

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS STANDING COMMITTEE

March 12, 2019

3:35 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

COMMITTEE CALENDAR

SENATE BILL NO. 23

"An Act making special appropriations from the earnings reserve account for the payment of permanent fund dividends; and providing for an effective date."

- MOVED CSSB 23(STA) OUT OF COMMITTEE

SENATE BILL NO. 24

"An Act directing the Department of Revenue to pay dividends to certain eligible individuals; and providing for an effective date."

- MOVED CSSB 24(STA) OUT OF COMMITTEE

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 23

SHORT TITLE: APPROP:SUPP. PAYMENTS OF PRIOR YEARS' PFD
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/16/19	(S)	READ THE FIRST TIME - REFERRALS
01/16/19	(S)	STA, FIN
02/05/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/05/19	(S)	Heard & Held
02/05/19	(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)	Heard & Held
02/28/19	(S)	MINUTE(STA)
03/05/19	(S)	STA AT 3:30 PM BUTROVICH 205
03/05/19	(S)	Heard & Held
03/05/19	(S)	MINUTE(STA)
03/07/19	(S)	STA AT 3:30 PM BUTROVICH 205
03/07/19	(S)	Heard & Held
03/07/19	(S)	MINUTE(STA)
03/12/19	(S)	STA AT 3:30 PM BUTROVICH 205

BILL: SB 24

SHORT TITLE: PFD SUPPLEMENTAL PAYMENTS
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

01/16/19	(S)	READ THE FIRST TIME - REFERRALS
01/16/19	(S)	STA, FIN
02/05/19	(S)	STA AT 3:30 PM BUTROVICH 205
02/05/19	(S)	Heard & Held
02/05/19	(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)	Heard & Held
02/28/19	(S)	MINUTE(STA)
03/05/19	(S)	STA AT 3:30 PM BUTROVICH 205
03/05/19	(S)	Heard & Held
03/05/19	(S)	MINUTE(STA)
03/07/19	(S)	STA AT 3:30 PM BUTROVICH 205
03/07/19	(S)	Heard & Held
03/07/19	(S)	MINUTE(STA)
03/12/19	(S)	STA AT 3:30 PM BUTROVICH 205

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
02/07/19	(S)	Heard & Held
02/07/19	(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)
03/12/19	(S)	STA AT 3:30 PM BUTROVICH 205

WITNESS REGISTER

BRUCE TANGEMAN, Commissioner Designee
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: Provided information about the amendments to SB 23 and SB 24.

WILLIAM MILKS, Assistant Attorney General
Civil Division
Labor and State Affairs Section
Department of Law

POSITION STATEMENT: Discussed the DOL memo articulating the critical facts that led Department of Law to conclude that a court would determine SB 23 constitutional.

ROBERT HENDERSON, Deputy Attorney General
Criminal Division
Department of Law
Juneau, Alaska

POSITION STATEMENT: Provided information related to SB 33.

NANCY MEADE, General Counsel
Administrative Services
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions about SB 33.

TERRENCE SHANIGAN, Staff
Senator Mike Shower
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Discussed merging pretrial services into the probation and parole division during the hearing on SB 33.

KATIE BOTZ, representing self
Juneau, Alaska

POSITION STATEMENT: Testified in support of SB 33.

MICHAEL VAN LINDEN
Alaska Therapeutic Court Alumni Group
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to SB 33.

DON HABEGER, Community Coordinator
Juneau Re-entry Coalition
Juneau, Alaska

POSITION STATEMENT: During the hearing on SB 33, asked the committee to be mindful to provide appropriate exit strategies for those who want to return to their community and be participating members.

ERIK REED, representing self
Wasilla, Alaska

POSITION STATEMENT: Testified during the hearing on SB 33 and ultimately voiced support.

SAMANTHA LIGHT, representing self
MatSu, Alaska

POSITION STATEMENT: Stated that SB 33 has good parts.

KARA NELSON, representing self
Juneau, Alaska

POSITION STATEMENT: Stated that she was testifying in opposition to SB 33.

ROBERT DORTON, representing self
Fairbanks, Alaska

POSITION STATEMENT: Stated opposition to SB 33.

SCOTT OGAN, representing self
Seldovia, Alaska

POSITION STATEMENT: Stated support for SB 33.

ACTION NARRATIVE

[3:35:39 PM](#)

CHAIR MIKE SHOWER called the Senate State Affairs Standing Committee meeting to order at 3:35 p.m. Present at the call to order were Senators Micciche, Reinbold, Coghill, Kawasaki, and Chair Shower.

SB 23-APPROP:SUPP. PAYMENTS OF PRIOR YEARS' PFD

[3:36:24 PM](#)

CHAIR SHOWER announced the consideration of SENATE BILL NO. 23 "An Act making special appropriations from the earnings reserve account for the payment of permanent fund dividends; and providing for an effective date."

He recapped that the bill was introduced at the request of the governor; it was last heard on 3/7/19; and public testimony was heard and closed. He said written testimony will be accepted until 6:00 pm this evening.

CHAIR SHOWER solicited a motion to adopt Amendment 1.

[3:36:47 PM](#)

SENATOR COGHILL moved to adopt Amendment 1, work order 31-GS1014\A.7 dated 3/9/19.

AMENDMENT 1

OFFERED IN THE SENATE
TO: SB 23

BY SENATOR SHOWER

Page 1, line 13:
Delete "\$1,328"
Insert "\$1,388"

[3:37:06 PM](#)

SENATOR KAWASAKI objected for discussion purposes.

[3:37:23 PM](#)

At ease

[3:37:49 PM](#)

CHAIR SHOWER reconvened the meeting. He asked Mr. Tangeman to speak to Amendment 1, which the Department of Revenue (DOR) requested.

[3:38:10 PM](#)

BRUCE TANGEMAN, Commissioner Designee, Department of Revenue, Anchorage, explained that Amendment 1 is technical to correct a miscalculation on the amount of the 2018 dividend. The amount \$1,328 is replaced with \$1,388.

SENATOR KAWASAKI noted that the legislature puts placeholders in the budget for the PFD because the exact amount of the dividend is unknown until the applicants have been certified. He asked what factors will cause this payment to change.

COMMISSIONER DESIGNEE TANGEMAN explained that DOR estimated the number of applicants that will be eligible for the payment and they acknowledge that may change. However, the dollar amount of the payment will remain the same.

[3:39:47 PM](#)

SENATOR KAWASAKI removed his objection.

CHAIR SHOWER asked if there was any further discussion of Amendment 1.

SENATOR REINBOLD asked how it happened that the number was miscalculated.

COMMISSIONER DESIGNEE TANGEMAN replied it was nothing more than a simple miscalculation in the spreadsheet.

SENATOR REINBOLD asked what the total unstructured draw would be, should the bill pass with the amendment.

COMMISSIONER DESIGNEE TANGEMAN replied it would be between \$4 million and \$5 million, depending on the number of people who receive the dividend.

CHAIR SHOWER found no further discussion.

[3:40:45 PM](#)

At ease

[3:41:33 PM](#)

CHAIR SHOWER reconvened the meeting and asked Mr. Tangeman if he had something to add.

COMMISSIONER DESIGNEE TANGEMAN clarified that DOR estimated that about 530,000 people would qualify for the repayment. That number multiplied by \$1,388 is in the \$40 million range, not \$4 million to \$5 million.

[3:42:04 PM](#)

CHAIR SHOWER found no further discussion or objection and Amendment 1 was adopted.

[3:42:21 PM](#)

SENATOR KAWASAKI moved Amendment 2, [work order 31-GS1014\A.4 dated 3/8/19].

AMENDMENT 2

OFFERED IN THE SENATE
TO: SB 23

BY SENATOR KAWASAKI

Page 1, line 5, following "of":

Insert "a supplemental permanent fund dividend of"

Page 1, line 6:

Delete "and who are eligible to receive a 2019 permanent fund dividend,"

Page 1, line 9, following "of":

Insert "a supplemental permanent fund dividend of"

Page 1, lines 10 - 11:

Delete "and who are eligible to receive a 2020 permanent fund dividend,"

Page 1, line 13, following "of":

Insert "a supplemental permanent fund dividend of"

Page 1, line 14, through page 2, line 1:

Delete "and who are eligible to receive a 2021 permanent fund dividend,"

Page 2, following line 18:

Insert new subsections to read:

"(h) An amount equal to \$1,061 for each individual who was ineligible to receive a 2016 permanent fund dividend under AS 43.23.005(d) is appropriated from the earnings reserve account (AS 37.13.145) to the restorative justice account (AS 43.23.048).

(i) An amount equal to \$1,289 for each individual who was ineligible to receive a 2017 permanent fund dividend under AS 43.23.005(d) is appropriated from the earnings reserve account (AS 37.13.145) to the restorative justice account (AS 43.23.048).

(j) An amount equal to \$1,328 for each individual who was ineligible to receive a 2018 permanent fund dividend under AS 43.23.005(d) is appropriated from the earnings reserve account (AS 37.13.145) to the restorative justice account (AS 43.23.048)."

Page 2, line 21:

Delete "include certain payments"

Insert "make certain payments to individuals who were eligible"

Page 2, lines 22 - 23:

Delete "to be made to eligible individuals with 2019, 2020, and 2021 permanent fund dividend payments"

SENATOR COGHILL objected for discussion purposes.

SENATOR KAWASAKI said he distributed a memo from Legislative Legal Services that discusses the legality and constitutionality of SB 23. He noted that the packets also contain a memo from the Civil Division of the Department of Law that discusses the reasons they view the bill constitutional. According to legislative legal, there are two solutions that would cure the suspected infirmity. One solution is to issue the supplemental payment to all individuals that received a dividend in 2016, 2017, or 2018. The alternative is to issue the supplemental payment to all individuals that receive the dividend in 2019, 2020, or 2021, regardless of their residency in 2019, 2020, or 2021. He noted that both SB 23 and SB 24 would need to be changed.

He acknowledged that the two memos are in conflict and offered his view that as currently written, the bill won't pass constitutional muster. Should the bill become law, his worry is that just one person could object to the rational and jeopardize future PFD payouts. He asked to hear from the commissioner.

[3:44:55 PM](#)

COMMISSIONER DESIGNEE TANGEMAN stated that the Alaska Department of Law believes the bill is constitutional. He acknowledged that Legislative Legal Services came to a different conclusion. He opined that Amendment 2 strays from the governor's intent and greatly over complicates the bill. The larger concerns include that DOR would be tasked with locating all the individuals that received the dividend in 2016 but no longer live in Alaska. "Are we going to then have to track these people down to every corner of the globe in order for them to get their dividend?" He pointed out that the PFD application asks the applicant to certify that on the date of application they are and intend to remain an Alaska resident indefinitely. He acknowledged that is intent language and explained that the bill uses the approach it does because the individual signs that they are still an Alaska resident. This is a less complicated approach that is more streamlined and easier to implement, he said. He added that DOR estimates that over a three-year span about 100,000 individuals that received a dividend no longer reside in Alaska, have died, or no longer qualify for some reason. Should the amendment be adopted, it would increase the cost of the back payments between \$150 million and \$160 million. He reiterated that implementation would be onerous for the department.

[3:47:41 PM](#)

SENATOR KAWASAKI questioned why DOR wouldn't use the 2016 list of applicants, that includes their addresses, to process the repayment in 2019.

COMMISSIONER DESIGNEE TANGEMAN replied it's not as easy as that because many of the 600,000 plus applicants may have changed bank accounts, moved within the state, moved out of Alaska, or died. It would be an onerous undertaking.

[3:49:10 PM](#)

CHAIR SHOWER commented that the committee can argue about complications but there's not much choice if it's a constitutional issue. He asked Mr. Milks to provide the Department of Law's view of the bill.

[3:49:45 PM](#)

WILLIAM MILKS, Assistant Attorney General, Civil Division, Department of Law, stated that at the committee's request, DOL submitted a memo articulating the critical facts that led the department to conclude that a court would determine SB 23 constitutional. He said he respects the opinion of Legislative Legal Services on this matter and understands that the analysis is based on general case law about general residency requirements. Nevertheless, it is the Department of Law's opinion that the legislature has the means to accomplish the limited objective of SB 23. That is to provide PFD back payments for a specific group of Alaska residents. He highlighted that the Permanent Fund Dividend Program is uniquely different than any other benefit program that states have enacted, that SB 23 is not a long-term change to the PFD program, and that the bill is addressed to specific facts.

MR. MILKS explained that the rational basis review is the most common review of any legislature's enactments. The U.S. Supreme Court has said that for this analysis it looks at whether the legislature had any reasonably conceivable state of facts that could provide a rational basis for the classification. In this case the classification is between two groups of Alaska residents; those who qualified for a PFD in the past but did not receive the statutory payment and those who didn't qualify for that past payment. The Department of Law believes there is a rational basis to address that set of facts.

Furthermore, the Alaska Supreme Court has talked about the concern that the PFD program is susceptible to individuals establishing minimal and temporary ties to Alaska to take advantage of the state's benefit program because the benefit is portable. That, too, leads DOL to the rational basis review when the legislature tries to impose safeguards. The legislature has the ability to address the issue, he said.

[3:54:04 PM](#)

SENATOR KAWASAKI said he very recently received the Department of Law's memo, but it doesn't seem to address the issue of somebody who is a resident now versus somebody who had been entitled to the PFD but hadn't gotten it.

MR. MILKS replied the memo addresses this bill that provides for two residency requirements. Somebody who is eligible to receive the dividend this year who received the reduced PFD payment in 2016 would be eligible to receive the back payment. The Department of Law believes that is a rational approach the legislature could take. It is not similar to legislation that's

been challenged and reviewed by the U.S. Supreme Court for having an excessive residency requirement to receive a particular benefit such as welfare.

SENATOR KAWASAKI asked if he believes this could be challenged by an Alaska resident who qualified and received the 2016 dividend but isn't eligible to apply in 2019.

MR. MILKS replied an individual certainly could bring a legal challenge, but he believes it would be unsuccessful.

[3:58:19 PM](#)

CHAIR SHOWER asked what would happen to the payback if the bill passed and somebody filed a legal challenge.

MR. MILKS responded that a legal challenge would probably be an effort to get an injunction to stop the back payment.

CHAIR SHOWER commented that could put the supplemental payment in limbo for some time.

MR. MILKS clarified that the judicial branch can review all laws the legislature passes.

[3:59:19 PM](#)

SENATOR COGHILL asked for help understanding the criteria the court will use to analyze each of the legal opinions.

MR. MILKS said the courts generally do not want to second-guess the elected branches of government, but the typical standard is whether there is a set of facts that could rationally support the legislature making the distinction.

If a bill passed that made a distinction between residents based on age, race, gender, or sex, it would be reviewed under the highest standard of review, which is strict scrutiny. The court would be looking for compelling governmental reasons to accept the distinction on those criteria. Residency requirements are usually analyzed on a rational basis, but it could go to strict scrutiny, he said.

A few years ago the Alaska Supreme Court talked about the right to travel when it upheld residency requirements for the PFD. The court contrasted cases that used strict scrutiny and said even the U.S. Supreme Court recognized that the legislature is given much greater leeway when a state is providing a highly portable benefit. The permanent fund dividend was specifically discussed.

Zobel is the only case Alaska has about the PFD program and the U.S. Supreme Court applied rational basis standard review in that case, not strict scrutiny.

MR. MILKS summarized that the Department of Law looked at SB 23 as a unique bill that deals with a unique program and they believe the courts will conclude that the legislative branch has the ability to address these unique set of facts.

[4:05:23 PM](#)

SENATOR COGHILL said he asked because he wanted to hear the Department of Law talk about the tests.

[4:06:50 PM](#)

SENATOR MICCICHE said he approaches this from both the practical and legal perspectives. Practically, he opposes Amendment 2 because the PFD was designed for Alaska residents and it provides a payment to people who are no longer residents. The original dividend program required longevity and commitment to stay in Alaska. The Zobel case did away with the longevity requirement for the dividend, but applicants must still check the box on their application indicating their intention to remain in Alaska.

He said that from the legal perspective he believes Harris v. Hahn is a fair comparison on the rational basis. At issue in that case were the residency requirements for veterans to qualify for tuition benefits while attending public universities - they either enlisted in Texas or were a resident of Texas at the time of enlistment. Senator Micciche summarized, "The rational basis that found it constitutional was for its residency at enlistment requirement." He said he believes the residency at the time of payment of the dividend to be a fair comparison. "I can't think of a more rational basis for the consideration of the administration and I support their approach." he said.

[4:08:50 PM](#)

SENATOR KAWASAKI asked what would happen to the PFD payout if somebody challenged the payout and the law was found unconstitutional.

MR. MILKS said if the state lost a challenge at the trial court level, it would review the case with the attorney general and decide whether or not to file an appeal.

SENATOR KAWASAKI clarified that he was asking what would happen to the PFD payout if all appeals are exhausted and the court agrees with the legislative legal memo and deems the entire law unconstitutional.

MR. MILKS said the payout wouldn't be paid if the court ruled it unconstitutional.

SENATOR KAWASAKI suggested a different approach to cure the infirmity in the proposed law would be to have people reapply for the 2016 additional payment.

[4:12:00 PM](#)

COMMISSIONER DESIGNEE TANGEMAN explained that if people apply for the 2016 additional payment though the 2019 dividend it is a simple exercise to marry the two lists.

SENATOR KAWASAKI said he didn't intend to push Amendments 2 or 3, but his concern is that if the PFD is a benefit owed to Alaskans, then the addition payments should be paid to all the people who received [the 2016, 2017, and 2018] dividends whether they're still in the state or not. He said people have left the state for a lot of reasons. There's been a down market economy and someone in a trade union, for example, could be working in Seattle because they couldn't find a job in the state. They would be denied the ability to have the back payment even though the governor and many legislators believe that person should have had the full PFD the whole time. He said that's why he introduced the amendments, but he'll review the legal memos further.

[4:14:05 PM](#)

SENATOR KAWASAKI withdraw Amendment 2 and did not offer Amendment 3.

[4:14:49 PM](#)

CHAIR SHOWER said the amended bill is before the committee for discussion. Finding none, he solicited a motion.

[4:15:08 PM](#)

SENATOR COGHILL moved to report SB 23, work order 31-GS1014\A as amended, from committee with individual recommendations, attached fiscal note(s), and any technical changes necessary to conform Amendment 1.

CHAIR SHOWER found no objection and CSSB 23(STA) was reported from the Senate State Affairs Standing Committee.

SB 24-PFD SUPPLEMENTAL PAYMENTS

[4:16:14 PM](#)

CHAIR SHOWER announced the consideration of SENATE BILL NO. 24 "An Act directing the Department of Revenue to pay dividends to certain eligible individuals; and providing for an effective date."

He said the bill was last heard March 7, 2019 and public testimony has been heard and closed. Written testimony will be accepted until 6:00 pm this evening, assuming the bill moves from committee.

He noted the proposed amendment.

[4:16:56 PM](#)

SENATOR COGHILL moved to adopt Amendment 1, [31-GS1013\A.6 dated 3/9/19].

AMENDMENT 1

OFFERED IN THE SENATE
TO: SB 23

BY SENATOR SHOWER

Page 1, line 9:
Delete "\$1,328"
Insert "\$1,388"

[4:17:07 PM](#)

SENATOR KAWASAKI objected for discussion purposes.

CHAIR SHOWER said this amendment makes the same technical change as Amendment 1 for SB 23.

[4:17:27 PM](#)

SENATOR KAWASAKI removed his objection.

[4:17:34 PM](#)

CHAIR SHOWER found no further discussion or objection and Amendment 1 was adopted. He solicited a motion.

[4:17:52 PM](#)

SENATOR COGHILL moved to report SB 24, work order 31-GS1013\A as amended, from committee with individual recommendations,

attached fiscal note(s) and any technical changes necessary to conform Amendment 1.

CHAIR SHOWER found no objection and CSSB 24 (STA) moved from the Senate State Affairs Standing Committee.

[4:18:26 PM](#)

At ease

SB 33 - ARREST; RELEASE; SENTENCING; PROBATION

[4:22:04 PM](#)

CHAIR SHOWER reconvened the meeting and announced the consideration of 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."

[4:22:40 PM](#)

ROBERT HENDERSON, Deputy Attorney General, Criminal Division, Department of Law, Juneau, introduced himself.

CHAIR SHOWER directed attention to the language in Section 2, page 2, line 8 and questioned why the arrest provision doesn't apply to peace officers generally. He also asked for clarification of the difference in the definition for peace officer versus police officer.

MR. HENDERSON said, regarding the first question, it would add clarity to include VPSOs and VPOs certified under Title 18. In practice, the troopers are generally involved when arrests are made by VPSOs or VPOs and will be the public entity responsible for getting the person to court within 24 hours. Municipal police officers provide the service in the communities that the troopers do not service. The answer to the second question is much more complicated, he said. In part it's because peace officer is defined in at least two places in the law.

[4:27:09 PM](#)

SENATOR MICCICHE asked if people arrested by park rangers or citizen's arrest are handed off to either a trooper or a municipal police officer for the official arrest.

MR. HENDERSON responded that AS 12.25 talks about peace officers and [AS 12.25.150] is the only place that limits the requirement

to municipal police officers. If that reference was changed to "peace officer," any public servant authorized to make the arrest would be obligated to bring the person to the magistrate within 24 hours. Practically, municipal police officers and troopers are the entities with the means and mechanisms to ensure the person appears before the municipal officer. He noted that VPSOs and VPOs are certified peace officers but may not have the means or mechanism to ensure that person is transported and appears before a judicial officer within 24 or 48 hours.

SENATOR MICCICHE asked how an arraignment would be impacted if the certified peace officer was weathered in and couldn't meet the deadline for the arraignment. He asked if language should be added to accommodate that scenario and not jeopardize the arrest.

MR. HENDERSON said he'd like public safety to discuss how they would manage that type of scenario.

CHAIR SHOWER noted that VPSOs don't have the same powers.

[4:30:27 PM](#)

SENATOR COGHILL recalled that the discussion on the timeline was how to accommodate the right of people arrested to go before a magistrate without unnecessary delay. The idea was also to have someone explain to the magistrate or judge the reason the person was arrested. He said he wants to include pretrial services without delay and have the 48 hour limit as the backdrop. He said he'd like to hear why the administration chose to put the 48 hour requirement first instead of last and eliminated the extenuating circumstances language.

[4:32:19 PM](#)

MR. HENDERSON said the collective reference to 48 hours refers to the constitutional obligation to ensure that a person arrested is brought to court within a reasonable time. Under U.S. Supreme Court case law, states are entitled to define the boundaries of reasonable time. The bill sets 48 hours as the maximum time. He said he has reason to believe that law enforcement will make a reasonable effort to ensure that the arrestee appears before a judge or magistrate as soon as possible. Changing the maximum limit to 48 hours provides more flexibility when there are extenuating circumstances.

CHAIR SHOWER said his office researched precedents for both 24 and 48 hours and the U.S. Supreme Court held in County of Riverside v. McLaughlin that suspects must generally be brought

before a court within 48 hours of arrest. He noted the footnote about court rule 5 on page 15 regarding the 24 hour rule with the intention for 48 hours.

SENATOR REINBOLD said she's talked to a lot of people and many think 72 hours is better than 48 hours because of courts not being open over the weekend or court staff being unavailable, and it could reduce the fiscal impact. She advised that she has an amendment drafted for 72 hours.

[4:34:59 PM](#)

SENATOR MICCICHE questioned whether running over 48 hours for an initial hearing would be an issue.

SENATOR COGHILL asked if there has been a problem getting arrestees before a judge in 24 hours.

MR. HENDERSON said he can't think of a case where there was a dismissal as a result of not meeting the 24 hour timeframe but that's because the rule was set and that became the norm. The bill returns to pre-2016 law to provide flexibility.

SENATOR REINBOLD said she'd like to hear from the court.

[4:36:41 PM](#)

NANCY MEADE, General Counsel, Administrative Services, Office of the Administrative Director, Alaska Court System, Anchorage, said the statute has gone back and forth between 24 hours and 48 hours, but with very few exceptions all defendants are arraigned within 24 hours. There is a judicial officer on call at all times on weekends. The only times people have not been arraigned within 24 hours were the rare situations where the prosecutor asked for more time to gather information for a bail hearing for certain felonies. A more common reason for not meeting the timeline is because the person was not in a medical condition to appear in court. Intoxication is an example when cases could extend to 48 hours. She said the court has not experienced any problem with either 24 or 48 hours. Even if the rule was 48 the arraignment would occur within 24 hours in almost every situation, she said.

CHAIR SHOWER asked if the proposed change to provide more flexibility would be helpful for the court.

MS. MEADE replied the court hasn't had a problem with either 24 or 48 hours. Responding to the chair's summary, she agreed that the change isn't needed based on current information.

[4:38:29 PM](#)

SENATOR REINBOLD said she'd like to reduce costs whenever possible and that might include not requiring court staff to be on call on weekends and holidays. She added, "I've definitely heard a different opinion than what you just brought forth."

MS. MEADE said she can't identify any cost that is added by having judges on call on the weekend because a judge must always be on call for not only this but also things like emergency domestic violence (DV) petitions or child in need of aid (CINA) issues or search warrants. "So I can't identify any fiscal impact from the timeframe," she said.

SENATOR REINBOLD expressed surprise that there's no added cost for work done on weekends.

MS. MEADE confirmed that judges and other staff don't get paid extra to work on weekends. She added that she cannot speak for the agencies.

MR. HENDERSON clarified that there will be a fiscal impact for the Department of Law. The attorneys are salaried so their cost is fixed but support staff is not a fixed cost.

CHAIR SHOWER requested the data that shows what the increased cost might be if the timeline is increased.

MR. HENDERSON said he'd try to get the information.

[4:41:14 PM](#)

SENATOR MICCICHE asked if the committee should change the definition of peace officers in this section.

MR. HENDERSON said he'd like to talk to the Department of Public Safety (DPS) before he gives a formal answer.

SENATOR MICCICHE said he was willing to wait for the answer. He then asked if a process exists today to apply for an extension beyond 24 hours.

MR. HENDERSON answered yes. He noted the corresponding change in Section 3 of the bill. He advised the committee should also keep in mind that the change to 48 hours would be consistent with Court Rule 5, which allows 48 hours.

SENATOR MICCICHE observed that unless somebody is arrested between 5:00 pm on Friday and 6:00 am on Saturday, it seems that a 48 hour timeframe negates the need for weekend services.

MS. MEADE said she understands the point but it's standard that people call right away because of the constitutional right of people to be seen without unnecessary delay. She also reiterated that the court already has a judicial officer on call for many purposes.

SENATOR MICCICHE clarified that the question was for Mr. Henderson who said the Department of Law would have to staff for weekend calls.

MR. HENDERSON responded that 48 hours would alleviate the need to staff for Saturday unless there is an arraignment, because the prosecution is always present when arraignments occur.

[4:43:31 PM](#)

SENATOR COGHILL advised that he had a comment on Section 2 and a question about intent in Section 1. He explained that the bookends for the 24 hour timeframe were to provide swift and certain action and to recognize that there are good and bad actors and that some governments are overzealous and others are lazy. All these things have to be considered in context, he said. "We were trying to get somebody in front of a judge so that they have to answer, but they also have the right to answer."

He asked Ms. Meade to comment on the intent language in Section 1 and discuss what the court is doing now to video conference pretrial hearings.

[4:45:06 PM](#)

MS. MEADE responded that she has been discussing possible language modifications in Section 1 and the corresponding rule changes relating to video conferencing with the Department of Law and they are considering those suggestions. She said she raised her eyebrows a little when she read the intent language because there is already a lot of video conferencing between the court system and jails. The courts are 100 percent responsible for that happening, she said, and 100 percent of the savings is attributed to the Department of Public Safety (DPS). She acknowledged that the legislative intent language does no harm because the court will continue to work on finding efficiencies. She listed the advantages of video conferencing including that it is safer not transporting prisoners and not having them move

around in the courthouse, it's better for DOC because they no longer have to search people when they leave and return to the facility, and it's better for DPS fiscally. The court system is dedicated to video conferencing and the Supreme Court has made it a priority for [information services] staff to work on this. She cited an example at the Anvil Mountain Correctional Center to demonstrate that the court system purchases and maintains the video conferencing equipment in the jails throughout the state and will continue to do so. She noted that the executive branch shares in the cost of the equipment but not the staff time.

She described the legislative intent language as acceptable but not required.

SENATOR COGHILL opined that everyone should work to further video conferencing not just the court system. He asked if the language in the court rule change has to work in conjunction with the intent language.

MS. MEADE responded that she has been talking to the Department of Law about modifications in all three court rule changes. She related that she suggested changing the intent language in Section 1 to say that the Court System, the Department of Public Safety, and the Department of Corrections continue to work on increasing the use of video conferencing. The language in the other court rules is modified a little to allow more discretion.

She talked about the work the Supreme Court has done to carefully craft the video conferencing rule. She said the court system carefully considered the changes proposed in the bill and suggested modifications to reflect what the Supreme Court believes ought to happen with video conferencing.

SENATOR COGHILL expressed interest in looking at the suggested changes.

[4:49:21 PM](#)

MS. MEADE added that the Court System is reexamining their fiscal note in light of this being a priority for the administration and the legislature, and they may ask for funding for the positions and equipment to continue to do this work.

SENATOR KAWASAKI asked if somebody who is arraigned by video conference has counsel present.

MS. MEADE offered her understanding that there may not be defense counsel present for arraignments in Fairbanks. She added

that whether counsel is present and has the ability to privately consult with their client is one of the big problems associated with video conferencing. To be approved, there has to be a privately accessible phonenumber and a room for private conversations at DOC. This has been identified as a need in Fairbanks and she didn't know if that had changed.

SENATOR KAWASAKI asked how a public defender would communicate with a defendant who is arraigned by video conference. He questioned whether they are being deprived of their right to have counsel present in this circumstance.

MS. MEADE said she'll look into where and when the communication happens. She reiterated that providing a means for the defense to talk to their client is a sticking point with video conferencing, and it's particularly important in subsequent hearings. That's the reason video conferencing isn't available in every jail.

[4:52:08 PM](#)

SENATOR REINBOLD expressed concern about victims, that the courts allow so many pretrial delays, that so many people are released, and that tens of thousands of people are affected by the horrible crime epidemic. "We need to do something about it."

SENATOR COGHILL commented that there are a couple of sides to video conferencing. One is how quickly it's done and the other is the right to counsel. In video conferencing somebody could be intimidated or have a language barrier of some sort. He opined that the intent language isn't wrong and expressed appreciation for Ms. Mead's work on the bill.

CHAIR SHOWER asked Mr. Shanigan to speak to the policy change of taking pretrial services out of the probation section because he has a broad law enforcement background and can provide the perspective of someone on the street.

[4:55:16 PM](#)

TERRENCE SHANIGAN, Staff, Senator Mike Shower, Alaska State Legislature, Juneau, stated that when he talked to corrections officers about the pretrial services unit, he learned that it was initially staffed both by seasoned corrections officers and by people who had no experience in corrections. Many of the corrections officers that were hired for the new unit had been probation officers and that is how they are still classified, although they perform the duties of pretrial services officers. Corrections officers also pointed out the redundancy in current

law that separates people who perform pretrial services duties and probation officers, because it essentially designates two people to do one person's job. They suggested it would be more streamlined if the duties of pretrial had been combined with the duties of the probation officer. Their reasoning is that this would take advantage of institutional knowledge.

MR. SHANIGAN said he's also asked people outside the system if all parts of the pretrial services unit should be discarded and the answer was no. The pretrial services duties addressed some of the very good parts of Senate Bill 91. For example, the pretrial services component allows some prevention activities in a specialized situation. He said that may have a fiscal impact, but the cost of pretrial services could be supported privately.

He directed attention to Section 15, line 18, that talks about the powers of the commissioner and describes establishing a probation system. Then Section 16 returns to talk about the pretrial services officer. He described it as an uncomfortable nuance to ask probation officers who still identify as such to do pretrial work. He cautioned against losing the good elements of the pretrial services unit in the responsibilities of the commissioner. He pointed to Section 19 that adds a new section titled "Duties of probation officers when acting as pretrial services officers." and advised that it would be more accurate to say, "Duties of probation officers when conducting pretrial services responsibilities." This goes to the point that probation officers are clear that they continue to be probation officers even though they were performing pretrial services duties.

CHAIR SHOWER drew an analogy between F15 pilots and F16 pilots. F15C pilots are air to air; they specialize in one mission and get very good at it. An A10 pilot specializes in air to ground and they get very good at it. There are also a lot of platforms that specialize in a lot of things and it's hard for those people to be good at all the missions.

CHAIR SHOWER reviewed the upcoming committee schedule.

[5:02:45 PM](#)

CHAIR SHOWER recessed the meeting to 6:00 pm.

[6:11:58 PM](#)

CHAIR SHOWER reconvened the Senate State Affairs Standing Committee meeting and opened public testimony on SB 33.

[6:12:19 PM](#)

KATIE BOTZ, representing self, Juneau, asked if the committee was taking testimony on repealing Senate Bill 91 or comments on SB 33.

CHAIR SHOWER clarified the hearing was on SB 33.

MS. BOTZ responded that she wanted to testify about Senate Bill 91.

CHAIR SHOWER explained that the governor filed four bills this year that relate to changes to Senate Bill 91 and Senator Micciche filed one bill on the topic. He asked if she wanted to testify on SB 33, which would change the law regarding arrest, release, sentencing, and probation.

SENATOR MICCICHE said he can't apologize for the administration for posting a very confusing Facebook note, but all [five] bills relate to Senate Bill 91, they're just split up by topic. He said you have expressed interest in SB 35 that relates to sexual assault. SB 33 specifically relates to arrest and pretrial bail issues. He suggested she give her view on the Senate Bill 91 issue and the committee would consider the message.

MS. BOTZ offered her understanding that there is lots of confusion associated with Senate Bill 91 regarding police officers and state troopers not being able to do their jobs. She voiced support for returning to the "basic of what our state troopers and what our police officers are supposed to do." That is protect the people, keep criminals in prison, and ensuring that communities are safe. She said the reports that police officers and state troopers don't think they are able to do their jobs adequately is very frustrating and it's reduced these professionals' standing in the public's eye.

CHAIR SHOWER asked if she supports or opposes SB 33, which does repeal portions of Senate Bill 91.

[6:16:53 PM](#)

MS. BOTZ replied, "I do support SB 33."

[6:17:05 PM](#)

MICHAEL VAN LINDEN, Alaska Therapeutic Court Alumni Group, Juneau, Alaska, during the hearing on SB 33, stated that the pretrial services unit helped funnel people into the previously underutilized therapeutic court in Juneau to get the help they

needed. He said it's also important to not discriminate based on the ability to post bail. He summarized his opinion is that the pretrial services unit provides a great service that hasn't had enough time to work. "We need to give this a little bit more time before we start repealing anything."

[6:18:41 PM](#)

DON HABEGER, Community Coordinator, Juneau Re-entry Coalition, Juneau, advised that the history of this coalition is that it was functioning prior to criminal justice reform and Senate Bill 91. When Senate Bill 91 was enacted, the coalition supported the provisions that allow people that want to return to the community and become productive members. The coalition supports giving good tools like the pretrial assessment to the court to make informed decisions. He said the evidence suggests that anybody assessed as low risk is at increased risk to recidivate if they are mixed with a high risk criminal population. The coalition opposes this. He asked the committee to be mindful to provide appropriate exit strategies for those who want to return to their community and be participating members.

[6:20:50 PM](#)

ERIK REED, representing self, Wasilla, shared that on December 13, 2017 he and his family were struck by a drunk driver. His wife was killed and he and his son survived but are left with ongoing trauma. The drunk driver was released on third-party monitoring and he said he feels that it would be a tragedy if this man was able to apply his EM time against his ultimate sentence. "He gets to spend all his time with his wife and kids and his family, but my son and I, we have nothing. We go to PTSD counseling every week." He said the focus seems to be on rejuvenating criminals but they're not held accountable and the victims are forgotten. He stressed the unfairness of the process. He urged the committee to send a message that criminals don't get out of jail free.

CHAIR SHOWER expressed condolences for his loss and assured him the committee is considering that perspective.

[6:25:08 PM](#)

SENATOR REINBOLD thanked Mr. Reed for his testimony and asked if he supports SB 33.

MR. REED replied he supports anything that makes people accountable for the crimes they are guilty of. He emphasized that he doesn't support anything that doesn't hold people accountable for their crimes.

CHAIR SHOWER asked if he supports SB 33, "which takes it back to, in many cases, pre-Senate Bill 91 arrest, release, sentencing etc. Do you concur with that?"

MR. REED said yes.

[6:26:39 PM](#)

SAMANTHA LIGHT, representing self, MatSu, stated that SB 33 has good parts and she agrees that the court needs to be more active in timely case management. She voiced support for electronic monitoring and related her son's story to demonstrate its benefit. Parts of SB 33 that she doesn't support include the rebuttable presumption. She worries that her 20-year-old son won't be able to resume his life until age 35. She understands that crime is rampant and she appreciates what the state is doing to protect its citizens.

[6:29:39 PM](#)

KARA NELSON, representing self, Juneau, stated that she was testifying in opposition to SB 33. Some of the reasons include eliminating the credit while on electronic monitoring (EM). There is no evidence that this will further public safety but it will deter people from getting help. [technical difficulties] She voiced support for the use of video conferencing for pretrial hearings. However, SB 33 generally returns to a system that does not work. She said she appreciates that the committee is committed to avoid things that create harm such as bail that people can't pay and long times in jail pretrial. She said there is ample evidence showing this creates less public safety.

[6:32:03 PM](#)

ROBERT DORTON, representing self, Fairbanks, Alaska, stated that he opposes SB 33 primarily because it eliminates credit for receiving rehabilitative services while on electronic monitoring (EM). He shared that he was sent to prison on drug charges and was released on electronic monitoring after three years. He takes responsibility for what he's done and since he was granted EM, he has done things to turn his life around. He acknowledged that it is rare, but people do change their behavior and make amends with their community. He listed the things he is doing personally to live a better life. He has been drug-free for six years and he credits Senate Bill 91 for his current success. He urged the committee to give Senate Bill 91 another cycle.

[6:35:12 PM](#)

SCOTT OGAN, representing self, Seldovia, stated support for SB 33. He said he does not like the Alaska he lives in today because of crime issues. He recounted the crimes he and his family have suffered the last three years.

CHAIR SHOWER noted that his son in law's truck was broken into last week while he was taking testimony on a crime bill.

[6:36:51 PM](#)

CHAIR SHOWER closed public testimony on SB 33 and held the bill in committee.

[6:37:16 PM](#)

There being no further business to come before the committee, Chair Shower adjourned the Senate State Affairs Standing Committee meeting at 6:37 pm.