Dahlstrom. She said she believes that the state can affect positive change. No one on the committee wants to experiment with the public, and the committee intends to get this right, to have safer communities and address the crime problem, she said. Yesterday, the DPS provided data that showed a significant spike of 49 percent in vehicle theft since January 2016. That illustrates and is consistent with the outrage she has heard in her community. She asked whether he could elaborate on some of the issues hidden in this large crime

spike that SB 32 that intends to address. She suggested reviewing the current crime problem, the goal of reducing crime, and the tools that can help do so might give Senator Kiehl a little more peace of mind that this is not an experiment but is the right thing to do. For example, she pointed to the outrageous statistics on vehicle theft and asked how SB 32 would bring the statistics down.

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COMMISSIONER DESIGNEE PRICE stated that specific to vehicle theft she did not see a correlation. However, in terms of Senator Kiehl's point, she suggested that as Rob Henderson works through the bill, he will find areas that can be linked to reduction goals. She related a scenario in which law enforcement officers are constrained under current law if they encounter drug dealers carrying a couple of grams. She suggested that returning that specific drug possession to a felony will give law enforcement the leverage to identify other dealers and traffickers. She suggested that tools are inherently imbedded in SB 32. The overarching goal of SB 32 is to reduce crime. In this instance, it would reduce not only the drug deal but all of the ancillary crimes. She acknowledged his concern but suggested that this bill and others can reduce crime.

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SENATOR MICCICHE referred to vehicle theft and said that his constituents and many others have voiced concern. He offered his belief that the bill would reinstate the class C felony penalty of 0-2 years, which would increase with the second offense. He asked if the governor has considered raising the peripheral crimes related to drug trafficking to the next highest classification. He suggested that repeat offenses being increased to a class B felony or an aggravator could separate first-time offenders from those who have essentially "entered the business."

ATTORNEY GENERAL DESIGNEE CLARKSON responded that these bills are designed to be the beginning of a discussion. He said that the governor welcomes all comments and suggestions on ways to improve the bills.

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SENATOR MICCICHE acknowledged that the public has been very frustrated with plea bargaining. He directed his question to the Department of Law (DOL) and asked whether the department has a new directive for a higher standard and if it will push harder to gain a higher level of conviction on some crimes.

ATTORNEY GENERAL DESIGNEE CLARKSON answered yes. He said in discussions with Deputy Attorney General Rob Henderson and John Skidmore, Director, [Criminal Division, DOL], he has established his expectation, in particular, on sex offense cases related to plea bargains. He said he must approve any cases in which the plea bargain reduces penalties that might trigger public concern. He characterized this as setting himself up as a filter to avoid problems, such as the one encountered in the Justin Schneider case. He said that the Schneider case was principally a problem created by the law. However, the sex offense bill that the committee will consider later addresses all of the problems that arose in the Schneider case.

SENATOR MICCICHE said he did not want to argue the case. However, he said he is thrilled to hear that going forward sexual assault cases being plea bargained down must be approved by the attorney general.

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SENATOR REINBOLD provided a brief recap, that Senate Bill 64 established the Criminal Justice Commission (CJC) [when Governor Parnell signed the bill into law] in 2014. The CJC's recommendations were incorporated into Senate Bill 91, which she strongly opposed. She described the bill as a complete revision of criminal law. Alaska's criminal justice reform went beyond revisions made in California under Proposition 8. She recalled one city in California related that crime was so out of control that it could not figure out how to remedy the system.

She said due to some factors in Alaska, including the recession, and the marijuana initiative, law enforcement tools were stripped [in Senate Bill 91], and morale was deeply affected. She said that in some parameters Alaska became the most dangerous state in the nation. She expressed alarm at rising crime, such as vehicle theft. She expressed concern about parole and probation, especially early release.

SENATOR REINBOLD expressed her concern about the overall cost to the public, businesses, and the overall sense of a lack of personal safety. She offered her belief that a complete repeal of SB 91 would dramatically reduce the crime rate. She acknowledged that crime statistics in Alaska were bad prior to Senate Bill 91. However, crime has ramped up since then, she said. She asked whether repealing Senate Bill 91 would significantly empower law enforcement officers and reduce crime. She further asked if that was a true statement.

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ATTORNEY GENERAL DESIGNEE CLARKSON agreed it was a true statement. He stated that the crime bills clearly have a cost, which is why fiscal notes are attached to them. He clarified that it is a question of priorities. One of the governor's priorities is to ensure that the public does not pay the entire cost of increased crime rates, that the state undertakes the necessary cost to address the problem, and if that leads to more people in correctional facilities, so be it.

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CHAIR HUGHES acknowledged, as Senator Reinbold mentioned, the public bears the brunt of the cost of crime in the state. She recalled hearing figures estimated at \$50 million, although she was unsure if that spanned several years. She asked him to provide the estimated figures. She agreed the state will take on additional costs to keep the public safe, but that those costs would be offset by property losses and destruction currently being absorbed by the public.

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SENATOR REINBOLD said it is more than just the financial costs since people do not feel safe in their neighborhoods. She recalled one report, perhaps in the [2017 Alaska State Troopers' Statewide Drug Annual Report] that showed significant vehicle theft was to transport drugs. She asked for clarification that tightening up the drug laws will significantly improve public safety and reduce car thefts. She further asked whether a comparison between SB 32 and Senate Bill 91 can be made. She said the attorneys at Legislative Legal Services indicate they did not draft Senate Bill 91 but estimated that the current crime bills will repeal approximately 85 percent of the bill. She said she would like to know what is left of Senate Bill 91.

ATTORNEY GENERAL DESIGNEE CLARKSON responded that the DOL can provide documentation charts to identify individualized changes in specific categories so the committee can make those comparisons. He offered to provide that documentation soon.

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COMMISSIONER DESIGNEE PRICE agreed that the bills as presented will reduce crime. She acknowledged that it is not possible to make any guarantees, but it is possible to see that strengthened laws will result in fewer ancillary crimes. She said, "Drugs is without question a huge category that will have an impact on reducing other crimes." She said that addressing drugs in a

holistic and significant capacity will reduce car thefts and violent offenses.

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ATTORNEY GENERAL DESIGNEE CLARKSON, in terms of car theft, suggested that people steal vehicles for a variety of reasons, including joyriding, drug activities, or to break down vehicles and sell the parts. He related a scenario to illustrate the point. He acknowledged some correlation relates to drug activity; however, he did not think it was totally the reason. He was unsure of the amount of Senate Bill 91 being repealed. He said [the crime bills] represent the beginning of the conversation. He assured members that the governor is open to including other provisions in the [crime bills].

CHAIR HUGHES commented that these things are all related.

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SENATOR SHOWER said he heard members mention that people are frustrated. He said he would go beyond that and say that people are furious and outraged. He said his son-in-law had his truck broken into a few days ago. People do not just want some "fixes." People want Senate Bill 91 repealed and they want it done right. He agreed that throwing money uselessly at problems is not acceptable, but the cost savings to the state in the past few years has been shifted to its citizens. Citizens have their cars stolen, but they cannot get insurance reimbursements, or their private property is stolen and resold and they cannot get it back, he said. He said that monetary, psychological, and damage to families has been shifted to the citizens. He emphasized the importance of getting this right. He said he was not [in the legislature] when Senate Bill 91 was passed. However, he has heard that a Lower 48 group had pushed the process almost as a social justice reform, to try it out in Alaska. He agreed that the process of breaking the criminal justice reform into chunks was the right move. He suggested that it might be necessary to slow the bill down in order to amend it or have a longer debate in order to get this done right. He offered his desire to get this done right for the people.

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SENATOR KIEHL agreed it should be done right. He related his understanding that a series of situations occurred in which law enforcement was not able to make arrests or to "have the tool of arrest specifically." He asked for further clarification if this relates to the general threat statute or if other situations

exist in which law enforcement officers respond to situations but cannot make arrests.

COMMISSIONER DESIGNEE PRICE deferred to Deputy Commissioner Duxbury.

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MICHAEL DUXBURY, Deputy Commissioner, Office of the Commissioner, Department of Public Safety (DPS), after clarification on the question, stated that SB 32 returns drug possession charges to pre-Senate Bill 91 law and gives law enforcement the ability to arrest people on drug possession charges. More than anything, this bill gives law enforcement the same discretion that has been bumped up to prosecutors and district attorneys. He said someone could bring 2.5 grams, or 25 doses of an illicit controlled substance like heroin to the villages. He mentioned that heroin often contains fentanyl in Alaska. He characterized it as 25 individual opportunities to harm someone. However, under Senate Bill 91, the person could just receive a "ticket" for doing so.

MR. DUXBURY, in terms of showing compassion for someone with addiction, pointed out that he has been involved in drug enforcement as an investigator and supervisor. In his experience, a person possessing 25 doses of heroin, would likely save a few doses and sell the rest. However, it is possible to help someone get into treatment if the person is arrested]. He recalled a 2016 federal survey linked methamphetamine and heroin to property crimes and assaults. He offered his belief that SB 32 would give law enforcement the ability to impose sanctions on small-time dealers possessing 2.5 grams of illegal drugs to get to the strategic level of drug traffickers and also improve the quality of life for residents.

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SENATOR KIEHL asked for further clarification that under current law, law enforcement cannot arrest someone for simple possession.

MR. DUXBURY said that the possibility exists to arrest, that it is discretionary, but more often than not it does not lead to arrest. He related a newspaper account about a year ago, in which two young men were left for dead in Hatcher Pass. Both individuals would have been better off had they been arrested for the small amount of heroin in their possession since they could have received help from the court. Instead, they were given tickets and ancillary crime led them to be left for dead.

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CHAIR HUGHES appreciated the overview of the problems.

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ROBERT HENDERSON, Deputy Attorney General, Criminal Division, Central Office, Department of Law, offered to provide a sectional analysis of the bill and to reference any changes from Senate Bill 91.

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MR. HENDERSON turned to Sections 1 and 2, which read as follows:

Section 1: Clean up language. Aligns murder in the second degree when a person dies during the course of a drug deal with the changes made to the drug statutes later in the bill.

Section 2: Clean up language. Same change that is made in sec. 1 is made in sec. 2 for murder of an unborn child in the second degree.

MR. HENDERSON said these are both conforming changes that relate to misconduct involving a controlled substance in the second degree found in Section 30. He said that misconduct involving a controlled substance in the second degree is incorporated in the "felony murder rule," or murder in the second degree [AS 11.41.110(a)], and murder of an unborn child [AS 11.41.150(a)].

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MR. HENDERSON said Sections 3-10 and Sections 12-18 would repeal the automatic inflation adjustment that Senate Bill 91 created. Under Senate Bill 91, the decision to adjust the property and criminal mischief thresholds for criminal conduct was delegated by the legislature to the Alaska Judicial Council (AJC). Beginning in 2020, the AJC was obligated to issue a report every five years to adjust the property and theft thresholds. These sections would eliminate the automatic inflation adjustment, and read as follows:

Section 3 - 10: Removes inflation adjustment from property crime statutes

Section 12 - 18: Removes inflation adjustment from property crime statutes.

MR. HENDERSON said that Sections 3-10 and Sections 12-18 eliminate the automatic inflation adjustment. He explained why that happens. One problem is that it is mandatory, so it is not permissive. The AJC would issue a report based on the information on the Department of Labor & Workforce Development's inflation rate and issue a notice to the respective affected agencies, including the Alaska Court System (ACS), which would become a new element of the offense.

He said several legal issues arose. First, in its bill review letter, the DOL cautioned that this provision may have a separation of powers or improper delegation concern. Generally speaking, delegations can come from the legislature; however, the delegation must come from the executive branch and not the judicial branch. He said, "The second legal issue that we identified was a potential notice issue, to ensure that those who are impacted by this property threshold have adequate notice as to what that amount is." Third, providing adequate public participation is the final reason to remove this provision. During debate on Senate Bill 91, the legislature found that business owners want to be involved in the discussion on the amounts.

Senate Bill 91 raised the felony threshold amount from \$750 to \$1,000. Subsequently, based on public input, Senate Bill 54 reduced the felony threshold to \$750. This provision was removed from SB 32 since the felony threshold is an important public policy decision.

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SENATOR MICCICHE related his understanding that no felony threshold amount is established in current statute.

MR. HENDERSON clarified that this bill would remove the automatic inflation adjustment. Under current law, the threshold amount for felony theft in the second degree is \$750, and the automatic inflation adjustment would increase that amount every five years.

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MR. HENDERSON turned to Section 11, which read as follows:

Section 11: Defines "prior convictions" when evaluating the existence of prior convictions in the recidivist theft statutes.

He explained that Section 11 is a conforming amendment or "identified omission" to correct an error that occurred during the drafting of Senate Bill 91 and Senate Bill 54. For the purposes of considering prior convictions, this bill would add the crime of theft in the third degree, during prosecution for recidivist theft. Under current law, a person who commits the fourth offense of theft in fourth degree would be charged with theft in the third degree or a class A misdemeanor. Section 11 would add a reference to AS 11.46.140 (a)(4), theft in the third degree, as a conforming amendment.

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MR. HENDERSON referred to page 10 of SB 32, Section 19, which read as follows:

Section 19: Adds to the crime of escape in the second degree persons who are under the jurisdiction of the Commissioner of Health and Social Services for a felony and restricted to the residence then leave their residence without permission.

[2:39:05 PM](#)

SENATOR SHOWER asked for further clarification of prior convictions in Section 11.

MR. HENDERSON explained this is not a change in law, but a clarifying amendment to AS 11.46.140(a)(4), which read, "the value of the property is less than \$250 and, within the preceding five years, the person has been convicted and sentenced on three or more separate occasions ..."

He characterized it as the "recidivist death statute." This provision of law currently exists, and Section 11 would provide a clarifying amendment.

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MR. HENDERSON turned to Sections 19-20, related to amendments to the escape statutes. In response to Chair Hughes, he affirmed he already reviewed Sections 12-18 related to an automatic inflation adjustment.

[2:41:27 PM](#)

MR. HENDERSON referred to page 10, Section 19, which read as follows:

Section 19: Adds to the crime of escape in the second degree persons who are under the jurisdiction of the Commissioner of Health and Social Services for a felony and restricted to the residence then leave their residence without permission.

MR. HENDERSON explained that that under current law, a person in custody for a felony offense, who is placed on electronic monitoring and removes, tampers, or disables it would be charged with a class B felony. Section 19 would amend it to include those in custody under the jurisdiction of the Department of Health and Social Services, Division of Juvenile Justice.

[2:42:32 PM](#)

CHAIR HUGHES related her understanding that Section 20 would make removing an electronic monitoring device a class C felony. She asked for the penalty for tampering with an electronic device under Senate Bill 91.

MR. HENDERSON agreed it would be a class C felony. He explained that Section 19 relates to the crime of escape in the second degree. Pre-Senate Bill 91, the penalty for removing an electronic monitoring device while in official detention was a class B felony. However, if the person was in DOC custody for a misdemeanor, the penalty for removing the electronic monitoring device would remain a misdemeanor.

Under Section 19, the penalty remains the same for a person charged with escape in the second degree, which is a class B felony; however, it would add the Division of Juvenile Justice (DJJ) to the list covered by this provision, thereby creating a class B felony offense for those in DJJ custody for a felony. Thus, if the DJJ elected to use an electronic monitoring device for someone in custody outside a secure facility for a felony, and the person removed, tampered with or disabled the electronic monitoring device, the person would be charged with a class B felony offense. He suggested it may make more sense to review these sections together [since Sections 19, relates to escape in the second degree, and Section 20, relates to escape in the third degree. Both sections are amended to include removing an electronic monitoring by those in DJJ custody].

MR. HENDERSON referred to Section 20, which read as follows:

Section 20: Makes it a class C felony to remove an electronic monitoring device or leave a person's residence while under official detention for a

misdemeanor regardless if under the jurisdiction of the Department of Corrections or the Department of Health and Social Services. Also makes it a class C felony if the person is on conditions of release before trial and ordered to electronic monitoring or house arrest by the court and the person removes the electronic monitoring device or leaves one's residence without permission.

He reviewed Section 20, which would amend [AS 11.56.320 (a)] to add the crime of escape in the third degree, which is a class C felony offense. This would elevate the crime of cutting an electronic monitoring device for a person under detention for a misdemeanor crime to a class C felony. Under current law, a person charged with a misdemeanor who tampers with an electronic monitoring device would be charged a misdemeanor. Further, this provision would create a new offense for removing, tampering with, or disabling an electronic monitoring device while on bail, he said.

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SENATOR SHOWER related his understanding that the Division of Pretrial Services would be dismantled. He asked whether this language has been matched so a gap does not exist.

MR. HENDERSON answered yes. He recalled that SB 34 removed the Division of Pretrial Services (DES); however, that authority is being shifted to the Division of Probation and Parole (DPP). He affirmed that the DOC would still have the ability to use tools such as the electronic monitoring devices. Section 20 of SB 32 would elevate the crime of tampering with an electronic monitoring device to a class C felony for persons incarcerated, whether they are incarcerated at a private facility, the DOC, or DJJ. In further response, he agreed it would apply to all facilities.

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SENATOR KIEHL asked for clarification on the reason to elevate a bail issue [under AS 11.56.320 (a)(4), which adds language "while on release under AS 12.30"] to a felony offense and if this is consistent with how bail issues are handled.

MR. HENDERSON answered that it is to provide incentives for the DOC and private companies to use electronic monitoring devices in lieu of incarceration. This provision would also establish a significant consequence and sanction to meet the goal of deterrence, he said. This gives someone who is incarcerated an

opportunity to be on electronic monitoring, but it would provide deterrence by adding a new criminal offense if the person removes, tampers with, or disables the device. In further response, he offered to cover violating conditions of release and failure to appear later.

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SENATOR MICCICHE related his understanding that currently the DOC cannot locate about 30 percent of those on pretrial release. He wondered why the bill does not match felony to felony; for example, if a person charged with a class B felony skips town, the person would only be charged with a class C felony. He wondered why the penalties were not linked to the original felony charge.

MR. HENDERSON responded that the administration sought to find a balance. He related that post-sentencing a class B felony offense has a maximum penalty of 10 years, and a class C felony has a maximum penalty of 5 years. He related his understanding that Senator Micciche's question referred to, for example, whether someone on bail for an assault in the first degree, a class A felony, should be charged a class A felony for a bail offense. He said that is a policy call for the legislature to make.

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At-ease.

2:53:29

CHAIR HUGHES reconvened the meeting. She asked Mr. Henderson if he would like to make any comments.

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MR. HENDERSON said the next section touches on failure to appear and violating conditions of release. He offered to take it up at the next scheduled meeting.

[SB 32 was held in committee.]

[2:54:56 PM](#)

CHAIR HUGHES gave committee announcements.

[2:55:12 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 2:55 p.m.