

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 8, 2019

1:32 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Mike Shower

**OTHER LEGISLATORS PRESENT**

Representative Andy Josephson  
Representative Knopp

**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)
02/06/19	(S)	Heard & Held
02/06/19	(S)	MINUTE(JUD)
02/08/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

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

**POSITION STATEMENT:** Presented a sectional analysis for SB 32.

**ACTION NARRATIVE**

[1:32:37 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, Reinbold, and Chair Hughes. Senator Micciche 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."

**SENATOR MICCICHE** joined the meeting.

**CHAIR HUGHES** reviewed committee action on SB 32. The committee heard an introduction of the bill on 2/6/19 and Mr. Henderson reviewed the sectional analysis of the bill through Section 20.

She remarked that during these hearings the committee will not consider amendments to the bill. After consulting with legislative ethics and counsel, in accordance with AS 24.60.030, it has come to her attention that she may have an indirect conflict on this legislation. She said she is working to ensure that the public is heard, and the integrity of this legislative process is above reproach.

**CHAIR HUGHES** recognized that Representatives Knopp and Josephson have joined the meeting.

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**ROBERT HENDERSON**, Assistant Attorney General, Criminal Division, Central Office, Department of Law, reaffirmed the goal of SB 32 is to return discretion to prosecutors and judges to ensure that

adequate sentences are allowed under the law, and to allow judges to impose sentences when necessary. He related that the Department of Law (DOL) found that Senate Bill 91 had significantly focused on the rehabilitation of the offender with less focus on the victim and the community. He said that is contrary to the sentencing criteria that prosecutors must follow. This bill also focuses on other sentencing criteria, including the seriousness of the offense, restoration of the victim, and reaffirmation of societal norms. That does not mean that rehabilitation is not important since it will always remain an important factor. However, it cannot be the only factor that is considered, he said.

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MR. HENDERSON continued the sectional analysis of SB 32. He referred to Sections 21-22 of the sectional analysis which read as follows:

Section 21: Clean up amendment for change that occurs in section 22, making failure to appear a crime.

Section 22: Removes 30-day grace period for defendants during which it was not a crime to fail to show up for a hearing. Under current law, it is not a crime to fail to appear for a court hearing unless the person goes 30 days or longer without making contact with the court or fails to appear with the intent being to avoid prosecution. This section removes both of those limitations.

MR. HENDERSON referred to page 12 of Section 21, which is a conforming amendment that makes a failure to appear a criminal offense.

He said that Section 22 would amend the crime of failure to appear for those on release on bail. Senate Bill 91 made failure to appear a violation, punishable by a \$1,000 fine unless the offender absconded for more than 30 days. After reviewing Section 22, he added that the penalty for failure to appear would be a class C felony if the person is on conditions of release for a felony and the penalty would be a class A misdemeanor if the person is on conditions of release for a misdemeanor.

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MR. HENDERSON turned to Section 23 of the sectional analysis for SB 32, which read as follows:

Section 23: Amends the crime of violating conditions of release which relates to conditions imposed by the court on persons on pretrial release. This section makes it a class A misdemeanor for a person to violate their conditions of release if they are on release for a felony and a class B misdemeanor if they violate while on conditions for a misdemeanor.

MR. HENDERSON reviewed Section 23 and added that Senate Bill 91, as amended by Senate Bill 54, made all violations of conditions of release for persons on pretrial release a class B misdemeanor, punishable by up to five days in jail.

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SENATOR REINBOLD asked for further clarification on whether Sections 22-23 would revert to pre-Senate Bill 91 law.

MR. HENDERSON agreed that Section 22 related to failure to appear and Section 23 related to violating conditions of release, which would repeal the penalty provision and revert to pre-Senate Bill 91 law.

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MR. HENDERSON further explained that Section 23 would amend the crime of violation of conditions of release. He said that Senate Bill 54, which amended Senate Bill 91, made all violations of conditions of release for persons on pretrial release a class B misdemeanor punishable by up to five days in jail.

He said that [Section 23] would amend the kinds of violations of conditions of release to make it a class A misdemeanor if the person violates the conditions of release for a felony. It would make it a class B misdemeanor if the person violates the conditions of release for a misdemeanor.

MR. HENDERSON turned to the sectional analysis for Section 24, which read as follows:

Section 24: Makes it a class A misdemeanor to refuse to provide a DNA sample when arrested for a qualifying offense. Under current law, those arrested for a qualifying offense must provide a DNA sample for inclusion in a DNA database. However, there is no enforcement mechanism. This section adds that enforcement mechanism.

This section would amend the crime of violation of condition of release to a class A misdemeanor if the person violates a condition of release for a felony. It would make it a class B misdemeanor if the person violates a condition of release for a misdemeanor. In response to Senator Reinbold, he clarified that Section 23 of SB 32 would make it a class A misdemeanor if the person is released on bail for a felony and a class B misdemeanor if the person is released on bail for a misdemeanor. Although he could not currently access the 2014 statutes to confirm the pre-2016 law, he recalled that this provision will revert the penalty provisions to pre-Senate Bill 91 and pre-2016 law.

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CHAIR HUGHES acknowledged that the sentiment in her office is that Mr. Henderson is correct. She asked him to verify the penalty provisions to be certain.

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SENATOR KIEHL asked for further clarification on the rationale for this change. He said that a condition of release lists what the person cannot do while on bail for the original offense. He said the goal is for the offender to behave well during the transition period into the community in order to become a functional member of society. He asked for further clarification whether the penalty provision under Senate Bill 54 for violating a condition of release is to return the offender to prison under the original sentence.

MR. HENDERSON answered that if a person violates a condition of release while on bail, the court has the authority to revoke the bail and impose a new bail on the underlying offense. Violating of a condition of release means a new criminal charge can be added for not following the court's order, he said. He characterized it as a new sanction. This section provides additional incentive for the offender so the person knows that a consequence will be added if the person does not follow the bail order. In further response to Senator Kiehl, he agreed that this would relate to "pre-conviction" bail.

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SENATOR KIEHL asked whether stacking additional criminal charges might interfere with dealing with the original offense. When a person faces charge after charge being stacked up, the person could plead to whatever seems easiest. He expressed concern that prosecutors would not have the ability during sentencing to appropriately deal with the underlying offense.

MR. HENDERSON responded that prosecutors always have the ability to advocate for the appropriate sentence for the underlying criminal offense. In fact, that charge is separate and distinct from the violation of a condition of release. He agreed that sometimes violating a condition of release may be joined to the underlying offense for the purposes of trial or resolution. However, sometimes "violating conditions of release" can be charged separately and result in a separate case number.

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SENATOR KIEHL acknowledged that his experience may be limited, and he may lack the appropriate perspective. He said he would welcome a discussion on that topic.

MR. HENDERSON welcomed further discussions. He said that resolving cases is fact dependent and case specific.

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SENATOR MICCICHE related his understanding that in terms of "violating conditions of release," that this bill is a full repeal of Senate Bill 91. The reason for "the stick" is that the person is out on release "with a deal." The person is released pre-trial if the person meets certain conditions, and the person faces consequences when the requirements are not met.

MR. HENDERSON agreed.

SENATOR MICCICHE said that the consequences are reasonable ones, scaled specifically to the original crime.

MR. HENDERSON agreed.

SENATOR MICCICHE offered his belief that this is a reasonable approach. He surmised this might be what has been missing, and it may highlight why the public was so upset about the direction taken in [Senate Bill 91].

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SENATOR REINBOLD expressed her concern. She said she reviewed a pre-Senate Bill 91 chart that showed the penalties for violating conditions of release. She related that pre-Senate Bill 91, violating conditions of release was a class A misdemeanor if the underlying crime was a felony. She expressed concern that under the bill the penalty is only a misdemeanor. Further, the penalty is a class B misdemeanor if the underlying offense was a misdemeanor. She said if her memory serves her correctly, the

pre-Senate Bill 91 penalty for class A misdemeanors would result in 0-365 days in jail, and for class B misdemeanors would result in 0-90 days. Under Senate Bill 91, the penalty for misdemeanor offenses was reduced to 0-10 days for class B misdemeanor offenses and 0-30 days for class A misdemeanor offenses. She asked whether that is correct.

MR. HENDERSON answered that is correct. He said he would like the record to be clear. He said Senate Bill 91 reduced the penalty for class B misdemeanors from 90 days to 10 days. Senate Bill 91 also reduced the penalty for class A misdemeanors from 365 days to 30 days, absent aggravating factors or certain offenses.

SENATOR REINBOLD expressed concern that Senate Bill 91 dramatically reduced the penalties for class A and class B misdemeanors. She elaborated on the effects of Senate Bill 54.

CHAIR HUGHES interjected that she would like to focus on SB 32. In further response to Senator Reinbold, she asked to focus on SB 32 and not Senate Bill 54.

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SENATOR KIEHL referred to Section 22 and asked for the rationale for the law being repealed.

He referred to [page 12, lines 21-25 of SB 32] and the language being deleted, "(A) DOES NOT MAKE CONTACT WITH THE COURT OR A JUDICIAL OFFICER WITHIN 30 DAYS AFTER THE PERSON DOES 24 NOT APPEAR AT THE TIME AND PLACE OF A SCHEDULED HEARING; OR."

SENATOR KIEHL asked whether this language might rob the court of its discretion if someone on bail inadvertently made a mistake; for example, if the person overslept. He asked whether this would give the person an incentive to skip town.

MR. HENDERSON said that is a great question; however, that circumstance is already covered. He referred to current law, AS 11.56.730 (b), which provides an affirmative defense for failure to appear when unforeseeable circumstances outside the person's control prevented the person from appearing before court or a judicial officer for the scheduled hearing. The person must contact the court orally and in writing immediately upon being able to do so. He stated that this defense remains in law under SB 32. It also existed in pre-Senate Bill 91 law. The scenario Senator Kiehl described is not covered under Section 22, he said.

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MR. HENDERSON reviewed Sections 24-25 of the sectional analysis, which read as follows:

Section 24: Makes it a class A misdemeanor to refuse to provide a DNA sample when arrested for a qualifying offense. Under current law, those arrested for a qualifying offense must provide a DNA sample for inclusion in a DNA database. However, there is no enforcement mechanism. This section adds that enforcement mechanism.

Section 25: Clarifies that refusing to provide a DNA sample after conviction, as a part of a person's sentence, or because the person is required to register as a sex offender or child kidnapper, is a class C felony.

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CHAIR HUGHES related her understanding that this goes beyond a repeal since it would add a tool not previously available.

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SENATOR KIEHL asked whether existing law would allow a judge to order a DNA sample from a person who refuses to provide one. He asked whether any mechanisms exist without the bill.

MR. HENDERSON said that the court could hold someone in contempt until the person provided the DNA sample. He said that the Court of Appeals has held that the prosecution does not have the authority to file contempt charges, that only the court can authorize the charge. However, it would be a very inefficient mechanism and way to obtain DNA samples, he said. Creating the enforcement mechanism to require a DNA sample upon arrest provides law enforcement with the necessary tools to obtain the DNA sample through a new criminal offense, he said.

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SENATOR KIEHL asked if the reason for this is to catch "cold cases."

MR. HENDERSON answered yes, that is exactly the reason. The DNA database or Combined DNA Index System, known as CODIS, is a powerful law enforcement tool. It has allowed law enforcement the ability to get the DNA into the system as quickly as possible, which protects the public "downstream."

CHAIR HUGHES asked whether he would characterize this as closing a loophole. She asked whether this was something that perhaps was overlooked.

MR. HENDERSON agreed that Sections 24-26 close the gap or loophole.

[1:54:12 PM](#)

SENATOR MICCICHE asked whether the required submittal of DNA sample and charge for refusal has passed constitutional muster in the U.S.

MR. HENDERSON said he was unsure if it has been challenged in Alaska, but it is a tool used throughout the country. He characterized the CODIS database as a robust system. He said he has confidence that the constitutionality of this provision would be upheld. He could not specifically recall if it has already been upheld.

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CHAIR HUGHES asked Mr. Henderson to follow-up on this and he agreed to do so.

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SENATOR MICCICHE agreed it provides a powerful tool. He expressed concern about Alaskans' rights to privacy since that has not been adequately defined. He was just curious if any case law exists to address this.

MR. HENDERSON said that there are several reasons it would not violate a person's privacy. He said the qualifying offenses are very specific and unique. The two offenses are crimes against a person, and felony DUI offenses, he said. Protections were added to address people who are acquitted or when the court dismisses the charges. In those instances, the DNA is removed from the system, he said. He characterized this as the balance between the need to ensure that the public has necessary information and helping to solve cold cases.

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SENATOR REINBOLD said that people involved in criminal activity lose some of their rights. She said this provision will help to ensure speedy trials and avoid wrongful convictions. This is an important tool for law enforcement, she said.

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SENATOR KIEHL asked for further clarification whether this includes 100 percent of felonies and any crime against a person.

MR. HENDERSON referred to AS 44.41.035 (b), which read, "The Department of Public Safety shall collect for inclusion into the DNA identification registration system a blood sample, oral sample, or both, from (1) a person convicted in this state of a crime against a person or a felony under AS 11, AS 26.05, or AS 28.35, ...."

He also read AS 44.41035 (b) (6): a person arrested for a crime against a person or a felony under AS 11, AS 26.05, or AS 28.35, ...." He agreed that it was any crime against a person, including misdemeanor domestic violence offenses, any felony, and felony DUI.

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SENATOR KIEHL noticed that in Sections 25-26 the penalty for refusing to provide a DNA sample is sometimes a felony and in other cases is a misdemeanor. He asked him the reason for the difference.

MR. HENDERSON said that Section 25 makes refusing to provide a DNA sample a class C felony if convicted and Section 26 makes it a misdemeanor if arrested. Again, this provides balance, he said. If you fail to provide a DNA sample upon arrest, the penalty is a misdemeanor. The penalty for failure to provide a DNA sample upon conviction is a class C felony, which is also current law.

MR. HENDERSON referred to Section 26, which read as follows:

Section 26: Classification section. Classifies the crime of violating an order to submit to DNA testing upon arrest is a class A misdemeanor.

He said this provides an enforcement mechanism specific to arrest.

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SENATOR MICCICHE said he supports the collection of DNA evidence. However, he would like to be certain that this provision is constitutional.

MR. HENDERSON offered to provide an answer to the committee.

2:01:37 PM

MR. HENDERSON turned to Section 27 of the sectional analysis for SB 32, which read as follows:

Section 27: Enacts a generalized threat statute to cover when an individual threatens to commit a serious crime which reasonably places another person in fear. Covers real threats of violence and not simply false threats.

MR. HENDERSON said this adds a new provision that is not related to Senate Bill 91. He explained that this focuses on the effect of the threat, not on its falseness. The prior law related to terroristic threatening was designed and implemented as an aggravated form of making a false report. Under current law, terrorist threatening is only a crime if the threat is false. This changes it to add both real and false threats.

[2:02:46 PM](#)

CHAIR HUGHES asked whether the prior law made it a crime if the threat was imminent or if it was false.

MR. HENDERSON explained that under the crime of assault in the fourth degree, which is misdemeanor assault, the person makes a threat if the person places someone in fear by words or conduct. However, if the words or threat has an immediacy component to it, under the crime of terrorist threatening, the threat had to be false. This fixes that by creating a new offense that would criminalize a generalized threat.

He explained that these types of generalized threat statutes allow law enforcement to intervene for reports of threats involving a school shooting, or some type of catastrophic event, such as a bomb threat. In those instances, law enforcement can take immediate action and not wait until the threat is imminent or the person has taken a substantial step. These generalized threat statutes have been upheld nationwide, because the person's actions recklessly placed someone in fear of serious physical injury, which does not infringe upon someone's first amendment rights.

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CHAIR HUGHES said she understood the intent. She wanted to ensure that this language does not extend the crime of terroristic threatening to a situation in which two people are in a bar fight and one of them threatens the other. She referred to page 13 under Section 27, paragraph (1), subparagraphs (A)-(D), are joined by "or." She referred to page 13, line 29 to AS

11.56.810(a)(1) (A), which read, "placing a person in reasonable fear of serious physical injury to any person..." She asked whether any confusion would happen, such that the person in the bar would be charged with terroristic threatening.

MR. HENDERSON agreed that the new crime of terroristic threat is not designed to capture the conduct she just described. The conduct of a person in a bar who threatens to assault someone would fall under the current assault statutes. This language is limited since it would place the person in reasonable fear of serious physical injury. He explained that the term "serious physical injury" has a specific definition under the law and is not just any injury. It must be a substantial injury that would interfere with bodily functions, such as being shot, with severely damaged body parts.

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CHAIR HUGHES acknowledged that if someone in a bar had a gun the crime would be clear. However, what if the person in the bar was strangling someone. She suggested that perhaps the committee needs to better understand the definition for "serious physical injury." She wanted to be sure that this language does not cast too wide a net.

MR. HENDERSON related his understanding that a factual scenario exists that could capture a person in terrorist threatening and not the assault statutes. However, the criminal division would be looking at the specific intent of the language when charges are filed. The DOL is not trying to criminalize every potential bar fight, but to provide law enforcement the necessary tools to intervene with safety threats.

CHAIR HUGHES said she wanted to have this on the record to be sure the intent is clear. She acknowledged that law enforcement would likely realize the intent and distinction.

[2:08:49 PM](#)

SENATOR KIEHL asked for further clarification on Mr. Henderson's comments on the language for false threats.

MR. HENDERSON said that in the commentary to current law, terroristic threatening is referred to as an aggravated form of making a false report.

SENATOR KIEHL asked whether the benefit of switching it to terroristic threatening would be to make it a more serious

offense. He asked whether terroristic threatening in the second degree would be more serious than an aggravated false report.

MR. HENDERSON said it would be the same level of offense with a class C felony penalty. The goal is to create a statute that ensures a crime covers the threat when it is real as opposed to when it is false, he said. One of the necessary elements of the current law is that the threat has to be false. For example, if a person says, "I'm going to blow up the school tomorrow" and it is just a joke, that would be covered. However, if the person has an intent to follow through with it, it is not currently covered in the criminal code. This provision is necessary, so the state has the ability to stop that activity from happening.

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SENATOR MICCICHE said that the reason for AS 11.56.810(a) is key. The language is almost verbatim, including the "or." This language would essentially change the statute from making a false report to committing the crime of terroristic threatening. He related his understanding that previously, the statute required that it be a false report and under [proposed Section 27] it can be either, so long as that threat is communicated.

MR. HENDERSON answered that is correct.

[2:11:16 PM](#)

MR. HENDERSON turned to Section 28 of the sectional analysis, which read as follows:

Section 28: Makes the crime of disorderly conduct a class B misdemeanor punishable by not more than 10 days.

MR. HENDERSON said that this would return disorderly conduct to a class B misdemeanor, punishable up to 10 days in jail. Under Senate Bill 91, the maximum penalty for district court was 24 hours. This returns discretion on disorderly conduct cases to the court and prosecution, he said. In response to a question, he clarified the penalty.

[2:12:11 PM](#)

MR. HENDERSON offered to cover each section separately but highlighted that Sections 29-37 collectively return the drug laws to pre-Senate Bill 91 law. He referred to a matrix in members' packets. He said that two specific aspects of the matrix will be relevant to this conversation, which are drug possession and distribution.

[2:13:12 PM](#)

MR. HENDERSON turned to Section 29 of the sectional analysis, which read as follows:

Section 29: Reenacts class A felony level crime for the distribution of schedule IA controlled substances (heroin) and making methamphetamine.

MR. HENDERSON explained that this relates to distribution of any amount of a schedule IA controlled substance, which includes opioids and opioid derivatives such as heroin, fentanyl, and morphine. It would also return the manufacture of methamphetamine to a class A felony offense. He explained that Senate Bill 91 moved the manufacture of methamphetamine from a class A felony to a class B felony offense.

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MR. HENDERSON read Section 30, which read as follows:

Section 30: Renames AS 11.71.030, misconduct involving a controlled substance in the second degree to misconduct involving a controlled substance in the third degree. Amends the statute to include manufacturing or distribution of any amount of a schedule IIA or IIIA controlled substance. Also repeals section of law regarding the delivery of 1g or more of a schedule IA controlled substance or 2.5 grams or more of a schedule IIA or IIIA controlled substance as the amendments in the bill focus on the type of drug being distributed and not necessarily the amount.

He added that schedule IIA controlled substances includes dangerous stimulants, including cocaine, methamphetamine, LSD, and PCP, and mushrooms. The schedule IIIA controlled substances are anabolic steroids, and depending on how it is manufactured, includes Spice [synthetic cannabinoids]. It also repeals Section 30, pages 16-17 of law for the distribution of one gram or more of a schedule IA controlled substance or 2.5 grams of a schedule IIA or IIIA controlled substance.

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CHAIR HUGHES asked for further clarification and acknowledged she might be getting "into the weeds." She referred to Section 29, which relates to a class A felony for distributing and manufacturing schedule IA controlled substances. She referred to

page 17, to Section 30, [AS 11.71.030](a), which relates to misconduct involving a controlled substance in the third degree and relates to manufacturing schedule IA controlled substances. She asked whether this is a smaller amount of drugs or to otherwise explain the difference.

MR. HENDERSON said he would explain each subsection of Section 30. He said that most of the current language in AS 11.71.030(a) will be repealed by Section 51. What will remain is the distribution of any schedule IIA or schedule IIIA controlled substance, the distribution of any schedule IVA, VA, or VIA drugs to a person under the age of 19, or possession near a school.

He referred to the language related to the manufacture, delivery, or possession with intent to manufacture or deliver schedule IA controlled substances. He directed attention to page 16, Sec. 30, to AS 11.71.030(a)(1)(A), which read, "one or more preparations, compounds, mixtures, or substances of an aggregate weight of one gram or more containing a schedule IA controlled substance;" and said that is repealed in Section 50. He related that subparagraphs (B), (C), and (D) of Section 30 are also repealed.

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CHAIR HUGHES asked why the repealed language is not shown in Section 30.

MR. HENDERSON explained that this was a bill drafting decision to include the repealed language together. He offered to further explain. In further response, he stated it is standard drafting protocol to group the repealed language.

[2:18:05 PM](#)

SENATOR MICCICHE asked the department for a markup version that shows the effect of the repealed language in the body of the bill.

CHAIR HUGHES agreed it would be helpful.

[2:18:41 PM](#)

CHAIR REINBOLD suggested that color coding could help and elaborated on her request.

[2:19:25 PM](#)

MR. HENDERSON agreed to provide a marked-up version.

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At-ease.

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CHAIR HUGHES reconvened the meeting.

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MR. HENDERSON reviewed the repealed provisions in Section 30. He said that [AS 11.71.030] (a) (1) is repealed in Section 50; that [AS 11.71.030] (a) (4), related to the manufacture of methamphetamines, has been repealed since it was moved to a class A felony. On page 17, [AS 11.71.030] (a) (6), possession of a listed chemical with intent to manufacture methamphetamine was repealed and moved to misconduct involving a controlled substance in the second degree. On page 18, [AS 11.71.030] (a) (7), possess methamphetamine in an organic solution, and [AS 11.71.030] (a) (8), [related to delivery of methamphetamine] were both repealed.

He said that new language was added related to distribution of a schedule IIA controlled substance or schedule IIIA controlled substance in [AS 11.71.030] (a) (9), which read as follows:

**(9) under circumstances not proscribed under AS 11.71.021(a)(2) (6), manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver.**

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MR. HENDERSON read Sections 31-32 of the sectional analysis of SB 32, as follows:

Section 31: Conforming amendment to the changes made in section 30.

Section 32: Makes the possession of any amount of a schedule IA (heroin) or IIA (methamphetamine, cocaine, PCP, etc.) controlled substance and various amounts of IIIA, IVA, and VIA controlled substances a felony.

He said that the language in paragraphs (1) and (2) are unchanged, but paragraph (3) is new language that reinstates a felony for possession of any amount of these very dangerous drugs.

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SENATOR MICCICHE asked for further clarification [on marijuana possession]. He has received calls from licensed marijuana businesses. He asked for further clarification that licensees possessing legal amounts of marijuana and growing legal quantities of marijuana are not covered by [Section 32].

MR. HENDERSON answered that he is absolutely right. He explained that AS 11.71 deals with unregulated or illegal marijuana and does not touch upon or reach into AS 17.38, related to the regulated marijuana industry.

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SENATOR MICCICHE asked whether the full repeal also includes a full repeal of the sentencing changes, such that the class A felony and class B felony for distribution goes back to the pre-Senate Bill 91 sentencing guidelines.

MR. HENDERSON answered that is correct.

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SENATOR REINBOLD offered her belief that the committee agrees and is working together on this issue. She said she thought this was the most important crime bill. She related that prosecutors and victims have identified this as one of the core problems. She described the cycle of drug use that leads to burglary, robbery, assault, or even homicide. She remarked that this bill is so important and urged giving law enforcement these tools.

[2:25:50 PM](#)

MR. HENDERSON said that Senator Reinbold made a very important point and one of the things this bill does is to reprioritize prosecution and interdiction of drug offenses, which is what is seen throughout this bill.

MR. HENDERSON continued his sectional analysis of SB 32. He reviewed Sections 33-34, which read as follows:

Section 33: Conforming amendment to the changes made in section 32.

Section 34: Removes possession of most dangerous controlled substances from the crime of misconduct involving a controlled substance in the fifth degree, as those possessory crimes would be a class C felony under the bill.

He said Section 34 reinstates the prior misconduct involving a controlled substance in the fifth degree, which is a class A misdemeanor. This would move possession of the most dangerous drugs, such as heroin, methamphetamine, and cocaine from a misdemeanor level [to a class C felony].

[2:26:43 PM](#)

MR. HENDERSON reviewed Sections 35-36 of the sectional analysis, which read as follows:

Section 35: Renames AS 11.71.060 "misconduct involving a controlled substance in the sixth degree" to conform with the changes made to the drug offense statutes.

Section 36: Conforming amendment to statute prohibiting prosecution of individuals who seek medical or law enforcement assistance for a person who is overdosing.

He stated that Section 35 will return to the 2016, pre-Senate Bill 91 law. He said that Section 36 relates to the "Good Samaritan Law" in Alaska, which prohibits the prosecution of individuals for certain drug offenses when an individual seeks medical or law enforcement intervention.

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CHAIR HUGHES remarked that Mr. Henderson has gotten through the drug classification changes. She summarized that pre-Senate Bill 91 had six degrees, that Senate Bill 91 changed that to five degrees, and SB 32 would bring it back to six degrees.

MR. HENDERSON answered that is correct. He said that everything moved down one, except for the unclassified misconduct involving a controlled substance in the first degree.

[2:27:59 PM](#)

SENATOR MICCICHE asked for further clarification on the drug possessions. He related his understanding that the penalties returned to a class C felony and a class A misdemeanor. He asked whether the section has been retained that allows for a suspended sentence to provide a treatment plan for a first-time offender. He said this would help the person turn around his/her life.

MR. HENDERSON answered that Senator Micciche is absolutely correct. He related this provides several tools. The department has always had a suspended imposition of sentence (SIS), but the

[criminal justice system] will also have a suspended entry of judgment (SEJR), which is a sentence agreement for those who complete treatment and the judgment is never entered, and the conviction will not stand.

[2:29:02 PM](#)

MR. HENDERSON turned to Section 37 of the sectional analysis, which read as follows:

Section 37: Increases the maximum period of probation for felony sex offenses from 15 years to 25. Also increases the maximum period of probation for any other offense to 10 years.

MR. HENDERSON elaborated that Senate Bill 91 limited the length of time for probation, depending on the offense and conviction. This section would return that discretion to the court and allows the court to place someone on probation for the length of time necessary, based on the judge's judgment as to what would be an appropriate length of probation.

[2:29:49 PM](#)

CHAIR HUGHES asked for further clarification on whether this section would apply to those sentenced during the period that Senate Bill 91 was in effect or if those parties would receive shorter probation periods.

MR. HENDERSON said that would relate to the applicability sections. The criminal penalties that would govern the criminal conduct would be what existed at the time the person committed the offense.

CHAIR HUGHES asked for the current probation time.

MR. HENDERSON answered that the 2016, pre-Senate Bill 91, felony sex offenses were up to 25 years of probation and all other offenses were 10 years. Under the current law, felony sex offenses has a maximum probation term of 15 years, felony crimes against a person has a maximum probation term of 10 years, and felony non person crimes has a maximum probation term of five years, and misdemeanor person crimes has a maximum probation term of three years, and misdemeanor DUI has a maximum probation term of two years, and all other misdemeanors have a one year term.

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SENATOR REINBOLD remarked that this section is so important.

[2:31:33 PM](#)

SENATOR MICCICHE referred to drug distribution. He said that in the next committee of referral, he may be interested in an escalator on the maximum felony sentencing for certain quantities of distribution. He asked whether the department could assist him on proposed language.

MR. HENDERSON said that if Senator Micciche has questions as to the impacts of sentencing enhancements, that the department would be available to help.

[2:32:29 PM](#)

SENATOR KIEHL asked whether he could give an example of a misdemeanor that needs 10 years of probation.

MR. HENDERSON answered yes. He related a scenario for a theft case, when the restitution is outstanding. The alternative is to have the restitution judgment become a civil judgment that the victim must execute. In that instance, the victim would not have the benefit of the criminal justice system. He said it may be important to keep the person on probation to ensure that the restitution is met. In other circumstances, a person may need a longer period of time to meet the conditions of probation. He pointed out that these are maximum terms, but this allows the court the discretion to make those decisions.

SENATOR KIEHL recalled sentencing has a whole series of aggravators. He asked whether those apply to probation.

MR. HENDERSON answered no.

[2:34:22 PM](#)

MR. HENDERSON turned to Sections 38-40, which read as follows:

Section 38 - 40: Enhanced sentences for making methamphetamine around children or engaging children in the sale of methamphetamine are reenacted. Also increases the presumptive sentencing ranges for class A, B, and C felonies.

Felony Level	Current Law	SB 32
Class A	First Felony: 3-6 (20 max) Second Felony: 8-12 (20 max) Third Felony: 13-20	First Felony: 5-8 (20 max) Second Felony: 10-14 (20 max) Third Felony: 15-20

	(20 max)	(20 max)
Class B	First Felony: 0-2 (10 max) Second Felony: 2-5 (10 max) Third Felony: 4-10 (10 max)	First Felony: 1-3 (10 max) Second Felony: 4-7 (10 max) Third Felony: 6-10 (10 max)
Class C	First Felony: 0-2 (5 max) Second Felony: 1-4 (5 max) Third Felony: 2-5 (5 max)	First Felony: 0-2 (5 max) Second Felony: 2-4 (5 max) Third Felony: 3-5 (5 max)

MR. HENDERSON said that this would return the presumptive sentencing to pre-Senate Bill 91. He suggested that Senate Bill 91 moved the ranges down one level. He explained presumptive sentencing. When someone commits a felony offense their sentence is dictated by two factors, one is the classification of the offense, such as an unclassified class A, B, or C felony. Secondly, the person's criminal history is considered, which gives a range of sentencing. In order to go above or below the range, the court must find an aggravator or a mitigator, depending on the circumstances of the case.

He said that Section 38 would adjust all the presumptive sentence ranges for class A felony back [to pre-Senate Bill 91]. He explained that this includes both the range itself and what is often considered special circumstances, such as when a person commits a class A felony and possessed a firearm, used a dangerous instrument, or caused serious physical injury. In those instances, the person would face a higher presumptive sentence range. He directed attention to language on page 25 of SB 32, which returns the enhanced penalty for making methamphetamine in the presence of children. This returns the presumptive sentence penalty to a range of seven to 11 years.

[2:36:33 PM](#)

MR. HENDERSON turned to Section 39 of the sectional analysis, which returned the sentencing ranges for all class B felony offenses to pre-Senate Bill 91, along with the return of the enhanced sentencing provisions for class B felony offense for someone attempting to make methamphetamine around children.

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MR. HENDERSON turned to Section 40 and stated this would return the presumptive ranges for class C felony offenses. He pointed out that Senate Bill 91 made the presumptive sentence range for

a first-time class C felony offense a presumptive probationary term of 18 months. That was amended to 0-2 years in Senate Bill 54. He directed attention to Section 40 on page 26, of SB 32, which leaves that change in since it was pre-Senate Bill 91 language. Again, that goes back to the 2016 pre-Senate Bill 91 law, he said.

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SENATOR MICCICHE asked whether a 20-year maximum sentence would include an aggravator above the 5-8, 10-14 , or 15-20 years of sentencing ranges. He asked if a judge would take excessive amounts of drugs intended for distribution into account as an aggravator or if it needed to be specified.

MR. HENDERSON replied that a specific aggravator exists for "a large amount" that allows the court to go beyond the presumptive sentence range. He said that "a large amount" is unique to the facts of the case and is different in Kotzebue than "a large amount" in Anchorage. That is one reason for a reluctance to specify an amount in drug laws for very serious drugs. It is important to allow the judge to have discretion to understand the impact of a specific drug on a specific community when the crime occurred, he said.

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SENATOR MICCICHE asked for further clarification why the maximum is 20 years for a class A felony instead of using a sliding scale. He further asked for the reason why the penalty for a third felony is a maximum of 20 years when the maximum penalty is the same for a first felony offense. He suggested he expected it to be on a sliding scale.

MR. HENDERSON answered that it is based on the classification system that is established in Alaska law, with four classifications of felonies. Those classification always dictate a maximum term, he said. For example, the maximum penalty for all class C felonies is five years, for all class B felonies is 10 years, for all class A felonies is 20 years. Unclassified felonies are unclassified and most go up to 99 years, he said. He explained that the classification system sets the maximum penalty, establishes ranges within the maximum, and depending on the situation, also establishes mandatory minimum sentences.

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SENATOR REINBOLD said it seemed like Alaska has so many cases that do not set mandatory minimums.

MR. HENDERSON recalled that minimums are scattered throughout the code. For example, murder of a police officer establishes a mandatory minimum of 99 years. He referred to the "three strikes and you are out" provision in which a person who commits three class A or unclassified offenses in a series, faces a mandatory minimum of 99 years. He pointed out the mandatory minimum for misdemeanor assault of police officer is either 30 or 60 days, that a first-time DUI has a mandatory minimum of 3 days; a second DUI has a mandatory minimum of 20 days. In addition, mandatory minimums for felony DUIs also exist. He reiterated that mandatory minimum sentences are found throughout the code.

SENATOR REINBOLD offered her belief that Alaska's criminal code and laws are not that harsh compared to some other states. She remarked that even the pre-Senate Bill 91 laws in Alaska are not that harsh. She advocated for the governor to consider tougher minimum penalties.

[2:42:52 PM](#)

CHAIR HUGHES also expressed concern. She advocated for discretion as a powerful tool. The public has been outraged when judges choose to impose zero penalties. She agreed with Senator Reinbold, that the state has an opportunity to reconsider the penalties.

[2:43:48 PM](#)

MR. HENDERSON turned to Section 41 of the sectional analysis which read as follows:

Section 41: Prohibits the suspension or reduction of the period of mandatory probation outlined in statute for sex offenders.

MR. HENDERSON said that Section 41 would clarify that the probation or suspended portion of a sentence in a sex offense cannot be reduced.

MR. HENDERSON reviewed Section 42 of the sectional analysis, as follows:

Section 42: Returns sentencing range for class A misdemeanors to 0-1 year.

MR. HENDERSON reviewed Section 43 of the sectional analysis, as follows:

Section 43: Returns sentencing range for class B misdemeanors to 0-90 days.

He said Senate Bill 91 limited it to 10 days.

[2:44:28 PM](#)

MR. HENDERSON reviewed Sections 44-45 of the sectional analysis, as follows:

Section 44: Reenacts prohibition on jail time for a first marijuana offense if the person is not on probation or parole at the time of the offense.

Section 45: 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.

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SENATOR KIEHL said that one thing that strikes him about this bill is that it is "kind of a double tap." Not only does it raise each crime to a higher order of crime, but it also proposes to increase the sentences for each level of offense. He asked what deters criminals. He recalled that a few years ago, the legislature raised the penalties for some of the most severe violent crimes. He asked whether the crimes have gone down. He further asked what deterrents work best.

MR. HENDERSON agreed that in some instances the criminal offense is elevated and the criminal penalty. He pointed out that the bill increases the ceiling, and not necessarily the sentence if it is not necessary. The judge makes the decision based on the circumstances of the case and sets the appropriate sentence. This is important because it reaffirms that the court needs to apply all of the sentencing factors, not just deterrence, not just rehabilitation, not just community condemnation, but all of the factors. The judge must weigh these factors appropriately, and in some instance, rehabilitation might be the most important sentencing factor. In other cases, it might not be the most important factor, which might be isolation, community condemnation, or restoration of victim's rights. The judge needs to have the options to impose the sentence, when appropriate.

[2:47:29 PM](#)

SENATOR KIEHL asked whether the criminal justice system does not have any deterrent to stop crime.

MR. HENDERSON said he thought the question is whether deterrence works. He said he is not a social scientist so he cannot answer it. He said that the criminal justice system must consider deterrence for the specific offender and for the community as a whole. He referred to the DUI laws and general deterrence that imposing a mandatory penalty has on the public. He said that how the person must serve that sentence will be discussed in the next section. However, the general public knows if you commit this offense, a DUI, this is going to happen.

[2:49:00 PM](#)

SENATOR KIEHL asked for certainty. "How do we know that has a deterrent effect?" he asked.

MR. HENDERSON offered his belief that the number of DUIs have dropped considerably over 30 years. He acknowledged that this is due to a number of reasons; however, one reason is mandatory incarceration. He suggested that lowering the blood alcohol concentration (BAC) and instituting collateral consequences are other reasons.

[2:49:54 PM](#)

CHAIR HUGHES suggested that cab drivers could verify if they have more pickups on Friday and Saturday nights. She said she thinks that they do, and that people think twice. Based on conversations she has had with law enforcement in Southcentral, Alaska has had an influx of criminals from the Lower 48 because of the softening of Alaska's laws, she said. She said by toughening them up, Alaska should slow down and stop that importation and focus on Alaskans.

[2:50:40 PM](#)

MR. HENDERSON read Sections 45-46, of the sectional analysis for SB 32, house arrest, as follows:

Section 45: 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 46: The same changes in section 45 are made in section 46 to the statute governing refusal to submit to a chemical test.

2:51:08 PM

SENATOR KIEHL noticed that the DUI statutes have typically used the same approach for a person who refused to "blow" by treating it as though the person had a high reading. He asked for the reason to apply a different standard for refusal to submit to a chemical test.

MR. HENDERSON said he might be confused about the question. He said that Sections 45 and 46 allows for the same amount of discretion.

SENATOR KIEHL asked whether the person could serve the penalty for refusal to submit to a chemical test on electronic monitoring.

MR. HENDERSON agreed; however, it would need to be approved by the Department of Corrections.

SENATOR KIEHL said he must have misread it.

2:51:59 PM

MR. HENDERSON reviewed Section 47 of the sectional analysis, which read as follows:

Section 47: Conforming amendment due to the enactment of the class A felony level offense for drug distribution. Adds that conduct to the definition of "illegal activity involving a controlled substance" in the landlord tenant statutes.

MR. HENDERSON explained this is a conforming amendment to the landlord tenant statutes with changes to the drug statutes.

2:52:21 PM

MR. HENDERSON reviewed Section 48 of the sectional analysis, which read as follows:

Section 48: Conforming amendment. Adds all felony level drug distribution to the list of crimes involving a minor which the Department of Health and Social Services will disclose information to the public.

MR. HENDERSON explained this is a conforming amendment to the list of crimes covered by the Department of Health and Social Services (DHSS), Division of Juvenile Justice.

[2:52:25 PM](#)

MR. HENDERSON reviewed Section 49 of the sectional analysis, which read as follows:

Section 49: 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. HENDERSON said this change is not related to Senate Bill 91. This change would ensure that the Alaska Court System can transmit information related to involuntary commitments to the Department of Public Safety. Prior to 2014, the department would have the information available to upload into the national data base.

[2:52:52 PM](#)

MR. HENDERSON reviewed Section 50 of the sectional analysis, which read as follows:

Section 50: 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.

MR. HENDERSON said this change is not related to Senate Bill 91. This is a rule of efficiency for the prosecution. It would amend Criminal Rule 6(r) which governs the admissibility of certain evidence at grand jury. This amendment would allow the prosecution to introduce a person's criminal history electronically, as opposed to using certified judgments, when appropriate and when necessary to prove the existence of predicate offenses. He suggested it would apply to recidivist theft, assault, and felon in possession types of offenses. This would allow the criminal justice system to hold the person on the felony charge in instances in which a lag time in receiving the certified judgment occurs. Otherwise, the prosecutors would need to dismiss the felony charge or reduce it to a misdemeanor charge.

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CHAIR HUGHES pointed out that delays can occur when the information is coming from other state agencies. She said it can

result in significant delays, so this is a very sensible approach.

[2:54:14 PM](#)

MR. HENDERSON explained that Section 51 is the repealer section and Section 52 is the applicability section.

[2:54:27 PM](#)

SENATOR KIEHL asked whether there is a change in the domestic violence (DV) look back in Section 51.

MR. HENDERSON recalled that this repeals the "look back" for prior convictions for misdemeanors, in part, to return discretion to the court on a misdemeanor for up to 365 days since the cap has been eliminated. Now the court has the authority to sentence appropriately within that entire range.

SENATOR KIEHL asked for further clarification.

MR. HENDERSON stated that under current law, Senate Bill 91, a cap exists on class A misdemeanors of 30 days. The court can impose a sentence up to 365 days if the person has prior convictions or for certain offenses. A prior section unique to the misdemeanor code repealed the definition of prior convictions because the court now has the discretion to impose a sentence up to a year. The court would consider all the facts and circumstances in the case, he said.

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SENATOR KIEHL asked for further clarification on statutory aggravators in Section 51.

MR. HENDERSON replied that the "Juneby rule" does not allow the offense to be counted double. It does not allow the element of the offense to be double counted and also make it an aggravating factor to exceed the presumptive range. He said it has been the law since the Court of Appeals issued the decision. In further response, he explained that the "Juneby rule" is eliminated for misdemeanors since the sentencing cap and aggravating factors have been removed. It is not necessary to have a double counting provision since the court would now have an overall range to sentence appropriately and the misdemeanor aggravators have been repealed.

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MR. HENDERSON related Section 52 is the applicability section and Section 53 is the retroactivity section that makes section

49, the data sharing between the DPS and the court system, retroactive. He said that Section 54 is the conditional effect section for the court rule change for the criminal 6(r) change. Section 55 creates an immediate effective date for Sections 49 and 55. Section 56 would establish July 1, 2019 as the effective date for all other sections.

[SB 32 was held in committee.]

[2:58:24 PM](#)

CHAIR HUGHES reviewed upcoming committee announcements.

[2:59:01 PM](#)

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 2.59 p.m.