ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE
February 7, 2019
3:34 p.m.

MEMBERS PRESENT

Senator Mike Shower, Chair
Senator John Coghill, Vice Chair
Senator Lora Reinbold
Senator Peter Micciche
Senator Scott Kawasaki

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Andy Josephson

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 & HELD

SENATE BILL NO. 33
"An Act relating to pretrial release; relating to sentencing; relating to treatment program credit toward service of a sentence of imprisonment; relating to electronic monitoring; amending Rules 38.2 and 45(d), Alaska Rules of Criminal Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 33
SHORT TITLE: ARREST; RELEASE;SENTENCING;PROBATION
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/23/19	(S)	READ THE FIRST TIME - REFERRALS
01/23/19	(S)	STA, JUD, FIN
02/07/19	(S)	STA AT 3:30 PM BUTROVICH 205

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

WITNESS REGISTER

AMANDA PRICE, Commissioner Designee
Department of Public Safety (DPS)
Anchorage, Alaska
POSITION STATEMENT: Provided introductory remarks during the first hearings on SB 33 and SB 34.

NANCY DAHLSTROM, Commissioner Designee
Department of Corrections (DOC)
Anchorage, Alaska
POSITION STATEMENT: Provided introductory remarks during the first hearings on SB 33 and SB 34.

KEVIN CLARKSON, Attorney General Designee
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Provided introductory remarks during the first hearings on SB 33 and SB 34.

JOHN SKIDMORE, Director
Criminal Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Answered questions and delivered the sectional analysis for SB 34.

ACTION NARRATIVE

3:34:55 PM
CHAIR MIKE SHOWER called the Senate State Affairs Standing Committee meeting to order at 3:34 p.m. Present at the call to order were Senators Coghill, Kawasaki, Reinbold, and Chair Shower. Senator Micciche arrived soon thereafter.

SB 34-PROBATION; PAROLE; SENTENCES; CREDITS
SB 33-ARREST;RELEASE;SENTENCING;PROBATION

3:35:24 PM
CHAIR SHOWER announced the consideration of 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." and
SENATE BILL NO. 33; "An Act relating to pretrial release; relating to sentencing; relating to treatment program credit toward service of a sentence of imprisonment; relating to electronic monitoring; amending Rules 38.2 and 45(d), Alaska Rules of Criminal Procedure; and providing for an effective date."

He stated that both bills were introduced by Senate Rules at the request of the Governor. He advised that he asked the commissioners of the Department of Public Safety (DPS) and the Department of Corrections (DOC) and the attorney general to provide opening remarks from a policy perspective. The director of the Criminal Division of the Department of Law would follow with a sectional analysis for each bill. He asked the committee members to keep their initial questions at the 30-thousand foot level for the broad policy perspectives and wait to direct the detailed questions to Mr. Skidmore.

3:36:56 PM
AMANDA PRICE, Commissioner Designee, Department of Public Safety, said she was thrilled to be before the committee to support Governor Dunleavy's commitment to make communities safer. SB 33 and SB 34 do that by returning tools to law enforcement to move more quickly to make arrests and hold offenders accountable.

3:37:43 PM

NANCY DAHLSTROM, Commissioner Designee, Department of Corrections, introduced herself and advised that the director of the parole board and director of probation and parole were with her and available for questions.

3:38:10 PM
CHAIR SHOWER recognized that Representative Andy Josephson was in the audience and that Senator Micciche had joined the committee.

3:38:24 PM
KEVIN CLARKSON, Attorney General Designee, Department of Law, thanked the committee for the invitation to talk about SB 33 and SB 34. He described them as numbers two and three in a suite of four bills designed to return needed tools to judges, prosecutors, and law enforcement to respond to the rising crime trends in the state.

He stated Senate Bill 91 sought to improve the criminal justice system by changing the bail laws, which became effective in 2018. The idea was to release more people pretrial while also maintaining community safety. Unfortunately, that became known as the "catch and release" system, he said. It took too much discretion from judges and limited their ability to evaluate each case on the facts and each offender based on their criminal history and ties to the community.

SB 33 corrects that by restoring judicial discretion when considering pretrial release. Under SB 33, the panoply of options available to judges include: release on own recognizance (OR), unsecured bail, secured bail, release with electronic monitoring by a private company, and release under the supervision of a third-party custodian. The Department of Corrections will maintain its ability and authority to monitor pretrial release through its probation and parole officers.

ATTORNEY GENERAL DESIGNEE CLARKSON said SB 33 also seeks efficiencies and justice. For example, it will encourage greater use of video teleconferencing in almost all pretrial hearings. This will greatly reduce the need to transport defendants, DOC personnel, and prosecutors to court locations thus resulting in significant cost savings. This is safer for officers and will reduce the opportunity for contraband to be introduced into correctional facilities. The bill also prohibits an offender from receiving credit for pretrial release when he or she is on electronic monitoring. This will avoid the problem of a defendant prolonging pretrial release proceedings to reduce the

time or entirely avoid serving their ultimate sentence in jail upon conviction.

He said defendants should always be encouraged to seek treatment, but not to the extent that pretrial delay impacts the victim's ability to get closure and the prosecutor's ability to pursue the case. He opined that, "Pretrial delay is always a friend of the defendant and it's never a friend of the victim or prosecutors."

ATTORNEY GENERAL DESIGNEE CLARKSON encouraged the committee to examine the bill closely and give serious thought to how it will help the criminal justice system help Alaskans.

3:43:20 PM
SENATOR MICCICHE asked him to address the exacerbation of release on own recognizance (OR) under the new bail schedule, and whether SB 33 would send a message to the courts to return the bail schedule to the direction of the legislature.

ATTORNEY GENERAL DESIGNEE CLARKSON said he believes judges will have greater flexibility when deciding which pretrial release conditions to adopt but they will look at the same factors. He deferred further comment to Mr. Skidmore.

CHAIR SHOWER said he would reserve time for closing remarks at the end of the hearing.

3:45:04 PM
ATTORNEY GENERAL DESIGNEE CLARKSON began his comments on SB 34 stating that it is designed to strengthen the tools used to address probation infractions. It eliminates the caps on the sanctions for those probationers who commit technical violations or abscond. The bill returns discretion to judges to consider the original crime(s) and technical violations of their terms of release

SB 34 also changes the earned compliance credit from day-for-day credit to a credit system wherein the offender receives one day credit for every three days without a violation. Further, an offender who commits a violation loses all of the credits they earned up to the time of the violation. He opined that the longer an individual goes without a violation, the greater incentive they have to continue their good behavior.

With reguard to parole eligibility, the bill reimposes the previous restrictions as to what crimes are eligible for

discretionary parole. SB 34 also eliminates a presumption of release that has to be overcome by clear and convincing evidence and returns discretion to the parole board. This will help ensure that individuals who are released on parole are a good risk and return safety to communities. Finally, the bill eliminates good time credit for convicted offenders who are on electronic monitoring.

He noted that Mr. Skidmore would walk through the sectional analysis.

3:47:40 PM
CHAIR SHOWER asked Mr. Skidmore to start with the sectional analysis of SB 34, but to feel free to begin with a 30-thousand foot view of switching back from Senate Bill 91.

JOHN SKIDMORE, Director, Criminal Division, Department of Law, said he would start his comments by reminding members that when he testifies, he tries to provide insight on the law and how a bill will impact the criminal justice system. It is not his role to express his personal opinions about any particular bill. His testimony is always on behalf of the administration.

He related that most of his comments during the hearings on Senate Bill 91 were that the bill represented recommendations that the former administration wanted to implement. He recalled that throughout his testimony, he consistently counseled that it would take time to understand how provisions in the bill would play out. He said, "Whenever you make changes to a system, you always need to evaluate it for whether or not you achieve the desired result, whether or not there are unintended consequences, and then you have to decide whether or not any changes have to be made." He said that principle is consistent with what he would describe today. He opined that, "These are changes that I think folks are going to say are appropriate to be making because of some of the concerns or the problems that they have created."

3:50:19 PM
SENATOR COGHILL said he has always found Mr. Skidmore to be honest as well as clear on the law and how it plays out. However, because Mr. Skidmore does not bring the view of the court or public defender to the discussion, he said he may ask for those perspectives at some point.

CHAIR SHOWER clarified that there is no intention to rush these bills, but to provide a thorough vetting and "get it right going backwards."

3:53:17 PM
MR. SKIDMORE delivered the following sectional analysis for SB 34:

> Section 1: Eliminates language related to caps on technical violations of probation under AS 12.55.110.
>
> Section 2: Eliminates language related to caps on technical violations of probation under AS 12.55.110.

SENATOR COGHILL requested information, at some point, on how the caps worked and the issues that came up on the timeline.

CHAIR SHOWER noted that the bill frequently uses the terms "shall" and "may" and he would like some discussion, when "may" is used, about what that means to the judge and if the discretion is bounded sufficiently to ensure it does the right thing.

MR. SKIDMORE continued:

> Section 3: Makes the recommendation of a probation officer for early termination of probation permissive and at the discretion of the probation officer. Also eliminates the timeline for when such a recommendation must be made. 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.

He explained that probation officers have the ability to recommend to the court that a defendant does not need to remain on probation. Senate Bill 91 encouraged this to occur by requiring probation officers to make a recommendation. They did not have a choice. Section 3 returns discretion to the probation officer; it does not force a recommendation to occur.

SENATOR COGHILL pointed out that Section 3 does away with the things the probation officer had to consider when making the

required recommendation. He asked Mr. Skidmore to review those requirements.

MR. SKIDMORE read the deleted text starting on page 2, line 31, through page 3, line 7, of the bill and agreed with the concept Senator Coghill described. The condition upon which the recommendation was required was twofold: first, either two years or 18 months had elapsed; second, the defendant had not had any violations during that time.

SENATOR COGHILL recalled the finding was that with that kind of incentive, probationers were shown to be safer. He said he would try to produce the data upon which that recommendation was based.

3:58:25 PM
SENATOR KAWASAKI asked how many people had qualified for probation termination under the two year or 18 month provision.

MR. SKIDMORE suggested he direct the question to the Department of Corrections; he did not have that data. He noted that that part of Senate Bill 91 was implemented in January 2017.

CHAIR SHOWER noted the experts online who might be able to answer the question.

SENATOR KAWASAKI said he was willing to wait for the information.

3:59:27 PM
MR. SKIDMORE continued.

> Section 4: Reduces amount of time that a probationer may decrease their length of probation for good behavior to one day for every three days without a violation.

He explained that under the current law, earned compliance credits allow a probationer who goes 30 days without a violation to reduce their probation by an equal 30 days. Section 4 changes the calculation so that for every 3 days without a violation, one day is removed from the period of probation.

SENATOR COGHILL said he'll be interested in seeing where that has failed.

CHAIR SHOWER said he would like to see data that shows a trend one way or the other.

SENATOR MICCICHE observed that the bill recognizes some value in the earned compliance credit because it does not return to pre-Senate Bill 91 when it did not exist.

MR. SKIDMORE said that's correct; it is not a complete repeal. It adopts the concept that human behavior can be influenced through both the stick and carrot method. Section 4 provides the carrot, but it is a slightly smaller carrot than in current law.

SENATOR MICCICHE observed that sex offenders are not eligible for earned compliance credit and a probationer who violates their conditions of probation loses any credits they earned prior to the violation.

MR. SKIDMORE responded that that is what Section 5 does.

CHAIR SHOWER advised that the committee wants to know what the data shows so they are better able to make effective changes to the criminal justice system.

4:03:43 PM
SENATOR REINBOLD pointed out that the bill still allows individuals to get 33-percent credit while they are out on probation.

MR. SKIDMORE confirmed that was correct.

SENATOR REINBOLD opined that Alaska ought to benchmark to other states and questioned whether this is more lenient. She offered her understanding that there were nine ways for individuals to get out of jail after Senate Bill 91 passed.

MR. SKIDMORE said he knows that some, but not all, states are using earned compliance credits and that the 3:1 ratio was just adopted at the federal level in the First Step Act.

SENATOR REINBOLD clarified she was talking about states with lower crime rates. She noted that some statistics show Alaska is the most dangerous state in the nation. Because the Governor wants to make Alaska the safest state in one year, she wants to look at all the ways people can get out of jail more easily and off probation more quickly. She also posed the question, "or is supervision a good thing for these people?"

SENATOR MICCICHE said that when there is not a full repeal, he'd like to see the data and the logic that supports that.

CHAIR SHOWER added that the bill will change, but it's appropriate for the committee to look at the metrics that show what is and is not working.

4:07:21 PM
SENATOR COGHILL said the intention in Senate Bill 91 was to incentivize people to get treatment during probation and parole. What Sections 4 and 5 will do is remove the ability for some people, certain sex offenders in particular, to be in a program. He said he'd like to see data that shows that that aspect of Senate Bill 91 was not successful.

MR. SKIDMORE pointed out that the language that allows certain sex offenders to earn credits for complying with the conditions of probation was removed from Section 4 because Section 5 prohibits earned compliance credit for sex offenders.

> Section 5: Prohibits a sex offender from earning credit against their period of probation. Also mandates that a probationer lose all of the credits they have accrued if they are found in violation of probation, requiring the accrual to start over.

He explained that sex offenders on probation are monitored through what is call the containment model that imposes a series of conditions. He said it has been extremely successful and should not be shortened for sex offenders. Because probation is what allows them to succeed so well, the intention is to completely exempt sex offenders from reductions of probation. He said DOC can discuss the details about why it is so successful, but as a prosecutor for 20 years he can attest to its success.

Section 5 also establishes that an individual who is found to be in violation of probation will lose all credits accrued to that point. The idea is to encourage people to continue good behavior because, "the longer they go, the bigger that carrot is for them and they don't want to risk losing it." Addressing Senator Reinbold's question about how the bill compares to other states, he said this concept is not found in the federal First Step Act. He did not know if other states use it.

SENATOR COGHILL noted that this information was not discussed several years ago.

MR. SKIDMORE agreed.

4:11:56 PM
SENATOR REINBOLD opined that the committee needs a compare and contrast document for the Governor's bills like Legislative Legal Services prepares for the bills it drafts. She added that at a high level she was supportive of all the Governor's crime bills, but she needed to see where they differ from Senate Bill 91.

MR. SKIDMORE directed attention to the bill matrix in the packets. It shows the progression of the law prior to Senate Bill 91, how it was changed by Senate Bill 91, how it was changed by Senate Bill 54 or House Bill 312, and what SB 32, SB 33, and SB 34 do. He acknowledged that the matrix does not provide information about the specific sections of Senate Bill 91 that are not touched by these three bills. He offered to follow up with a synopsis.

SENATOR REINBOLD said she was accustomed to seeing a document that has red and blue text that indicates the new and old language respectively. She asked if he could provide that.

MR. SKIDMORE said he has not seen that type of document.

4:14:39 PM
SENATOR COGHILL advised that once the administration's bills are amended, Legislative Legal Services can provide that format.

SENATOR REINBOLD reiterated her preference to immediately have a red and blue text side-by-side comparison.

MR. SKIDMORE moved to Section 6.

> Section 6: Amends duties of a probation officer to require that a probation officer consider recommending early termination of probation. Also eliminates the requirement to use administrative sanctions before filing a petition to revoke.

He directed attention to the deleted language on page 4, lines 23-30, and page 5, lines 2-8. Both subsections referred to administrative sanctions. He clarified that DOC still has the ability to use administrative sanctions, but at the policy level. Thus it does not need to be in the statutes.

MR. SKIDMORE pointed out that the language on page 5, paragraph (7), regarding termination of probation says the probation officer "shall consider recommending termination" of probation as opposed to "shall recommend termination." This returns discretion to the probation officer.

4:17:32 PM
SENATOR KAWASAKI asked him to reiterate the reason for removing administrative sanctions and incentives.

MR. SKIDMORE explained that one of the concepts in Senate Bill 91 was to reduce the number of petitions filed in court for probation violations. The bill codified the requirement for DOC to develop a program of administrative sanctions or incentives to try and get compliance. He reiterated that the department is able to have policies that do or do not use administrative sanctions or incentives. Having administrative sanctions in statute caused problems because it required regulations to be adopted and that has not happened.

SENATOR KAWASAKI summarized that regulations have not been adopted and were not adopted prior to Senate Bill 91.

MR. SKIDMORE confirmed that there were no regulations previously, there are none now, and there would not be any in the future. Now there is a written policy and DOC has the discretion to continue that policy or not.

SENATOR COGHILL commented that the policy in statute indicated a preference for adopting regulations; now that DOC has the discretion, it appears that they may not adopt regulations.

MR. SKIDMORE suggested that was a question for DOC; he was giving the legal analysis of what these changes allow. Discretion is returned to the department to manage their resources.

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

He explained that under current law, an inmate is not required to apply, but the parole board is required to consider them for parole automatically once they have served a sufficient amount of time. The proposed change requires the inmate to apply for parole; consideration for parole does not happen automatically.

SENATOR COGHILL recalled that some of the discussion was about addressing the number of petitions that were filed but were never considered by the board.

MR. SKIDMORE recalled the discussion was that a number of inmates simply do not apply for discretionary parole and the intent was to ensure that every inmate who was eligible would be considered. He suggested asking the parole board for the data, but he understands that a number of inmates still do not show up for their hearing. It is a waste of resources for the board to schedule hearings for those inmates who are not interested in parole, he said.

SENATOR COGHILL said he disagrees with the practical outplay but would stay open to the discussion.

4:24:48 PM
CHAIR SHOWER asked what mechanism is available for inmates who have a learning disability and may not know they have the option of applying.

MR. SKIDMORE suggested he asked the parole board.

4:25:36 PM
SENATOR REINBOLD voiced support for Section 7.

SENATOR MICCICHE asked which section addresses the timing of parole hearings.

MR. SKIDMORE said a provision in Senate Bill 54 encouraged parole hearings to occur more frequently than they had in the past. Nothing in SB 34 talks about that concept, but timing is addressed in an upcoming section.

SENATOR MICCICHE said he could wait.

MR. SKIDMORE turned to Section 8.

> Section 8: Returns discretionary parole eligibility to where it was prior to January 1, 2017. Makes the following crimes ineligible:
> - 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).

CHAIR SHOWER asked for a layman's explanation as opposed to a legal definition of crimes such as robbery in the first and second degrees.

MR. SKIDMORE explained that robbery in the first degree is the taking of property from another person using significant force. Assault in the first degree is the most serious level of assault and generally involves serious physical injury. Arson in the first degree is intentionally setting a fire that causes harm to another person as well as damage to the property. The concept of class A and B felonies captures the repeat offender. Class B and C sex felonies are generally talking about sexual contact. Some levels of penetration involving incapacitated individuals are the second level of seriousness of sexual assault. Sexual assault is generally committed against a non-consenting adult. Sexual abuse of a minor is about engaging in a sex act with a person who is under the appropriate age for that conduct to occur.

CHAIR SHOWER said some of the discussion will be about putting repeat offenders and violent offenders behind bars while ensuring that non-violent offenders are not put in the prison system when they don't need to be there.

MR. SKIDMORE clarified that robbery in the first degree requires that a person is armed with a deadly weapon and they represent by words or conduct that they have the weapon is on their person. Assault in the first degree is causing someone serious physical injury.

SENATOR REINBOLD asked him to define discretionary parole pre-Senate Bill 91 and what that bill allowed.

MR. SKIDMORE explained that prior to Senate Bill 91, the crimes set out in Section 8 were not eligible for discretionary parole. SB 34 reinstates the pre-Senate Bill 91 law so those crimes would not be eligible for discretionary parole.

SENATOR REINBOLD summarized her understanding that Senate Bill 91 expanded the law to allow: 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) to be eligible for discretionary parole.

MR. SKIDMORE said yes.

4:35:35 PM
SENATOR MICCICHE suggested that people would find it helpful if he explained where there has been a full repeal of Senate Bill 91. For example, Section 8 fully repeals the Senate Bill 91 expanded eligibility for discretionary parole.

MR. SKIDMORE said that's correct.

SENATOR COGHILL stated his intention to ask the parole board how many offenders in those crime categories have applied for discretionary parole and how many were problematic.

MR. SKIDMORE continued.

> Section 9: Eliminates a presumption of release and thereby returns discretion back to the parole board when determining release on discretionary parole.

He explained that Senate Bill 91 created a presumption of release because it used the term "shall" when it talked about releasing a person unless there is clear and convincing evidence that the person should not be released based on four criteria that were already in the law. Section 9 is a full repeal of that provision in Senate Bill 91. It says that instead of creating a presumption that someone shall be released, the decision is returned to the discretion of the parole board.

CHAIR SHOWER requested any data that was available related to Section 9.

4:38:25 PM
MR. SKIDMORE continued.

> Section 10: Allows the parole board to make a person, who does not meet the factors in section 9, ineligible for further consideration of discretionary parole or to have the person serve additional time before they can be considered again for discretionary parole.

He explained that Senate Bill 91 tried to streamline the parole application and hearing process thereby eliminating the parole board's ability to make case-by-case determinations on whether

or not an offender is a good candidate for parole. Section 10 would be a complete repeal of that aspect of Senate Bill 91.

4:40:10 PM
SENATOR COGHILL asked if Section 10 uses pre-Senate Bill 91 language.

MR. SKIDMORE answered in the affirmative. The language in Section 10, [AS 33.16.100(h)], is identical to the language in AS 33.16.100(e) that was repealed when Senate Bill 91 was enacted.

4:40:50 PM
SENATOR MICCICHE asked him to clarify that not every case qualifies for discretion on parole eligibility.

MR. SKIDMORE said the limitations he discussed in Section 8 about who is eligible for parole still exist. For Section 10 he described a person who is eligible and does apply for discretionary parole. In those cases, the parole board has the ability to say an individual is or is not a good candidate for parole now or in the future.

SENATOR COGHILL asked if the tool is added back because Section 9 eliminates the presumption.

MR. SKIDMORE replied Section 9 removes the language about the board using the clear and convincing evidence standard when it analyzes four factors to consider whether or not somebody is a good candidate for release. Those factors existed prior to Senate Bill 91 and those factors have not changed. What has changed is the presumption to be applied. Prior to Senate Bill 91, the board would consider those factors and decide whether or not the individual was a good candidate for parole. After Senate Bill 91, the board was required to release the individual unless they found by clear and convincing evidence that one of those factors indicated that the person should not be paroled. Also, the presumption was not a presumption of release. It was that the parole board would decide whether it thought the person was a good candidate or not.

4:44:30 PM
MR. SKIDMORE continued the sectional.

> Section 11: Conforming language regarding the requirement that a person fill out an application for discretionary parole.

Section 12: Eliminates time restriction on when a person may be discharged from parole, returning discretion back to the parole board.

He explained that Section 12 eliminates the mandatory recommendation that a person be released from parole after one year in which they had no problems. It returns that discretion to the parole board to determine whether or not the person remains on parole.

SENATOR KAWASAKI asked if deleting the language changes the meaning such that the parole board could release somebody before one year has passed.

MR. SKIDMORE replied the parole board has always had the ability to discharge somebody from parole before one year. Senate Bill 91 said that at that one-year mark the board is required to make the recommendation unless the individual has committed a violation. This gives the probation officer and the board greater discretion.

SENATOR KAWASAKI said he would look at the statutes.

MR. SKIDMORE continued.

Section 13: 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.

He noted that this section eliminates the term "shall" and instead says the parole officer "may" recommend early discharge for a parolee who has met the treatment condition of parole. The requirement to complete one year on parole is eliminated.

Section 14: Eliminates language referencing technical violations of parole under AS 33.16.215.

He said this is a conforming amendment for parole; he would talk further about technical violations when he discusses the repealers.

> Section 15: Eliminates language related to tolling [of parole] when a person absconds [on the loose and not reporting] from parole (conforming to repeal of AS 33.16.215 regarding technical violations of parole and sanctions for absconding) and prohibiting the parole board from extending the person's parole beyond the maximum release date.

He reviewed the concepts of absconding and tolling and explained that the purpose of setting conditions of probation and parole and monitoring the person during that period, is to help them transition from the institution to a productive member of society.

4:50:02 PM
SENATOR MICCICHE asked if the parole board has the ability to penalize someone who absconds.

MR. SKIDMORE replied the parole board has broad discretion when it determines what sanctions to impose. He noted that Section 15 returns full discretion to the board.

SENATOR COGHILL recalled that the former commissioner recommended that provision for situations such as difficulty getting to court. He said he'd look at this section a little more.

MR. SKIDMORE clarified that he was not commenting on why it was implemented. He was discussing what the section means operationally.

> Section 16: 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.

He said the concept of earned compliance credit that was discussed earlier for probation also applies to parole. Instead of 30 days credit for 30 days without a violation, Section 16 provides one day credit for every three days without a violation.

> Section 17: Prohibits a sex offender from earning credit against their period of parole. Also mandates that a parolee lose all of the credits they have accrued if they are found in violation of parole,

requiring the accrual to start over. Page 11 of the bill.

He said this is the same concept that was discussed for probation, only this applies to parole. He emphasized that the period of parole is not reduced for sex offenders. He reiterated that those offenders should be on parole for as long as possible because the data indicates that is very successful. He noted that this section also provides that a parolee loses all credits they have accrued if they have a violation.

Section 18: Prohibits a person from earning good time for time spent on electronic monitoring post-sentence.

He said the rationale for this provision is that the person on electronic monitoring has far greater freedom than a person in jail. They have already been awarded the significant benefit of not being in the institution.

SENATOR COGHILL said part of the idea was to incentivize treatment, but it has not proven to be as beneficial as anticipated. Nonetheless, he said he would still like to look for incentives for treatment.

SENATOR MICCICHE requested help locating AS 33.20.010(a).

MR. SKIDMORE read the existing subsection (a) of AS 33.20.010. and explained that Section 18 prohibits the good time earned while on electronic monitoring that is in current statute.

SENATOR COGHILL recalled that part of the discussion was about finding a way to keep people from staying in jail and adding to their criminogenic behavior. He acknowledged that Senate Bill 91 went too far, but said he was still interested in finding a way to incentivize treatment.

SENATOR KAWASAKI asked for confirmation that Section 18 completely repeals those provisions of Senate Bill 91.

MR. SKIDMORE confirmed it is a full repeal.

SENATOR KAWASAKI asked if halfway houses and other inpatient treatments qualify as a treatment program in this case.

MR. SKIDMORE said he did not know.

CHAIR SHOWER asked him to follow up with the answer.

5:02:25 PM
SENATOR REINBOLD, responding to Senator Coghill, related that prosecutors have told her that they no longer have anything to hold over offenders' heads [in terms of jail time] so there is no incentive to get treatment. She expressed hope that that would enter into the discussion at a future time.

SENATOR COGHILL said he understands that, but these are probationers which is different.

MR. SKIDMORE continued.

> Section 19: 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.

He explained that this is a conforming amendment. SB 34 eliminates administrative sanctions from the statutes and this section eliminates the requirement to report on them to the commission.

> Section 20: Repealer section.

He said he would only highlight certain repealers such as technical violations. He described examples of the conditions that probationers and parolees are required to follow, noting that technical violations of these conditions are not defined as a new criminal offense. He related that during the discussion of Senate Bill 91, there was talk about replicating the concept of the PACE program, which is "swift and certain" sanctions for those who violate conditions of probation and parole. The idea is that the petition to revoke, the admission or denial of guilt, and adjudication would occur quickly, and the sanction would be certain. That is the goal and that program has been found to be very effective. However, in Alaska the component about swiftness is missing. He said he does not know if the petitions to revoke are filed quickly, but he does know that they are not decided quickly.

What happened is that provisions throughout the law say that for a first violation a person will be placed in jail for a maximum of three days. After that time, they will be released because they have already served the maximum time. He posited that the cap may have been built into the law anticipating the process

wouldn't happen as quickly as desired. "I'm here to tell you it's not happening in a week. It's not happening in two weeks," he emphasized. The process is not swift, and that delay does not result in a sanction close in time to when the violation occurred, which diminishes its effectiveness, he said. The process is neither swift nor certain. This is the first problem.

The second problem prosecutors encountered is the court interpretation of the allegations that are filed in a case. He explained that in a criminal case, each conduct of criminal behavior is a separate allegation or charge. For example, failure to report, consuming alcohol, losing a job, changing residence, and contact with other known felons could all be filed in a single petition even though they are five separate charges. In other cases, a single allegation or charge is filed in a petition. The problem is that criminal justice reform eliminated the ability for the parole board or the judge to take into consideration not only the number of allegations but also the underlying offense. They are all treated the same.

To exacerbate this problem, all petitions filed after a person's first violation are considered the first petition amended, not a second and subsequent petition. The courts interpreted that to mean all the amendments to the petition still have a cap of just three days. "We have cases in which people have had their petitions amended multiple times and still only had [jail time of] three days for that first violation," he emphasized. He further stressed that not considering the number of allegations and how they interact with the underlying offense has created huge problems. Clearly, the caps for technical violations did not work out as hoped. He reminded the committee that he talked about this concern when Senate Bill 91 was considered but the law nevertheless ended up this way and it has been a problem from the beginning.

MR. SKIDMORE said the department litigated in an effort to get the courts to change their interpretation, but to no avail. He highlighted that no other state in the country addresses its probation and parole system in this way, and it is not working in Alaska. Thus, the caps are repealed.

He offered to discuss the repealers in other statutes if any member had a question.

Section 21: Applicability.

Section 22: Effective date. This bill takes effect on July 1, 2019.

5:13:41 PM
CHAIR SHOWER remarked that he asked for forceful testimony and the foregoing fulfills that request.

SENATOR MICCICHE noted that the applicability dates apply to sentences imposed on or after the effective dates of those sections for conduct also occurring on or after the effective date of those sections. He asked if there has ever been a case where the sentences imposed on or after an effective date can apply to conduct that occurred before the effective date.

MR. SKIDMORE clarified that this is not about the conduct of the underlying crime but of the conduct for the petition of the probation or parole violation That being said, the answered is no; the offender has to be advised of the potential sanctions prior to committing the conduct otherwise it is a violation of due process.

SENATOR KAWASAKI referenced the caps in Section 19 and said he agrees that people are stacking offenses. He asked how much of that is based on the fact that the alleged violations are generally not adjudicated swiftly, in the three-day window.

MR. SKIDMORE said he did not have data as to the number of people who ended up with repeat violations, but it was common. Complaints about this provision came in from all 12 prosecutor offices. He agreed that swiftness plays a role but there are other factors in play and it's difficult to separate them. He opined that there will also be problems providing data as changes are considered because a host of things were changed simultaneously. This makes it difficult to impossible to isolate all the factors to evaluate them individually.

5:19:00 PM
SENATOR REINBOLD commented that she likes the bills more all the time, but they don't go far enough. She thanked Mr. Skidmore for the presentation and the media for doing an excellent job of letting the folks at home stay abreast on this important topic.

SENATOR MICCICHE said he is carefully evaluating the bills and supports the repeal and replacement of Senate Bill 91 to more responsive statutes. However, he will be very careful not say a bill does not go far enough this early in the process.

5:20:46 PM
SENATOR KAWASAKI highlighted that this is not a repeal and replace of the entire Senate Bill 91. He cited compliance credits as an example where some value has been shown and the provision is not being fully repealed. He asked if there were other aspects of Senate Bill 91 that are good practical measures but are not in SB 34.

MR. SKIDMORE said yes, a number of crimes were eliminated from the criminal code while the penalties were reduced for things like promoting an exhibition of fighting animals, obstructing highways, and dealing with gambling. A subsection of arson was added into the penalties, provisions for murder were increased, and the increased victims' rights which Senate Bill 91 provided are not changed. A suspended entry of judgement was created, which was to work in conjunction with the suspended entry of sentence. The suspended entry of judgement is retained and will be a valuable tool going forward in terms of how to address individuals addicted to drugs.

He summarized that there are a number of provisions in Senate Bill 91 that are not changed at all, but throughout the three bills there are things like earned compliance credits that are not completely repealed. They are modified but the concept remains. He estimated that the bills touch on 90-95 percent of the concepts in Senate Bill 91, but some are completely retained. "There are certainly very good things that were done in Senate Bill 91 that are still here. But there are a lot of things that we went too far and we're trying to adjust them here. And that's what these suite of bills does in [SB 32, SB 33, and SB 34]."

CHAIR SHOWER requested a list of those things that are not proposed to be fully repealed. He opined that the committee would like the opportunity to review that data because the public expects a repeal effort. People on both sides of the political spectrum are upset and it is important to get it right this time. "We better be able to show them what we've done to make it right," he said. In the rush to get these bad actors off the streets and behind bars it's important to remember the presumption of innocence and that the constitution matters. This committee, in particular, should be looking to see that in this rush to judgement, all citizens are protected. "But don't get me wrong, if somebody's a bad actor and they need to be behind bars, we should put them there for the safety of our citizens," he concluded.

CHAIR SHOWER held SB 33 and SB 34 in committee for further consideration.

5:27:31 PM
There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 5:27 pm.