

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

March 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

COMMITTEE CALENDAR

SENATE BILL NO. 34

"An Act relating to probation; relating to a program allowing probationers to earn credits for complying with the conditions of probation; relating to early termination of probation; relating to parole; relating to a program allowing parolees to earn credits for complying with the conditions of parole; relating to early termination of parole; relating to eligibility for discretionary parole; relating to good time; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 35

"An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 34

SHORT TITLE: PROBATION; PAROLE; SENTENCES; CREDITS

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/19	(S)	READ THE FIRST TIME - REFERRALS
01/23/19	(S)	STA, FIN
02/07/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/07/19	(S)	Heard & Held
02/07/19	(S)	MINUTE(STA)
02/11/19	(S)	JUD REFERRAL ADDED AFTER STA
02/12/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/12/19	(S)	Heard & Held
02/12/19	(S)	MINUTE(STA)
02/14/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/14/19	(S)	Heard & Held
02/14/19	(S)	MINUTE(STA)
02/19/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/19/19	(S)	Heard & Held
02/19/19	(S)	MINUTE(STA)
02/21/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/21/19	(S)	Heard & Held
02/21/19	(S)	MINUTE(STA)
02/26/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/26/19	(S)	Heard & Held
02/26/19	(S)	MINUTE(STA)
02/28/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/28/19	(S)	Moved CSSB 34(STA) Out of Committee
02/28/19	(S)	MINUTE(STA)
03/01/19	(S)	STA RPT CS 3DP 1DNP SAME TITLE
03/01/19	(S)	DP: SHOWER, REINBOLD, MICCICHE
03/01/19	(S)	DNP: COGHILL
03/01/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/01/19	(S)	Scheduled but Not Heard
03/04/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/04/19	(S)	Heard & Held
03/04/19	(S)	MINUTE(JUD)
03/06/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)
03/06/19	(S)	Scheduled but Not Heard
03/08/19	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

KACI SCHROEDER, Assistant Attorney General
Central Office
Criminal Division

Department of Law
Juneau, Alaska

POSITION STATEMENT: Provided a sectional analysis of SB 34.

JENNIFER WINKELMAN, Director
Division of Probation and Parole
Department of Corrections
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of SB 34.

JEFFREY EDWARDS, Executive Director
Alaska Board of Parole
Department of Corrections
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of SB 34.

DARCEY PERRY, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified during the hearing on SB 34 that returning discretion to judges and the parole boards will lead to better outcomes.

MIKE COONS, President
Greater Alaska Chapter
Association of Mature Citizens (AMAC)
Wasilla, Alaska

POSITION STATEMENT: Testified in support of SB 34.

MARTY KINCAID, representing self
Palmer, Alaska

POSITION STATEMENT: Testified during the discussion of SB 34 with concerns about Section 2, which would imprison people for failing to pay debts.

CHRISTINE ALLISON, representing herself
Wasilla, Alaska

POSITION STATEMENT: Testified during the discussion of SB 34 with concerns about Sections 2 and 7.

GRACIE PRENTICE, representing herself
Kenai, Alaska

POSITION STATEMENT: Testified in support of SB 34.

JACQUELINE BOCK, representing herself
Sterling, Alaska

POSITION STATEMENT: Testified in support of SB 34 to repeal and replace Senate Bill 91.

JOHN ROZZLI, Chief Executive Officer
Valley Charities, Inc.
Wasilla, Alaska

POSITION STATEMENT: Testified during the discussion of SB 34, noting that Senate Bill 91 contained many good provisions.

LISA ELLANNA, representing herself
Nome, Alaska

POSITION STATEMENT: Testified during the hearing on SB 34 that Senate Bill 91 had many good provisions and encouraged the committee to find middle ground.

MICHAEL BERSER, representing self
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to SB 34.

VINCENT LIBERTINO, representing himself
Juneau, Alaska

POSITION STATEMENT: Testified during the hearing on SB 34, stating that much of the crime is related to drug addiction.

ACTION NARRATIVE

[1:31:56 PM](#)

CHAIR SHELLEY HUGHES called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Reinbold and Chair Hughes. Senator Kiehl joined the meeting shortly thereafter. Senator Micciche arrived as the meeting was in progress.

SB 34-PROBATION; PAROLE; SENTENCES; CREDITS

[1:33:33 PM](#)

CHAIR HUGHES announced that the only order of business would be SENATE BILL NO. 34, "An Act relating to probation; relating to a program allowing probationers to earn credits for complying with the conditions of probation; relating to early termination of probation; relating to parole; relating to a program allowing parolees to earn credits for complying with the conditions of parole; relating to early termination of parole; relating to eligibility for discretionary parole; relating to good time; and providing for an effective date."

[Before the committee was CSSB 34(STA), Version U.]

[1:35:08 PM](#)

KACI SCHROEDER, Assistant Attorney General, Central Office, Criminal Division, Department of Law, provided a sectional analysis of SB 34, Version 31-GS1031\U, referred to as Version U.

She turned to Section 7, on pages 5-6 of SB 34.

Section 7 Requires an application for discretionary parole to be submitted to the parole board before a person can be considered for discretionary parole.

She said that Senate Bill 91 eliminated the requirement for a prisoner to apply for discretionary parole. This language would revert to the pre-Senate Bill 91 language.

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SENATOR KIEHL asked for the current processing time of the applications.

[1:36:04 PM](#)

JENNIFER WINKELMAN, Director, Division of Probation and Parole, Department of Corrections, Juneau, deferred to the executive director of the Board of Parole.

[1:36:16 PM](#)

JEFFREY EDWARDS, Executive Director, Alaska Board of Parole, Department of Corrections, Anchorage, answered that part of Section 7 would eliminate some timelines in the 90-day requirement prior to the person's eligibility for discretionary parole. He said that the Board of Parole procedurally works with the institutions, the court, and prosecutor months in advance of the parole hearing to give the institutions time to generate reports and documentation on inmates, but also to meet victim notification requirements.

[1:37:12 PM](#)

SENATOR KIEHL said he appreciates the 90-day mandatory start date but wondered if any deadlines exist.

MR. EDWARDS offered to research and provide the exact timeline later today, but he recalled it was a couple of months.

CHAIR HUGHES asked to have the information sent to her office and she would distribute it to committee members.

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MS. SCHROEDER turned to Sections 8, which read as follows:

Section 8 Clarifies that a person who is ineligible for a good time deduction from their sentence is also ineligible for discretionary parole. Also, prohibits certain crimes from being considered for discretionary parole. These are the same crimes that were ineligible for discretionary parole prior to January 1, 2017:

- Non-sex class A felonies (Robbery 1, Assault 1, Arson 1);
- B felonies if the person had one or more prior felony convictions;
- C felonies if the person had two or more prior felony convictions; and
- B and C sex felonies (Sexual Assault 2, Sexual Abuse of a Minor 2, Distribution of Child Pornography).

MS. SCHROEDER said that Section 8 would return to pre-Senate Bill 91 law in terms of parole eligibility. It would make prisoners who were convicted of non-sex class A felonies, class B felonies with one or more prior convictions, and class C felonies with two or more prior convictions ineligible for discretionary parole. It would also make class B and C sex felonies ineligible for discretionary parole.

MS. SCHROEDER referred to page 7, lines 2-5, [Section 8], which states that inmates who are ineligible for good time deduction from their sentence are also ineligible for discretionary parole. This relates to repeat sex offenders, she said.

1:39:08 PM

CHAIR HUGHES asked whether Section 8 is a complete repeal of Senate Bill 91 language.

MS. SCHROEDER answered that Sections 8 and 9 together would represent a complete repeal. She said that Section 9 also included language added in the Senate State Affairs Standing Committee.

Section 9 Raises the amount of time a person sentenced for an unclassified offense (murder, kidnapping) before they are eligible for discretionary parole from one-third to one-half of the active term of

imprisonment or the mandatory minimum whichever is greater. Also requires persons convicted of B felony level drug distribution to serve one-half of the active term of imprisonment before they can be considered for discretionary parole.

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CHAIR HUGHES asked for clarification on discretionary parole in SB 34 and for examples.

MS. SCHROEDER deferred to Mr. Edwards.

CHAIR HUGHES asked which crimes would still be eligible for discretionary parole.

MR. EDWARDS answered that at the lowest level, first and second time class C felonies would be eligible for discretionary parole at one-quarter of their sentences. First time class B felonies would be eligible for discretionary parole at [one-half] of their sentences. He said that class A felonies are not eligible for discretionary parole. Under SB 34, unclassified felonies would be eligible at one-half of their sentences, or the mandatory minimum, whichever is greater.

[1:40:38 PM](#)

CHAIR HUGHES asked for further clarification on the reason an offender convicted of a class A felony is not eligible for discretionary parole, since she thinks of unclassified felonies as being more serious.

MR. EDWARDS said he was unsure. He acknowledged that unclassified felonies typically have a greater sentence, such that the maximum sentence is a 99-year sentence, and presumably if this class is not eligible for discretionary parole, the inmates would essentially serve a life sentence.

[1:41:26 PM](#)

MS. SCHROEDER said that is the best information the department could give at the moment. She said that prior to Senate Bill 91, class A felonies were not eligible for discretionary parole. She said that the department would need to review the legislative history to determine the reasons the legislature wanted to make that whole class ineligible.

[1:41:46 PM](#)

SENATOR REINBOLD related that the Senate State Affairs Standing Committee wanted to learn what other states were doing and if

every state had discretionary parole. She said discretionary parole does not make sense, since it seems like offenders receive big sentences, but prisoners can be released after serving one-fourth of their sentences. She recalled someone was going to do a comparison.

MS. SCHROEDER said that comparison would take a significant amount of time, since it is a very detailed analysis. She said that the discretionary parole statute in Alaska is difficult to understand and researching other states' statutes would be difficult. She did not think the department could provide this information in a reasonable timeframe.

SENATOR REINBOLD asked whether an organization such as the Council of State Governments (CSG) could provide a small sample.

MS. SCHROEDER said that she was not aware of anyone who tracks that information. She suggested that the Legislative Research Services, Legislative Affairs Agency might be able to provide it.

MR. EDWARDS said that he was not aware either, but he offered to do a general research over the Internet to provide some information.

CHAIR HUGHES answered that it might be worthwhile to do an inquiry via the CSG or the National Council of State Legislatures (NCSL). She noted the provisions in SB 34 for class B and C felonies and unclassified felonies, but not class A felonies. She asked whether the Department of Law would consider making an adjustment to this.

MS. SCHROEDER agreed to do so.

[1:45:07 PM](#)

SENATOR KIEHL asked for the impact these changes would have on the number of cases that go to trial and the length of time the department spends in preparation. He said the availability of parole or lack thereof is something that both sides must consider. He asked for an estimate of the impact this has on workloads for the Department of Law or the public defenders.

MS. SCHROEDER answered that she does not have an estimate of the impacts. She agreed that discretionary parole is considered by the prosecutor and the defense when plea agreements are discussed. She said she was unsure if it would create a significant amount of workload that would trigger a fiscal note.

She further agreed that any changes to discretionary parole would have a direct impact on the Department of Corrections (DOC).

SENATOR KIEHL said it would help to have a response from the public defenders on the changes to discretionary parole. He wondered if DOC would be spending a lot more time and resources in court opposite the DOL on behalf of their clients. He asked whether the department would anticipate additional requests for the lengthy pre-sentence reports that used to consume a lot of resources but are not done very often.

[1:46:54 PM](#)

MS. WINKELMAN responded that the pre-sentence reports are done at the pre-sentence stage. However, it is not part of the parole process, she said. She deferred to the DOL to weigh in. She did not envision that the provisions would impact the DOC in term of parole.

CHAIR HUGHES said perhaps that could be a discussion in SB 33, the pre-trial bill.

MS. SCHROEDER remarked that pre-sentence reports are ordered in every felony case before sentencing, unless it is a first-time felony. It would be very rare to waive a pre-sentence report. She offered to further discuss this.

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MS. SCHROEDER said that Section 9 is the heart of discretionary parole. There were a few changes made in the Senate State Affairs Standing Committee. The first change was that unclassified felonies would be eligible at one-half or the mandatory minimum, as Mr. Edwards mentioned. The prior law was at one-third, so the Senate State Affairs Standing Committee did increase that discretionary parole.

MS. SCHROEDER directed attention to pages 8-9, [AS 33.16.090(b)] to a change made in the Senate State Affairs Standing Committee. That change related to class B felony drug dealing. Those offenders would be eligible at one-half of their sentence, previously eligible at one-quarter, she said.

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MS. SCHROEDER turned to Section 10, which pertains to factors the board should consider when releasing an offender.

Section 10 Eliminates a presumption of release and thereby returns discretion back to the parole board when determining release on discretionary parole.

She said that Senate Bill 91 created a presumption of release, that the board shall release unless the board found by clear and convincing evidence that the person released would create a harm to the public. This bill would repeal that section of law and return the factors to pre-Senate Bill 91 law. It would state "may" instead of "shall."

MS. SCHROEDER explained Section 11:

Section 11 Allows the parole board to make a person, who does not meet the factors in section 10, ineligible for further consideration of discretionary parole or to have the person serve additional time before they can be considered again for discretionary parole.

She said that when the board denies someone for discretionary parole, it can set out a hearing and require certain stipulations prior to another hearing.

[1:49:40 PM](#)

CHAIR HUGHES asked Mr. Edwards to explain the reasons that providing discretion to the board is important for public safety.

MR. EDWARDS said that the word that is most commonly used in this provision is "discretion." He explained that giving the [parole] board the authority to analyze and evaluate the specifics of an individualized plan allows the board to evaluate the individual candidate, rather than lumping or grouping prisoners into a "must release" status if they have done certain things outlined in the law. He characterized returning discretion as of the utmost importance to avoid "tying" the [parole] board's hands with a mandated release.

CHAIR HUGHES asked Mr. Edwards whether he has encountered mandated releases that made him uncomfortable. She further asked if he was aware of instances in which the [parole] board would not have released individuals if it had the discretion to do so.

MR. EDWARDS answered that he does not always actively participate at parole board hearings since he is not a voting member. However, he offered to ask the board to provide

feedback. He recalled that revocation rates have increased slightly, which might relate to mandated releases. He reiterated that it is important to recognize the value of discretion to the [parole] board.

CHAIR HUGHES agreed that discretion is a valuable tool. She asked if he could look into the revocations to assess any correlation since that would be helpful for the committee to understand the importance of returning the discretion. She said that formulas do not always match up with real life circumstances. She offered her belief that this section of the bill is important and should be addressed.

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SENATOR KIEHL said this bill changes the terminology from "shall" release to "may" release unless there is clear and convincing evidence that the person presents a danger. He asked for the rationale for using this approach instead of changing the standard, which would give the board more discretion. He suggested adopting a standard lower than clear and convincing to make it easier for the board to do its job if they think a person might be a danger but retain the notion that if someone is not dangerous it is time to put them on supervision in the community to start reentry rather than keeping them in a facility.

MR. EDWARDS pointed to the four factors listed in Section 10. In addition, the department also uses the risk assessment tool that identifies certain risk factors. The changes in SB 34 do not restrict the ability of the [parole] board to release individuals. In fact, post Senate Bill 91 resulted in "granting decisions" or release decisions being cut in half. This means the board authorized about half as many as pre-Senate Bill 91. He offered his belief that these provisions do not restrict the board from releasing good candidates. He said Senator Kiehl is quite right that occupying prison space with low-risk, low-need individuals to serve time does not make much sense. A number of considerations were put into the risk assessment tool [LSIR] that touches on those risk factors. If the determination is made that the individual is ready for early release, the [parole] board would make that ruling.

SENATOR KIEHL said he appreciates the approach described and it shows that the state has a good parole board. However, when considering how the legislature writes the law, he wondered why not allow the risk assessment tool [LSIR] and the professionals a little more wiggle room, but not to go so far as to say that

even if the person poses low risk to the public, that the parole board does not have to let them out.

MR. EDWARDS responded that he would like to see the language in an amendment form to more fully understand Senator Kiehl's vision.

CHAIR HUGHES said that the bar of the clear and convincing standard or a lower bar could still be somewhat formulaic. She said that she would be concerned about going back to a formula, stating that the board has been considering the four items in AS 33.16.100 and it seems to be working. She asked Ms. Winkelman if she had comments.

[1:56:31 PM](#)

MS. WINKELMAN said that she did not.

[1:56:46 PM](#)

MS. SCHROEDER turned to Section 12, which read as follows:

Section 12 Conforming language regarding the requirement that a person fill out an application for discretionary parole.

MS. SCHROEDER explained that when the prisoner submits an application for a release plan, which provides information on where the person intends to live and prospective employment as a plan, the board can assist.

[1:57:19 PM](#)

MS. SCHROEDER continued.

Section 13 Outlines application process for discretionary parole. Ensures that the prisoner is furnished with a copy of the prepare report.

She said that this provision means that everyone is informed. She characterized this as "discovery" for the prisoner on discretionary parole. In a criminal case the prosecution needs to turn things over to the defense during discovery and when a prisoner applies for discretionary parole the prisoner is allowed to review what the board will be considering when making discretionary parole decisions.

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CHAIR HUGHES recalled an instance where an inmate was being released that required a 30-day plan, which was increased to 90

days in Senate Bill 91. She said the Commissioner of the Department of Labor and Workforce Development suggested that the timeframe should be increased to a minimum of a year or up to two years. She asked how the 90-day plan requirement would apply to people who will be let out on parole or probation. She asked whether the Department of Corrections would be open to lengthening the time to achieve a greater chance of public safety for communities.

MS. WINKELMAN stated that when offenders are sentenced; they receive timesheets that indicate their date of release. The institutional probation officer works with them on their release, she said. When inmates apply for parole, the 90-day plan provides a planning window as part of the application and release plan. Although the parole board has released some inmates earlier than the 90-day plan, the preparation the institutional probation officer uses to assist inmates starts the release planning process that is used when they come before the parole board.

MS. WINKELMAN said that the commissioner constantly works toward the goal of releasing prisoners in "better shape" than when they came into the system. The department wants to do it right and is open to suggestions to move inmates successfully from supervision back into the community. She was unsure of the source of the specific 90-day timeframe, but the department is open to considering whether the timeframe needs to be expanded.

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CHAIR HUGHES asked whether the 90-day plan is considered at the point of intake to focus prisoners on the concept of turning their lives around at the beginning of their sentences. She asked whether the department would consider shifting the plan instead of waiting until the end of the sentence.

MS. WINKELMAN said than an offender management plan is established for individual inmates at the time they enter the facility. She acknowledged that some offenders are in pretrial status, so those inmates are handled a bit differently. She explained that the plan is implemented once the inmate is sentenced.

[2:03:15 PM](#)

SENATOR MICCICHE joined the meeting.

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CHAIR HUGHES asked whether the management plan is in statute or regulation. She asked for further clarification on whether it is a plan to manage inmates for reentry or if it is about how to manage them while they are incarcerated.

She expressed an interest in having the reentry piece addressed upfront. She said a constituent used the phrase, "An idle mind is the devil's playground." She asked whether the plan should be shored up on the front end to avoid churning out habitual offenders, which has made communities very dangerous. She did not think that 30-90 days is a sufficient timeframe, so she would like to continue to work on this issue.

[2:05:44 PM](#)

MS. SCHROEDER continued.

Section 14 Gives a parole officer the discretion to make a recommendation to the parole board that a person's parole be terminated. Maintains requirement that the probationer is in compliance with their conditions of probation and has completed all of the required treatment programs. Also maintains the prohibition on unclassified felony, sexual felony, and domestic violence offenders from being recommended for early termination.

MS. SCHROEDER said that Senate Bill 91 law required the parole officer to make a recommendation to the parole board for early termination. She explained that some requirements in that legislation were kept since it is important that the probationer be in compliance with all of the conditions of parole. This provision also excludes those convicted of unclassified felonies, sexual felonies, and domestic violence offenses. She explained that this decision was made in Senate Bill 91 law and is being carried forward. She directed attention to line 11, to AS 33.16.210(c), to the timeframe difference for early termination of probation and parole. She explained that the inmate must have completed one year on parole before becoming eligible for early termination.

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SENATOR KIEHL said that he has read lines 11-14 [on page 10] several times. The new language [AS 33.16.210(c)(3)] also requires parolees to be currently in compliance, he said. He asked for further clarification on this provision since a parolee out of compliance would be in violation of parole.

MS. WINKELMAN said she was uncertain.

MS. SCHROEDER offered that would apply to someone found in violation by the parole officer and the parole board. She said that this language is a stylistic change and is not meant to be a substantive change.

[2:08:12 PM](#)

CHAIR HUGHES asked if the new language refers to the gap period between being found in violation by the parole officer and been found in violation by the parole board.

MS. SCHROEDER agreed. She was uncertain of the frequency.

MS. WINKELMAN responded that a parolee may commit a violation that potentially does not rise to the level of bringing the person before the board. For example, a parolee may be required to report to his/her parole officer next week, but instead may report a week later. That type of violation may not rise to the level necessary to come before the parole board, unless timely reporting was a repetitive issue.

CHAIR HUGHES asked how long it would take to make a determination that a parolee had violated the terms of parole.

MR. EDWARDS answered that typically pending early termination requests would not necessarily come before the board for pending violations. In terms of compliance, the violation would fall under the sanctions and incentive grid, he said. For example, the parolee might be given a verbal warning. For example, the individual might not be employed. Although that alone might not rise to the level of arrest or require an appearance, it would show a lack of compliance with the parole conditions.

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SENATOR MICCICHE said the language related to compliance with conditions of parole for one year previously was "shall" and is now "may". He related his understanding that this would allow more flexibility.

MS. SCHROEDER responded that some of the change was made in reference to the "one year." That language had to be changed to allow parole officers more flexibility to make a recommendation on early discharge after the person has been on parole for a year. She said that if the committee decides to change this language, she would ask members to be cognizant of this one-year timeframe. She said that paragraphs (1) and (3) of the previous

language would require a parolee to be on parole for two years, which was not the administration's intent.

[2:11:56 PM](#)

SENATOR MICCICHE acknowledged that previously the department was required [to recommend early discharge if the parolees had not been found in violation of parole for one year]. He interpreted the change to mean that the department could consider minor issues if the person is currently in compliance and still recommend early discharge, which made sense to him.

[2:12:35 PM](#)

MS. SCHROEDER continued.

Section 15 Eliminates language referencing technical violations of parole under AS 33.16.215.

MS. SCHROEDER related this is clean up language. She explained that this statute refers to revocation of parole. The language would remove the references to the three, five, and 10-day technical caps in this section, she said.

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MS. SCHROEDER continued.

Section 16 Allows the parole board to toll time while the parolee is in violation status. This is similar to how probation works when a probationer is in violation status. Under this provision, the parolee's parole time will not continue to run while the parole violation is under consideration by the parole board.

MS. SCHROEDER stated that Section 16 does not revert to pre-Senate Bill 91 law. This would give the board the authority to toll time, she said. She explained that toll time means the clock stops and the parolee's parole time will not continue to run if the parolee is in violation status.

She said that Senate Bill 91 law allowed toll time for absconding, which is expanded in this section to apply to all violations. When a person is in violation status and it has been filed with the board, the board can stop the clock, so the parole time does not continue to run. If they were unable to stop the clock, the parole time would continue to run, and it is possible that the parolee would be in violation status and time would run out.

MS. SCHROEDER said that the process in Section 16 is similar to how probation operates, that case law allows judges to toll time for probation. She said that this is something the parole board did not previously have authority to do but Section 16 would provide it.

CHAIR HUGHES asked whether tolling was allowed pre-Senate Bill 91 law.

MS. SCHROEDER responded that in practice the parole board was tolling time, but this provides the actual authority to do so. She said that under the court context for probation, the court derives its authority from case law; however, that authority does not extend to parole.

[2:14:42 PM](#)

SENATOR KIEHL asked how long it takes to process toll time. He said he could understand if the clock is paused for a couple of weeks, but not if it is paused for six months. He asked for a sense of how long it takes to process toll time and get to the final revocation hearing to better understand the impact of this change.

MS. WINKELMAN said that Mr. Edwards could clarify the timeframe. However, she related her understanding that from the date of violation until the parolee appears before the full board must happen within 120 days. Essentially, a preliminary hearing is held when parolees are placed in violation status. At the preliminary hearing, the board will determine whether to sanction the parolee or to hold a full hearing on the violation. She reiterated that the full board must hear the case within 120 days, and it cannot just come before a hearing officer.

MR. EDWARDS acknowledged that Ms. Winkelman was correct. He said this provision would place the parole board under the 120-day rule. The only exception would be if an individual has new charges pending. If so, the 120 days would be extended upon resolution of those new criminal charges. He explained that the reason to do so is because the [parole] board does not want to get involved in the prosecutorial work of new criminal charges. He added that the 120-day period is the maximum time limit.

[2:17:01 PM](#)

SENATOR KIEHL said that he presumed a parole officer would write up a parolee who committed a violation. He referred to the phrase used, which was "in violation status." However, he assumed the parolee would not be allowed to continue to be in

violation status for the entire 120 days. He asked the reason to pause the clock for the entire processing time.

MR. EDWARDS explained the timeline, such that when a parolee is arrested and incarcerated for a parole violation, the individual would appear at a preliminary hearing within 15 working days. He characterized the process as being similar to a bail hearing. At the preliminary hearing an evaluation would be made to determine if probable cause existed for the arrest. Once probable cause is determined, a final revocation hearing is held. Pre-Senate Bill 91 law, the hearing must be held within 120 days. The person would be limited to serve three, five, or ten days for a single violation, he said. Certain sections of SB 34 would repeal the technical violations and revert to the previous method.

He explained that at the original preliminary hearing the hearing officer has the authority to release the individual, similar to a court hearing when someone is released on bail. The [parole officer] would resume supervision while the parolee is in violation status, pending the final hearing. If the parolee subsequently incurred an additional violation, the individual would be incarcerated.

SENATOR KIEHL related his understanding that while the parolee is in supervised status in the community, the clock is paused. He suggested that from the offender's perspective this action would not provide an incentive for the parolee to stay clean. He characterized it as setting up the classic hopeless, helpless, criminal thinking errors that often lead to more offenses and additional victims.

MR. EDWARDS said he was not sure he had a great answer, but this process mirrors the current court process. It provides fairness and consistency between the court process and parole process.

[2:20:38 PM](#)

CHAIR HUGHES asked whether stopping the clock is a deterrent for the parolee to not violate.

MR. EDWARDS offered his belief that without this provision in law, a parolee's supervision would expire while the violation was still pending. He explained that it would create a situation that has been problematic for the supervision of the offender. In fact, supervisory conditions would no longer be in place, yet the parole violation is still pending. He remarked that parole violations can sometimes be quite serious. The board believes this mechanism will provide an avenue to maintain the parole

officer's authority over the individual during the violation pending period. He said he was not sure how to avoid a lapse in supervision unless supervision was restarted during the pending status. However, he was unsure of how to accomplish it under current law.

CHAIR HUGHES asked for further clarification that a parolee could complete parole and be released into the community but still have a parole violation pending. She suggested that it might require the person's parole to be extended or for the individual to be incarcerated.

MR. EDWARDS responded that under current law the board does not have any authority to extend the parolee's maximum release date, which is also referred to as the parole expiration date.

MS. SCHROEDER said that Mr. Edwards has highlighted the issue. She said the Department of Law's concern is the possibility that a parolee would not have supervision while still in violation status.

CHAIR HUGHES emphasized that the goal is to close that loophole.

[2:22:48 PM](#)

MS. SCHROEDER turned to page 11 and Section 17.

Section 17 Reduces amount of time that a parolee may decrease their length of parole for good behavior to one day for every three days without a violation.

MS. SCHROEDER said that the committee previously discussed earned compliance credits for probation, and this applies to earned compliance credits for parole. The earned compliance program was created by passage of Senate Bill 91, which created a credit that was "half," such that for every 30 days a parolee did not incur a violation, the individual would receive 30 days of credit against the person's total parole time. Under Section 17, parole credit would be reduced to one day for every three days.

[2:23:29 PM](#)

MS. SCHROEDER reviewed Section 18.

Section 18 Prohibits a sex offender from earning credit against their period of parole. [It] also mandates that [parolees] lose all of the credits they

have accrued if they are found in violation of parole, requiring the accrual to start over.

MS. SCHROEDER said that sex offenders cannot participate in the program for parole and probation. She explained that for the same reasons discussed for probation, the standards are being applied to parole. The reason to have sex offenders complete their probation is because the containment model the Department of Corrections (DOC) uses has proven to be effective. She characterized it as the "carrot and stick" approach because the longer parolees go without incurring a violation, the more credits they will accrue. That means parolees have a greater risk of losing everything if they commit a parole violation.

2:24:21 PM

SENATOR MICCICHE related a scenario in which a model prisoner has two years to serve. However, the prisoner has never gotten along with his/her parole officer, which can happen because different personalities exist. The model prisoner may have satisfied nearly two years of parole but because of a personality conflict and a minor infraction, the prisoner could lose everything. He suggested some way should exist to secure some earned compliance credit because under this provision "the carrot" would be eliminated. Perhaps some segments could be secured that would drive the same positive behavior, he said.

MS. WINKELMAN agreed that this has been a topic of discussion. She said that this language represents a policy call by this administration. However, the DOC is open to suggestions. She stressed that she has faith in her probation officers and supervisors to make good decisions, but she also acknowledged that personality conflicts can happen.

2:26:35 PM

CHAIR HUGHES asked to shift to the victim. She asked whether a victim can obtain a copy of the parolee's conditions of release and if it is public information.

MS. WINKELMAN answered that the probation conditions and judgment are open to the victim and the public.

MR. EDWARDS clarified that the parole conditions are available to the public upon written request, but that victims are automatically provided a copy.

CHAIR HUGHES asked for confirmation that victims automatically get a copy of probation conditions.

MS. WINKELMAN answered that victims receive a copy of the probation conditions through the department's victim notification policy.

[2:27:55 PM](#)

SENATOR KIEHL shared Ms. Winkelman's faith in the probation officers but he said he also shares Senator Micciche's concern about driving the change in behavior. He commented that what is being seen in psychology, weight loss, and smoking cessation accomplishments is that "the carrot" along with "the stick" is the most effective way to change behavior.

[2:28:27 PM](#)

MS. SCHROEDER turned to Section 19.

Section 19 Prohibits a person from earning good time for time spent on electronic monitoring post-sentence.

MS. SCHROEDER said that Section 19 is a complete return to pre-Senate Bill 91 law. This provision would prohibit the award of good time credit against a prisoner's sentence for time spent in a private residence on electronic monitoring or in a treatment program. She noted that the treatment listed in this provision is for treatment that the DOC has ordered. However, it would not apply to pretrial treatment that an offender has elected to attend. Further, the electronic monitoring is post-sentence, that the offender is already in custody, and the DOC makes a determination to put the person on electronic monitoring.

CHAIR HUGHES said part of this as a "math problem." She related a scenario that the offender is in a six-month treatment program, which would apply to the sentence. However, the offender would not get good time credit of the one-third sentence reduction or two months. She asked for confirmation that the individual cannot double dip and obtain eight months for a six-month treatment program.

MS. WINKELMAN agreed that in the scenario if the court or judge ordered credit for treatment, the offender would obtain day for day credit or six months, but not an additional two months of credit.

[2:30:53 PM](#)

SENATOR MICCICHE suggested this language might be worded strangely. He related his understanding that a judge could still

sentence someone who is guilty of a minor crime to electronic monitoring.

MS. SCHROEDER responded that Section 19 relates to post-sentence placement decisions made by the Department of Corrections (DOC). In this context, a judge may not sentence offenders to electronic monitoring, she said.

SENATOR MICCICHE asked whether the sentence could require electronic monitoring. He related his understanding that once sentencing has occurred the DOC cannot convert time in incarceration or probation to time on an electronic monitor.

MS. SCHROEDER explained that there are two types of electronic monitoring. First, someone can be placed on electronic monitoring during the pretrial phase, while the defendant is out on bail. The individual can get jail credit under current law. For example, a judge could determine the defendant was on electronic monitoring for 100 days and allow 100 days of credit against the individual's sentence, which would be included in the judgement. Second, once the person was sentenced to five years, for example, the DOC could make the decision to place the prisoner on electronic monitoring. This decision would be made outside the court since the court cannot order the Department of Corrections on placement, she said. This is a separation of powers issue, she said.

SENATOR MICCICHE related his understanding that a judge cannot sentence an offender to five years, with three years in an institution and two on electronic monitor. However, the DOC could decide after three years to place the person on electronic monitoring for two years.

[2:33:28 PM](#)

CHAIR HUGHES asked for clarification that the last two years in that scenario would be considered probation since it is not early release.

MS. WINKELMAN responded that the two years would be considered part of the original sentence. In the prior scenario, the DOC would make the determination on where to house the individual. For example, the department could determine that the person would serve three years in custody and two years on electronic monitoring. Once the person is released, the individual would be on probation for the length of time the judge imposed.

[2:34:43 PM](#)

SENATOR KIEHL asked for further clarification if the treatment program would also include programs offered within the institution.

MS. SCHROEDER answered that the treatment programs in question are ones provided outside of the facilities. She offered her belief that this would relate to a small cohort of the population.

[2:34:52 PM](#)

SENATOR KIEHL asked whether these are residential treatment programs in which the prisoner is not free to leave and that it would not apply to visits to a substance-abuse counselor.

MS. WINKELMAN agreed. She said that this would apply to residential treatment programs that the DOC has furloughed someone to, which is similar to a halfway house. The prisoner would have reached a certain level of his/her sentence and demonstrated a need for a placement into a treatment facility. The prisoner would serve the remainder of the jail time in treatment. Further, the person would not earn any good time for the period of time spent outside the facility undergoing treatment.

[2:36:09 PM](#)

SENATOR KIEHL asked whether prisoners spending time in a halfway house earn good time.

MS. WINKELMAN answered yes.

SENATOR KIEHL said it was not clear to him why a person would obtain good time in a halfway house but not for time spent in a treatment program. He thought they were similar, yet one would not receive the incentive.

MS. WINKELMAN responded that this was a policy call by the administration. She informed members that this refers to a very small population of prisoners going outside of the facility for treatment. She explained that a treatment center is a different setting than a halfway house. For instance, she explained that halfway house personnel are similar to correctional officers in facilities.

[2:37:26 PM](#)

SENATOR MICCICHE asked for further clarification that if an individual is out on electronic monitoring, the credit is one for one and not one for three.

MS. SCHROEDER answered yes, that these individuals do not receive good time, so it would be one for one.

CHAIR HUGHES related her understanding in the previous scenario, that the judge could impose three years in jail and two years of probation. She asked whether the department could place someone on electronic monitoring on an ankle monitor during the individual's probation time. She asked for further clarification whether the DOC uses ankle monitors for individuals on probation or parole.

MS. WINKELMAN explained that when a violation occurs during probation, the individual would go back to court. The court may revoke time and place the individual on electronic monitoring. She said it is still considered serving time, which is part of the revocation process. As part of the sanctions and incentives grid created under Senate Bill 91 law, when a violation occurs, the court may use electronic monitoring to ensure sobriety, she said.

[2:38:59 PM](#)

MS. SCHROEDER turned to Section 20.

MS. SCHROEDER explained that Section 20 is clean-up language. She explained that the DOC is required to report a number of things to the Alaska Criminal Justice Commission. Since the caps and administrative sanctions imposed under the program are repealed in this bill, this section removes the reporting requirement.

Section 20 Eliminates the requirement that the Department of Corrections submit a report to the Alaska Criminal Justice Commission regarding the sanctions imposed under the administrative sanctions program which is repealed in this bill.

MS. SCHROEDER explained that Section 20 is clean-up language. She explained that the DOC is required to report a number of things to the Alaska Criminal Justice Commission. Since the caps and administrative sanctions imposed under the program are repealed in this bill, this section removes the reporting requirement. Since the caps and administrative sanctions imposed under the program are repealed in this bill, this section removes the reporting requirement.

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MS. SCHROEDER turned to Sections 21-23.

Section 21 Repealed section.

Section 22 Applicability.

Section 23 Effective date. This bill takes effect on
July 1, 2019

2:40:03 PM

CHAIR HUGHES opened public testimony on SB 34.

2:40:45 PM

DARCEY PERRY, Board Member, Public Safety Employees Association (PSEA), Anchorage, spoke in support of SB 34. She said that everything is not black or white and one solution does not work for all, and from her prior work as a law enforcement officer, that pertains to people who commit crimes. She said that returning discretion back to judges and the parole board is important since they understand the clients and cases, and this will lead to a better outcome and a safer Alaska moving forward.

2:41:58 PM

MIKE COONS, President, Greater Alaska Chapter, Association of Mature Citizens (AMAC), Wasilla, stated his support for SB 34. He said he especially likes the changes to credit and changing "shall" to "may" for parole officers related to parolees. He wondered what happens when a parolee commits another crime and has additional time on pending probation. He asked whether the full amount of the original sentence is added to the new crime sentencing upon conviction. It seemed like previously sentencing time minus time served for those still on probation upon release disappears. If so, that would need to be corrected because if a criminal has five years pending but commits another crime, the offender should serve all five years plus a new sentence for the additional crime committed. He suggested that judges should issue a no parole order for repeat criminals on both sentences.

CHAIR HUGHES suggested that he submit his comments in writing to senate.judiciary@akleg.gov.

MR. COONS said he sent an e-mail with his suggestions.

2:43:45 PM

MARTY KINCAID, representing herself, Palmer, referred to Section 2, related to defendant defaults in the payment of a crime. She said that the new language in Section 2 [Version U] states that the court may order the defendant imprisoned until the order of

the court is satisfied. She asked whether that is the current language.

CHAIR HUGHES answered yes.

MS. KINCAID asked how the person would satisfy the debt if the defendant is in prison and what would happen to the family if the person is the breadwinner. She said that historically imprisonment has not been a successful deterrent to crime. She said the debtor's prison was eliminated in 1833 and in 1983 the U.S. Supreme Court said it was unconstitutional as a violation of the 14th amendment. She expressed concern that this is prejudiced against the poor.

CHAIR HUGHES said that the public can submit their questions to the committee, and she will obtain responses.

2:45:50 PM

CHRISTY ANN ALLISON, representing herself, Wasilla, referred to Section 2 and echoed Ms. Kincaid's comments. She thought that the language "until the order of the court is satisfied" circles around to the concept of the debtor's prison and invalidates the language that recognizes the defendant's inability to pay. The defendant would be perpetually held in the system until the court releases them.

She turned to Section 7. She said that it was important to remove the language that required a person to apply for parole. She said it is important to provide due process to ensure that everyone is meeting all of the stages for the possibility for discretionary or mandatory parole based on a set of procedures and not on the prisoner's application for [parole] since they should be eligible. She offered her belief that this language would disproportionately affect the uneducated, the poor, and the mentally ill. It means they are responsible to apply and those are the people who do not have access to or cannot afford an attorney to track their cases while they are in prison. These people cannot fill out the forms because they cannot read or write on their own. Further, the mentally ill do not have the faculties to track deadlines and apply timely. She said that the parole officers are overburdened. She said she is a family member of an individual who was wrongfully convicted. She said the way things are on paper is not the way it occurs inside of prisons. For example, the committee held a discussion on the management plan for inmates. She said that inmates are typically ignored until the end of the incarceration. She said that there

is not any comprehensive plan that is discussed with the inmate until a year or less of their sentence remains.

[2:49:10 PM](#)

CHAIR HUGHES reiterated that the public can submit testimony to senate.judiciary@akleg.gov.

[2:49:29 PM](#)

GRACIE PRENTICE, representing herself, Kenai, said that she supports replacing Senate Bill 91 with SB 34.

[2:49:55 PM](#)

JACQUELINE BOCK, representing herself, Sterling, testified in support of SB 34. She said she believes Senate Bill 91 needs to be repealed and replaced. She said her family has been a victim more than once. She expressed concern that law enforcement does not have the tools to keep law abiding citizens safe. She said her family is afraid to leave their home because of crime associated with a drug house in her neighborhood. She thinks something needs to be done for Alaskans. She said crime takes a long-term toll on youth and has an adverse financial impact on the state.

[2:52:00 PM](#)

SENATOR MICCICHE thanked her for her activism and work on the local crime panel. He stated that many suggestions are in the crime bills.

CHAIR HUGHES said that she hoped that the legislature will be able to make changes to make her feel safer.

[2:52:46 PM](#)

JOHN ROZZLI, Chief Executive Officer, Valley Charities, Inc., Wasilla, spoke in favor of retaining Senate Bill 91, perhaps making some modifications to it. He said that it has been successful in terms of reentry. He said that the recidivism rate is about seven percent with one of their reentry programs. He said the organization has a workforce readiness program that has helped offenders get back into the community and become successful. As a third-party employer, he has found reentrants are more successful at finding work, that unemployment and lack of housing is one of the big reasons why recidivism occurs. The organization has succeeded in helping inmates be successful. He stated he is opposed to repeal of Senate Bill 91, acknowledging that some things needed to be tweaked.

[2:54:15 PM](#)

CHAIR HUGHES advised the public that this bill does not repeal the reentry program that he mentioned.

[2:54:29 PM](#)

LISA ELLANNA, representing herself, Nome, said that the great number of those incarcerated for felony crimes are for non-violent crimes. Before the state makes it too restrictive for people who are trying to get back into their communities. It is important for them to contribute to their communities in meaningful ways and reestablish their lives. She echoed what Ms. Kincaid, Ms. Allison, and Mr. Rozzli stated. She agreed that it is important not to make laws that will disproportionately affect people that are experiencing poverty or other protected populations in the state. She expressed gratitude that some people question the constitutionality of [incarcerating] debtors. She agreed with a lot of Senate Bill 91 since it contains many good elements and a lot of community feedback went into making that law. She characterized the process as rubber banding back and forth between providing treatment and being restrictive. She said that she hopes the legislature can find the middle ground.

[2:57:19 PM](#)

MICHAEL BERGER, representing self, Anchorage, said he is not in favor of the changes in SB 34. He said that this bill would repeal caps on sanctions for violations, which are currently three, five, and 10 days. He said that violators may spend up to three months or a year prior to going to court. He was unsure how this bill would reduce spending or overcrowding. In terms of discretionary parole, he acknowledged that Senate Bill 91 makes more people eligible, but the parole board still has discretion who is approved or denied. He said he has served more than 20 years inside institutions and job preparation is very little. He said that people need to learn basics, including self-care and how to make a bed. He acknowledged that some programs make sense, such as custodial and construction programs, but it should be extended. He offered his belief that it could be extended through the reentry program. He advocated for training early on to better run their lives. In his experience, once people get to the point that they feel useless, they will use drugs or do whatever they have done that led to them being incarcerated.

[3:00:14 PM](#)

VINCENT LIBERTINO, representing himself, Juneau, said he is in long-term recovery and would not be here if it were not for Senate Bill 91. He said he is on discretionary parole. He

commended his probation officer, who works with him and he learns. He said he is part of the reentry program and will take a three-week drug and alcohol certification course. He said that he has gained from Senate Bill 91. He expressed concern that the committee would [repeal] it since it would go backwards.

He stressed the need to address the underlying cause of addiction. He said that 90 percent of the people in the prison system are there due to addiction. He said that addicts, alcoholics, and convicts do not read the bill before they offend. What does work is a true carrot and stick approach, which is what his probation officer does with him. If he is in violation, he abides by Senate Bill 91. He acknowledged that his recovery has not been linear. He works as a peer-to-peer recovery coach with NAMI [National Alliance on Mental Illness] Juneau. He highlighted his tourism work and success as a small business owner. He said he would be in prison without Senate Bill 91, that he received a 14-year prison sentence for drug sales in Anchorage.

MR. LIBERTINO said he served 5-6 years in prison. He said he completed an offender management program (OMP), which was not discussed today. He explained that he received a three-year furlough. While he was at the halfway house, Senate Bill 91 passed the legislature. His parole officer met with him to develop his discretionary parole packet. He said that was two years ago. He said that probation deals with suspended time and parole deals with good time. He emphasized his desire to be a productive member of society.

[3:04:49 PM](#)

SENATOR MICCICHE said that the committee is looking for a balance and for people to pay a price to society but to still succeed. He asked him to present the rest of his testimony in writing and provide more detail about the programs he has used.

CHAIR HUGHES said a lot of people do not understand that the intent of Senate Bill 91 was to allow people the ability to get on the right path. She emphasized that the legislature is not taking that away. The goal is to increase treatment programs. Justice needs to be served but people need to have every opportunity to better themselves and live productive lives. She said that passing these bills is not going backward.

[3:06:30 PM](#)

SENATOR KIEHL highlighted that some disincentives for treatment have been identified in the bill. He expressed concern that some

proposed changes in the bill will make it much more difficult for those trying to reenter the community to succeed. He directed attention to the repealers since one does not seem to be a conforming change.

CHAIR HUGHES mentioned that public testimony is open on SB 34.

[3:08:16 PM](#)

SENATOR KIEHL directed attention to AS 12.55.110(f), revoking a suspended sentence. He read part of the language, which read, "If the court does not find that the noncompletion of treatment was attributable to the defendant's inability to pay, the court may order the defendant imprisoned subject to the limits established in this section." He asked for further clarification on the reason to repeal it.

MS. SCHROEDER explained that series includes other repealers that relate to the technical violation caps. This was codified in Senate Bill 91 and is current practice. She said it is not necessary to codify it, but she does not see a problem in doing so. She said that the Department of Law started with an initial sweep and if the committee wants to add the language back in, the department would not object.

SENATOR MICCICHE explained that some people who have broken the cycle of addiction have talked to him about a natural process that occurs. Parents and friends are initially willing to bail the person out. That group of people willing to bail the person out shrinks the more the person offends, until the person runs out of friends. He said that made it serious for them. He acknowledged that sitting in prison short circuits the process and causes them to take rehabilitation more seriously. He said it is also compounded by the bail schedule from the courts. He said that the legislature signaled in Senate Bill 91 the inability to pay as a reason to keep people in jail. He said he supports this change.

[3:11:38 PM](#)

SENATOR KIEHL acknowledged the goal of making more treatment available. He said there are a few no-cost treatment options and some treatment for inmates is available in facilities. He said that DOC tries to get court-ordered offenders the ability to obtain treatment. However, there is not much treatment available. He said this is about continuing good faith effort. He said he does not think this relates to running out of friends. He said that repealing this language takes the criminal

justice system in the wrong direction in terms of a suspended portion of their sentence.

3:12:39 PM

MS. SCHROEDER offered a point of clarification. She referred to AS 12.55.110(f). She said that it has never been the case to send someone to jail because they are unable to complete treatment for the inability to pay. The issue with Section 2 relates to not paying a fine and potentially going to jail. She said that if the defendant was unable to pay after having made continuing good faith efforts, they are not sent to jail. This language pertains to and targets people who are willfully refusing to pay their fines. In terms of AS 12.55.110(f), the department would address someone who violates their probation if they are willfully refusing to go to treatment. This is not targeted at people who cannot pay for treatment.

SENATOR KIEHL acknowledged the two sections function differently.

SENATOR MICCICHE said that he did not have a means to review the repealer. He said that he stands corrected on the bail issue.

[SB 34 was held in committee.]

3:14:26 PM

There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:14 p.m.