HOUSE FINANCE COMMITTEE
May 1, 2023
1:36 p.m.

1:36:17 PM

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:36 p.m.

MEMBERS PRESENT

Representative Bryce Edgmon, Co-Chair
Representative Neal Foster, Co-Chair
Representative DeLena Johnson, Co-Chair
Representative Julie Coulombe
Representative Mike Cronk
Representative Alyse Galvin
Representative Sara Hannan
Representative Andy Josephson
Representative Dan Ortiz
Representative Will Stapp
Representative Frank Tomaszewski

MEMBERS ABSENT

None

ALSO PRESENT

April Wilkerson, Deputy Commissioner, Department of Corrections; Nancy Meade, General Counsel, Alaska Court System; James Stinson, Director, Office of Public Advocacy, Department of Administration; Lisa Purington, Acting Legislative Liaison, Department of Public Safety; Representative Stanley Wright, Sponsor; Allan Riordan-Randall, Staff, Representative Wright; Nancy Meade, General Counsel, Alaska Court System; Lisa Purington, Criminal Records and Identification Bureau Chief, Department of Public Safety.

PRESENT VIA TELECONFERENCE

John Skidmore, Deputy Attorney General, Criminal Division, Department of Law; Sidney Wood, Deputy Director of

Institutions and Chief Time Accounting Officer, Department of Corrections; Samantha Cherot, Public Defender, Public Defender Agency, Department of Administration; David Flaten, Social Services Program Officer, Division of Juvenile Justice, Department of Family and Community Services; Stacy Eisert, Self, Anchorage; Nicole Cleary, Self and Son, Eagle River; Karen Malcolm-Smith, President and Founder, David Dylan Foundation, Arizona; Dar Walden, Self, Anchorage; Bobby Dorton, Fairbanks Reentry Coalition, Fairbanks; Carl Kancir, Self, Anchorage; David Morgan, Government Affairs Associate, Reason Foundation, Atlanta.

SUMMARY

HB 28 ACCESS TO MARIJUANA CONVICTION RECORDS

HB 28 was HEARD and HELD in committee for further consideration.

HB 66 CONTROLLED SUB.;HOMICIDE;GOOD TIME DEDUC.

HB 66 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the meeting agenda.

#hb66
HOUSE BILL NO. 66

"An Act relating to homicide resulting from conduct involving controlled substances; relating to the computation of good time; and providing for an effective date."

1:37:27 PM

Co-Chair Foster asked the department to provide a brief recap of the bill.

JOHN SKIDMORE, DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW (via teleconference), relayed that the bill was a piece of the administration's package aimed at combatting the increase of drug delivery and overdose deaths in Alaska. The bill increased penalties related to delivery or distribution of controlled substances in four ways. First, the bill addressed when controlled substance delivery resulted in an overdose death by increasing the

penalty from manslaughter to murder in the second degree. Second, the bill increased the classification for delivery of drugs when the person receiving the drugs was incapable, incapacitated, or unaware. Third, the bill added the delivery of schedule IA drugs [e.g., fentanyl] to conduct referred in the criminal law as a special circumstance for class A felonies, which increased the presumptive sentencing range for a first offense from four to seven years to seven to eleven years. Fourth, the bill addressed "good time." He explained that good time was the way sentenced individuals with good behavior could be released on parole earlier. The bill would add the delivery of controlled substances to the list of crimes (e.g., murder and other class A or unclassified felonies in AS 11.41 or crimes against persons) that were ineligible for good time.

Mr. Skidmore clarified that the bill was only one part of the administration's approach to combatting problems associated with drugs in the state. There were other bills seeking to address addiction and provide more resources for people. He highlighted that the bill did not criminalize any conduct that was not already illegal. He explained that the bill addressed conduct that was already illegal and adjusted sentences resulting in higher penalties for the delivery of the drugs.

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Representative Josephson referenced Mr. Skidmore's mention of good time and the most heinous conduct involving delivery. He asked for verification there was more benign conduct that would also not receive good time under the bill.

Mr. Skidmore responded affirmatively. He clarified that the good time restrictions applied to delivery of any controlled substance. The delivery that resulted in death was not impacted by the provision of good time because under the circumstances the crime would already be manslaughter or murder. He explained that good time was restricted for murder crimes already.

Co-Chair Foster asked Mr. Skidmore to review the department's fiscal note.

Mr. Skidmore reviewed the department's zero fiscal note, OMB Component Number 2202, control code wyEuj. He explained

that while the department believed there was the possibility of some increased litigation because of increased penalties, the increase was not significant enough to warrant any additional positions or spending. He reiterated his earlier testimony that the bill did not criminalize any conduct that was not previously a crime; therefore, there would not be more cases coming to the Department of Law (DOL), it merely meant the consequences or penalties for some conduct may be increased.

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Co-Chair Foster asked Mr. Skidmore if he had any additional remarks on the bill.

Mr. Skidmore thanked the committee. He recognized that some of the provisions had more widespread impacts. The administration was interested in the conversation with the legislature on determining the right policy calls. He was available for questions.

Co-Chair Foster asked to hear from the Department of Corrections (DOC) about good time deductions and the fiscal note.

APRIL WILKERSON, DEPUTY COMMISSIONER, DEPARTMENT OF CORRECTIONS, relayed that the good time aspect of the legislation was the largest impact to the department's offender population. She deferred to a colleague for any detailed questions regarding good time impacts and calculations.

SIDNEY WOOD, DEPUTY DIRECTOR OF INSTITUTIONS AND CHIEF TIME ACCOUNTING OFFICER, DEPARTMENT OF CORRECTIONS (via teleconference), introduced himself.

Representative Galvin noted that the bill would result in an increased number of individuals being incarcerated for a longer period of time. She understood there were available beds and enough employees. She wondered if additional food, laundry, and electricity could accelerate costs.

Ms. Wilkerson replied that Representative Galvin was correct. She explained that based on current capacity, DOC had the ability to house another 650 inmates before adding capacity. She relayed that the existing budget was sufficient for its current capacity. She elaborated that

some of the drivers that would exceed the budget were increasing economic costs. She relayed that the bill would result in getting to the crossroads sooner than projected; however, the department did not see the result of exceeding capacity within the next six to ten years.

Representative Galvin remarked that historically there had been other bills that had resulted in more Alaskans in prison and sometimes properly so. She was not suggesting the law should not be passed. She wanted to take care to ensure the legislature did not set DOC up for a situation where its staff was feeling unsupported and the state incurred costs. She believed Ms. Wilkerson was suggesting it was okay to add additional inmates and there would likely be costs but it was not something DOC could currently calculate or determine. She wondered if the department could look at previous budgets to see when its budget experienced a sudden increase. She stated the increase [in inmates] impacted food, clothing, water, and sewer. She wanted to be mindful of the issue in order to be able to budget for the cost in the future.

1:49:13 PM

Ms. Wilkerson stated the point was taken clearly. She stated that when compounded, the various pieces of legislation had a greater impact than each piece of legislation individually.

Representative Stapp asked how many drug felons were awarded good time on an annual basis.

Ms. Wilkerson answered that DOC anticipated that the legislation would impact just under 100 individuals on a daily basis. She deferred to Mr. Wood for additional details.

Mr. Wood responded that he did not have the information on hand. He stated that unless there was something else impacting the sentence (e.g., other charges), generally individuals incarcerated on drug charges were eligible for good time.

Representative Stapp asked for the current number of inmates.

Ms. Wilkerson replied there were currently 4,450 inmates. She highlighted that the bulk of the population incarcerated for a drug charge fell under misconduct in the fifth degree. She explained that the legislation pertained to individuals convicted of charges in the first to fourth degree; therefore, the bulk of the individuals would continue to earn good time.

Representative Stapp asked for the number.

Ms. Wilkerson responded that she did not have the number on hand.

Representative Stapp asked how many drug convictions there were annually in Alaska.

Ms. Wilkerson replied that she would follow up with the information.

Co-Chair Foster requested a review of the DOC fiscal note, OMB component 1381.

Ms. Wilkerson replied that the fiscal note primarily looked at individuals within the DOC institutions. She relayed that the current population was running at about 83 to 85 percent capacity, which left room for growth of about 650 general capacity beds and just over 800 of the maximum capacity beds. She noted it excluded beds currently offline due to construction. The department anticipated the legislation would impact the department's daily population beginning in year three and would result in 97 individuals being held longer on a daily basis.

Representative Cronk reasoned that the legislation was not adding more cost to the department because it was funded for a higher number of inmates and was not currently at capacity.

Ms. Wilkerson replied affirmatively. She explained that COVID-19 and some of the other changes that occurred over the past three years had slowed the growth of the offender population, which would allow DOC to absorb the population associated with the legislation.

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Representative Hannan stated that Ms. Wilkerson had frequently talked about cost drivers at DOC largely being health conditions amongst the very sick population. She noted that the department's data and testimony at various points had specified that 80 percent of incarcerated individuals had a substance use disorder. She asked how many individuals were able to get programming for the disorder during incarceration and the associated expense. She stated that the bill would likely result in a percentage of individuals remaining in prison for a longer period who were likely to have a substance use disorder. She wondered if the state would be able to accommodate the individuals with treatment. She stated it was her impression that the state already could not provide substance use treatment for the majority of incarcerated individuals.

Ms. Wilkerson answered that she could follow up with the numbers and associated costs. The department currently offered programming during incarceration. She relayed contractors providing the service for DOC were facing workforce challenges. The department was currently looking at technology (e.g., telehealth) to try to expand the ability for programming.

Representative Hannan asked if programs were prioritized for individuals getting closer to release because they were limited by budget and contractor availability. She referred to individuals who under the legislation would no longer have good time release and no sentence motivation to participate earlier. She wondered whether program availability could be expanded to reach individuals facing addiction who had just entered jail (as opposed to the individual sitting in jail for 10 years and possibly receiving a year of treatment).

Ms. Wilkerson answered that the department prioritized treatment for individuals closer to release; however, the department would meet the needs of others as space was available and the desire for programming was requested.

Representative Josephson referenced Ms. Wilkerson's statement that the majority of offenders in AS 11.71 (drug cases) were in the mixed 5 category. He highlighted that the first type in that category was marijuana related. He thought there was less and less in that specific category than ever before because there was no particular point to

be criminal about it. He noted there was one category on record keeping. Additionally, he highlighted language reading, "possession of all other schedules." He surmised that most people in custody who were guilty of an AS 11.71 offense were convicted of possession rather than delivering or manufacturing. He considered that it may have been part of a plea bargain and the easy compromise to reach.

1:58:06 PM

Ms. Wilkerson responded that she did not have that level of detail. She offered to follow up with the conviction charge citation numbers.

Representative Josephson considered that perhaps Mr. Skidmore knew more about the specific issue. He expressed surprise that people were in custody for possession.

Mr. Skidmore considered AS 11.71 crimes including possession with intent to deliver. He would have to see the statistics related to the individuals Ms. Wilkerson was referring to. He stated it was necessary to be cautious when looking at conduct to distinguish between possession and possession with intent to deliver. The mixed 5 category was typically possession and not possession with the intent to deliver. He relayed that in the mixed 3 and 4 categories it was not out of the realm of possibility that many of the individuals that possess with intent to deliver ended up resolving their charges with a simple possession charge.

Representative Coulombe stated her understanding that good time was an incentive to get people on track earlier and out earlier. She asked if that was the department's position on good time.

Ms. Wilkerson agreed; however, it was one of several tools utilized by the department. She relayed that the department would continue to have community placement as an option if good time was removed from the individuals.

2:00:45 PM

Representative Coulombe asked if Ms. Wilkerson was referring to community placement after an individual was released from incarceration. She asked for more information.

Ms. Wilkerson answered that DOC could better utilize its halfway house beds and electronic monitoring if the individuals were no longer eligible for good time.

Representative Coulombe asked what active treatment programs were currently offered.

Ms. Wilkerson inquired if Representative Coulombe was asking about the providers or the process.

Representative Coulombe provided a scenario of an individual with a drug problem incarcerated for possession with an intent to sell. She asked what was happening in correctional facilities to help people get off of drugs.

Ms. Wilkerson replied that she would have to follow up with details. She elaborated that when an offender was booked into a facility a risk assessment would identify the individual's programmatic needs. The department offered various programs to assist individuals including reentry support to assist with addiction.

Representative Coulombe thought it sounded like the treatment was something that happened when individuals were released. She asked if there were 12-step groups or treatment within the correctional facilities for drug use problems. She remarked that the bill would result in longer prison terms. She believed that if there was no treatment in the facility it was pushing the problem down the road and not helping anything other than keeping an individual off the street. She remarked that in some cases that may be valid, but she was trying to understand what programs were being used in the facilities while individuals were incarcerated.

Ms. Wilkerson answered that she would provide a detailed list of programs offered by facility. She relayed that DOC offered assessments and volunteers came to DOC facilities to provide NA [narcotics anonymous] and AA [alcoholics anonymous] services as needed. Additionally, there were providers offering residential and short-term outpatient substance abuse treatment.

2:03:41 PM

Representative Tomaszewski had visited Lemon Creek Correctional Center the previous week and had spoken with

several of the inmates. He stated that inmates were very aware of good time parole. He looked at page 4, Section 5 of the bill and stated his understanding good time was one-third of an individual's sentence for good behavior. He asked if there were other degrees of good time such as one-half or one-quarter of a sentence.

Ms. Wilkerson answered in the negative. She explained that good time was a flat one-third of an individual's sentence. She relayed it was automatic, but an individual could lose their good time. She deferred to Mr. Wood for additional information.

Mr. Wood confirmed that good time was one-third [of a sentence] by statute. There were limiting factors that could reduce the number but nothing that could increase it.

Representative Tomaszewski looked at page 4, Section 4 that changed the sentencing range to 7 to 11 years for the first offense. He looked at the next line in the bill and remarked that the second offense was 10 to 14 years, and a third offense was 15 to 20 years. He asked if it would be possible for an individual to receive a longer sentence for a first offense than a second.

Ms. Wilkerson deferred the question to Mr. Skidmore.

Mr. Skidmore responded that the 7 to 11 years was a presumptive range for a first time offense. The presumptive range for a second felony was 10 to 14 years. He stated that theoretically a person could receive 10 years for a second offense and 11 years for a first offense; however, the likelihood was very slim. He explained that during sentencing the courts would consider previous offenses, sentences, and conduct.

2:07:22 PM

Co-Chair Foster asked to hear a review of the fiscal note from the Alaska Court System.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, relayed that the court had no position on the bill. She noted that the decisions about classifications of offenses and penalties resided with the legislature. She detailed that the department had submitted a zero fiscal note. She elaborated that sometimes when penalties increased it may

lead to more trials instead of plea bargains, but the courts did not anticipate much of an impact from the bill. She relayed that the provision that moved the [charge from] manslaughter to second degree murder was rarely used over the years.

2:08:39 PM

Co-Chair Foster asked to hear from the Public Defender Agency.

SAMANTHA CHEROT, PUBLIC DEFENDER, PUBLIC DEFENDER AGENCY, DEPARTMENT OF ADMINISTRATION (via teleconference), discussed that the bill would enhance penalties for certain drug offenses, eliminate good time for felony level distribution of drugs, and establish a new murder charge where a person manufactured or delivered controlled substances and a person died as a result. She reported that the agency would see an increase in workload. She expounded that cases charged as high level felonies and with more significant penalties often resulted in increased litigation and pretrial preparation, which could include contested sentencing and post-conviction litigation, increasing the workload and cost for the Public Defender Agency. She stated that such increased litigation at the pretrial level may cause further delays. She highlighted that individuals in pretrial status charged with drug offenses would not have access to treatment programs while in custody until convicted and sentenced. She elaborated that upon release they would not have access to treatment and reentry services as they would have when released for good time and supervised by a probation officer while on mandatory parole. She relayed that most often, the charged individuals served by the agency and who would be impacted by the bill needed treatment and reentry services to address their addiction while in custody and once they were out of custody and returning to their communities.

Co-Chair Foster requested a review of the agency's fiscal note, OMB Component Number 1631.

Ms. Cherot relayed that the fiscal note primarily consisted of personal services cost for two trial attorney positions to be located in the agency's Anchorage and Palmer offices due to the volume of cases in the areas, particularly related to charged drug offenses.

Co-Chair Foster observed that the Department of Law had a zero fiscal note, and the Public Defender Agency had a $449,000 note.

Representative Stapp asked Ms. Cherot to repeat her comments pertaining to reentry services and good time.

Ms. Cherot relayed that reentry services would not be available as individuals would not be on mandatory parole or supervised by a probation officer. She explained that many times probation officers linked individuals to treatment programs and other reentry services.

Representative Stapp asked if Ms. Cherot was saying that taking away good time would mean the individuals would not have reentry and treatment services.

Ms. Cherot confirmed that without the structure and support systems the individuals could access the services but they would have to do it on their own.

Representative Josephson provided a scenario where a person was serving three years and got out in two years with good time. He stated his understanding that DOC provided reentry and treatment programs during the year they had been released on good time. He asked if Ms. Cherot was saying the individuals did not get the programs if they did not get the one-third off from their sentence [via good time].

Ms. Cherot replied that there were two aspects involved. She relayed that in her experience clients did not have access to treatment programs in custody until sentenced. In situations with enhanced penalties and cases that were less likely to resolve, individuals were in pretrial status longer and did not have access to services. She added that based on earlier testimony she understood the individuals did not have access to the services until the end of their sentence. The individuals would then not be released on mandatory parole because they had lost their good time, meaning they would not have access to the supervision and services for reentry and treatment programs. She noted the individuals would have to access the services on their own.

Representative Josephson noted that under his example where the individual had one year [of their sentence] suspended [via good time] they would be on paper and would have some connection to DOC's probation officers.

2:14:23 PM

Ms. Cherot agreed. She noted a distinction between probation and parole. She believed one consequence of "this" was that the individual could be less likely to opt for a reduced sentence of active jail time with suspended jail time that would involve probation. She explained that the individual may be more likely to opt for a flat time sentence because they were not going to be monitored on parole; therefore, they may not opt to be monitored on probation.

Representative Josephson asked if someone could get discretionary parole, which was one-third off a sentence, but not get mandatory parole. He found it admittedly counterintuitive.

Ms. Cherot answered the bill would not impact discretionary parole.

2:15:34 PM

Co-Chair Foster asked to hear from the Office of Public Advocacy (OPA).

JAMES STINSON, DIRECTOR, OFFICE OF PUBLIC ADVOCACY, DEPARTMENT OF ADMINISTRATION, stated that Ms. Cherot had covered the defense perspective. He spoke to the fiscal impact note control code RWssd, OMB Component Number 43 from OPA. The fiscal note requested one attorney IV in Anchorage for similar reasons [to those discussed by the Public Defender Agency]. He believed the one position would be sufficient for the agency to meet the impact of the legislation.

Co-Chair Johnson asked how long it took to hire an OPA attorney position.

Mr. Stinson responded that it depended. The agency had been fairly lucky in the latest hiring cycle. He stated that sometimes it could be seasonal and depended on whether the agency was hiring newly graduated law students, which was coming up in the summer months. He elaborated that sometimes it was possible to hire someone for an existing position and advance them into an attorney IV slot.

Co-Chair Johnson asked about the range difference between an attorney I and attorney IV position. She saw $181,000 in for the position in OPA and the trial attorneys.

Mr. Stinson responded that the positions were typically staffed as flex PCNs based on attorneys II through IV. He explained it was an average range set. He detailed that all of the PCNs that were not attorney Vs were flexibly staffed. There was only one attorney I position, which was not where attorneys started out. The attorney I position was a bail attorney where someone did not yet need to pass the bar exam.

2:19:33 PM

Co-Chair Johnson asked what the attorney II salary and benefits cost. He noted that the fiscal note showed an attorney IV position with a cost of $181,000 including benefits.

Mr. Stinson answered that he did not have the information on hand.

Representative Galvin considered different pieces that helped explain the evidence based strategies to reduce drug overdose deaths. She referenced information provided by the Department of Health reviewing other strategies. She appreciated that the committee had heard there were other things that would happen aimed at reducing deaths caused by fentanyl, which she believed was part of the governor's goal. She stated they were looking at "this one methodology" of working to address the drug problem in Alaska. She wondered if a longer term incarceration sentence would be a deterrent. She had read U.S. Department of Justice information specifying that deterrence worked in four ways and one of the primary ways was ensuring that individuals who would be impacted were aware of a change being made. She was uncertain that taking away good time would reduce the behavior. Additionally, she wondered how Alaskans would know that good time was no longer available for particular offenses so that potentially deterrence could work.

Mr. Stinson replied that he did not envy the legislature's duty to consider overarching policy decisions. His primary concern was ensuring that OPA was adequately resourced in

order to absorb the impact of the legislation. He was not overly comfortable expounding further.

Ms. Cherot responded that she was not aware of any evidence-based research demonstrating that increased sentences would increase deterrence.

2:23:43 PM

Co-Chair Foster requested a review of the fiscal note from the Department of Public Safety (DPS).

LISA PURINGTON, ACTING LEGISLATIVE LIAISON, DEPARTMENT OF PUBLIC SAFETY, relayed that the DPS fiscal note was zero (OMB component 2744).

Co-Chair Foster asked for a review of the Department of Family and Community Services fiscal note.

DAVID FLATEN, SOCIAL SERVICES PROGRAM OFFICER, DIVISION OF JUVENILE JUSTICE, DEPARTMENT OF FAMILY AND COMMUNITY SERVICES (via teleconference), reviewed the department's zero fiscal note, OMB component number 2134.

Co-Chair Foster asked Mr. Flaten to provide additional information about the note.

Mr. Flaten replied that the crime reclassified by the legislation was exceptionally rare as far as referrals to the Division of Juvenile Justice and the department did not anticipate any fiscal impact on the division.

Representative Hannan relayed that when Mr. Skidmore had first described the bill he had detailed that there were only five to seven cases in the past ten years that could have fallen under the category addressed by the legislation. She asked if any of the individuals had been juveniles and whether Mr. Flaten had encountered many juvenile cases where the crime involved one juvenile delivering a drug to another.

Mr. Flaten answered the cases were exceptionally rare. The vast majority of the drug-related crimes seen by the division were related to cannabis use.

2:27:56 PM

Co-Chair Foster OPENED public testimony.

STACY EISERT, SELF, ANCHORAGE (via teleconference), spoke in support of the bill. She relayed that she was testifying on behalf of herself and her deceased son Jason. She shared that her son had died from chemical homicide from fentanyl poisoning at the age of 41, two years earlier. He had a master's degree in English literature and was a high school English teacher. She provided additional details about her son's life. She shared that three of Jason's close friends had died and he had struggled with the loss. He had gotten married in 2016 and had two sons who were the apple of his eye. His marriage had fallen apart, and he had started self-medicating. She relayed that in March of 2021, Jason had ingested some lethal drugs containing a deadly dose of fentanyl. She shared the story about her son's death. She and her husband had lost their son and Jason's children would never know their father.

Ms. Eisert relayed that Jason had been adamant about being and organ donor, but due to the lethal way he died, the hospital had been unable to use his organs to save someone else's life. She reiterated her support for the legislation. She stated that her son's death was an act of homicide by those persons who knowingly manufactured or delivered the controlled substance. She shared that there was not a prison sentence that could compare to the prison sentence she and her husband endured daily. She underscored the incredible pain she felt. She stated that unfortunately their story was just one of thousands. She stressed there must be consequences for actions so more lives would not be lost, and families destroyed. She thanked the committee for its time.

2:32:47 PM

NICOLE CLEARY, SELF AND SON, EAGLE RIVER (via teleconference), testified in support of the bill. Her son had died in October 2021 from acute fentanyl poisoning. She shared that there had been three types of fentanyl in his system including a nonlethal dose of pharmaceutical fentanyl and two lethal doses of two other types. She shared that her son had started with marijuana at a younger age and had moved to harder drugs. He had been in and out of jail until the two years before his death. She explained that he had done a 90-day inpatient treatment program in jail and was then released. Subsequent to his release he

completed a 90-day outpatient treatment program. She provided details on her son's story. She did not have any clue that her son had been using again. She stated that his friend had supplied him with lethal doses of fentanyl and had murdered him. She shared that her family had been ripped apart. She supported the bill completely because it would hopefully save someone from her experience in the future. She hoped a stronger sentence would deter people from selling fentanyl in the future. She thanked the committee for hearing her testimony.

2:36:59 PM

KAREN MALCOLM-SMITH, PRESIDENT AND FOUNDER, DAVID DYLAN FOUNDATION, ARIZONA (via teleconference), noted she was also a member of the Alaska Mental Health Board, but her testimony was personal and did not reflect the opinion of the board. She shared that it was her son's birthday, he had been her only child and he would have been 31 years old. She relayed she had a stack of 2022 DEA and border patrol interdictions, which included information about 51 million fake fentanyl pills and 13,000 pounds of true powder – enough to kill the entire U.S. and more. She stressed it was a national and state nightmare. She provided detail about her son's life. She stated that he had never passed up an opportunity to help the underdog. She shared that in 2017 her son had died from drug poisoning. He had just returned from treatment. She provided details leading up to her son's death. She did not know what happened to her son. She reported that there had been no consequences for involved individuals for the fatal weekend that ended her son's life. She stated that as a Christian, forgiveness was central to her values. However, she asked how a person would be prosecuted who opened fire at a school. She asked if they would get manslaughter and good time. She implored the committee to vote in favor of the legislation.

2:42:14 PM

DAR WALDEN, SELF, ANCHORAGE (via teleconference), shared that she is the founder of the Christopher Walden House of Hope. She relayed that her son Christopher had died of a heroin overdose in 2019; the drug had been laced with 3.5 times the lethal dose of another substance. Her son had been clean for five years and they would never know what sent him into relapse. She provided details about her son's

life. She elaborated that her son had been compassionate. He had spent many years struggling with addiction and had been caught in the OxyContin war. She shared her son would be 37 today. There were numerous peers who had passed away due to oxycodone. She elaborated that when oxycodone became too expensive, users turned to heroin. She explained that heroin was currently deadly laced with fentanyl. She believed six out of ten pills coming off the street at present were laced with fentanyl. She stated that the sad part of their situation was knowing who sold the drugs but there was nothing they could do about it. She underscored the need for stronger consequences. The drug dealer was now selling drugs to others. She stressed they needed to stop kids from dying. She supported the legislation. She stated that if it was not stopped, the state would be facing one of the biggest disasters of all time. She thanked the committee.

2:46:07 PM

BOBBY DORTON, FAIRBANKS REENTRY COALITION, FAIRBANKS (via teleconference), expressed that he was grieving with the mothers who had shared their stories. He stated it was impactful knowing the impact he had caused in his prior lifestyle of selling drugs. He had served eight years in prison and after his release he had gotten his GED and was working as a substance abuse counselor. His current work was on the development of substance abuse programs for behavioral health. He would still be in prison if it were not for good time. He shared that because of good time he had been released early with an ankle monitor for three years. He believed people can change if given incentives. He was now part of the opioid taskforce. He believed people dying senseless deaths from fentanyl poisoning was rampant and was a problem. However, he thought Section 2 of the bill that removed good time for people with certain felony convictions should be removed. He would not be where he is today if that section was in law. He is an advocate and made a difference. He stated it was because of the legislature's belief that people could change that he had the opportunity to work his differences out and do good for the community. He believed the good time incentives were very valuable. He shared his love for the mothers who had spoken.

2:49:40 PM

CARL KANCIR, SELF, ANCHORAGE (via teleconference), shared that his heart went out to the women and their families who lost their loved ones. He stated there were many problems in Anchorage including a homelessness problem. He thought many homeless people were too lazy to work. He supported building a facility on Fire Island to separate the drug users from suppliers to break addiction. He suggested making the individuals do their own cooking, laundry, and other instead of having the municipality and state pay for the cost. He supported an Alaskan Alcatraz where a prison was located out in the Aleutian chain. He elaborated on the proposal and thought the consequences may result in people choosing a different occupation. He stated it sounded cruel, but he had grandchildren and great grandchildren in Alaska and did not want to see their lives wasted because of people selling drugs. He believed it was necessary to get cruel with drug dealers because they were killing people just as if they shot someone with a gun.

Co-Chair Foster CLOSED public testimony.

Co-Chair Foster relayed amendments to the bill were due by Wednesday, May 3 at 5:00 p.m.

HB 66 was HEARD and HELD in committee for further consideration.

#hb28
HOUSE BILL NO. 28

> "An Act restricting the release of certain records of convictions; and providing for an effective date."

2:54:18 PM

Co-Chair Foster asked for a brief recap of the bill.

REPRESENTATIVE STANLEY WRIGHT, SPONSOR, introduced himself.

ALLAN RIORDAN-RANDALL, STAFF, REPRESENTATIVE WRIGHT, briefly described the bill. The legislation aimed to reduce barriers for individuals with low level marijuana possession charges in two parts. First, the bill would remove the information from any Department of Public Safety (DPS) background checks. Second, the bill would prevent the court system from adding any information regarding such charges onto its public website. He relayed that the court

system had already removed any of the charges that fell under the category and the specific section of the bill had been removed.

Co-Chair Foster asked the court system to review its fiscal note.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, relayed that the court system already did exactly what the bill called for in Section 4. The section was not necessary because the court had taken the action of amending its own rules about what went on the public version of CourtView. She had just received the message that the cases under the specific category had been removed earlier in the day. The court system's fiscal note was zero because the bill did not require it to do anything that had not already been done. She stated it was the court's position that since the court had already done on its own volition what Section 4 sought to accomplish, the section was unnecessary.

Representative Tomaszewski asked for clarity on Ms. Mead's statements about the related actions taken by the court.

Ms. Mead replied that the court passed a rule amendment that it had signed about two months back to accomplish exactly what the bill called for. The court had a rule about what did and did not appear on the public version of CourtView and had many categories. She elaborated that in February the court system had amended the rule to take more and more cases off of the public version of CourtView and had signed an order with an effective date of May 1 to remove all of the old marijuana possession cases for people over 21 with no other convictions in the case.

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Representative Tomaszewski asked if there was anything stopping the court system from changing the rules back.

Ms. Mead noted that she believed the supreme court order that accomplished the rule change was included in members' bill packets (supreme court order (SCO) 2001). She answered that the court could theoretically reverse itself, but it had never happened. She stated there was a zero percent chance of a reversal taking place, especially because the trend was to remove cases from CourtView and never to add cases to CourtView in recognition of some of the public

concerns about what appeared there. The category addressed by the legislation pertained to cases that by definition were resolved prior to legalization in 2015 (or the offense occurred prior to legalization). She reiterated there was a zero percent chance that the court would want to republicize what happened in the old cases. She relayed that the court considered the action it had taken as a cleanup.

Representative Tomaszewski asked if the court had an objection to the bill.

Ms. Mead answered that the action could be done via statute; however, the court believed it was unnecessary. She elaborated that the court maintained items on CourtView according to what it thought was appropriate. She explained that CourtView was the court system's own website and case management system. There was a recognition that the public used the website for things other than managing cases. For example, people used the website to find out information about people's past convictions. The court preferred to make its own rules about what appeared on its website under a general separation of powers doctrine. However, in the past, the legislature had told the court via statute to remove a category or two of cases from CourtView. The court system had done so and there had been no objection. She relayed that the court system was not opposing the bill.

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Representative Josephson thought Ms. Mead had stated there were more than 12 or so infractions, charges, or convictions that already did not show up on CourtView. He asked if his understanding was correct.

Ms. Mead agreed. She elaborated that the topic addressed by the bill was the 15th subsection and category of cases removed from CourtView under the court's Administrative Rule 40A.

Representative Josephson asked if the court system could get rid of CourtView altogether if it chose to do so.

Ms. Mead replied affirmatively.

Representative Josephson asked what Ms. Mead would have said if he had asked her five years ago whether she anticipated all of the legislative hearings on CourtView.

Ms. Mead replied that she did not know what she would have said, but she did not anticipate that CourtView would become such a topic in the building.

Representative Josephson stated that he was likely to support the bill. He asked for verification that if someone possessed marijuana and had significant criminal charges that were dismissed, there would be no way for the public to see the information in CourtView. He stated his understanding that charges were not sufficient and a conviction would be necessary for the conviction information to remain on CourtView.

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Ms. Mead clarified that the bill and the court system's rule, which were exactly the same, removed marijuana possession convictions. They were not looking at what was originally charged or at other charges. She explained that cases that were fully dismissed were a category that the legislature had told the court system to remove from CourtView. She elaborated that any criminal case whether it was murder, drugs, or assault, that ended with a full dismissal and/or acquittal, came off of CourtView because of a statute.

Representative Josephson explained that he had not been talking about marijuana convictions. He clarified that he was talking about second, third, and fourth charges. He stated his understanding that cases resulting in an acquittal or dismissal were already gone from CourtView. He asked for verification that the bill would not remove or delete more charges in that respect.

Ms. Mead agreed. She confirmed that a case that ended in full dismissal, full acquittal, at a plea bargain was already removed from CourtView under the legislature's statute. She stated that the bill removed convictions.

Representative Hannan remarked that the court undertook the removal of convictions once state law had changed and the crimes were no longer crimes under state law. She clarified she was speaking about low level cannabis possession

convictions by people over the age of 21 that were no longer crimes as of 2015. She surmised that the court system did not merely arbitrarily look at categories of crimes and remove them from CourtView.

Ms. Mead confirmed that the court recognized the conduct was legal and along with the passage of time that the value of having the information on CourtView was no longer as strong as the possible consequences of having the cases on CourtView. She stated that perhaps in 2016 or 2017 it was not as true because the conduct was more recent, but by 2023, eight years after legalization, it was the supreme court's conclusion that having the cases on CourtView was no longer a strong enough public benefit in comparison to the possible consequences. She clarified that the other categories of things that did not appear on CourtView – the statute said dismissed cases – were cases where the value of having the public know about them was generally outweighed by the detriment to the person whose name was on the website. One of the biggest categories was domestic violence protective orders that someone filed. She explained that they would go on CourtView, but if the court denied a short-term or long-term order and there was no probable cause, the item would not go on CourtView. She summarized that all of the other categories were ones where it could be harmful to a person and having their name on the website was not beneficial.

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Representative Josephson stated there were about 2,500 attorneys in Alaska and his last practice had been family law about nine years back and related to things like restraining orders. He added that he had been in court constantly. He explained that people would pay a good amount of money to represent them zealously. One of the things that he had done was to find out nearly everything about the other party. The beauty of CourtView was the ability to find easily accessible, free information that did not require deposing someone. He had been able to go to the courthouse and pull 10 to 20 files. He stated that given the bill and previous reforms, if someone was trying to zealously represent a client, it would get more and more challenging for them to know they had the complete body of evidence on an opposing party. He stated that an attorney may want to go to the troopers to see if they had additional information or get a court order.

Ms. Mead answered that under the supreme court order directing the court system to remove the cases, the cases were removed from the public version of CourtView. She remarked that an attorney could go back to what existed prior to CourtView and walk into a courthouse. She added that the 15 categories under the court's administrative rule were unpublished. She explained that the information was not on the public version of CourtView, but it was not confidential. She elaborated that a person could walk into a courthouse and go to a public kiosk to view all of CourtView with the exception of truly confidential cases. She stated that if a person cared a lot they could walk into a courthouse and use the kiosk to find out more about individuals than they could from their living room.

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Co-Chair Foster asked for a review of the DPS fiscal note.

LISA PURINGTON, CRIMINAL RECORDS AND IDENTIFICATION BUREAU CHIEF, DEPARTMENT OF PUBLIC SAFETY, reviewed the department's fiscal impact note, OMB Component Number 3200. She relayed that based on amendments made in the House Judiciary Committee that added a fee of up to $150 for individuals requesting that records be limited from dissemination in certain background checks under AS 12.62.160(b)(8), the department revised its fiscal note to reflect the costs that would ideally be covered by program receipts generated by fees charged. She explained that because it was unknown how many individuals would come forward to request that the records be restricted from dissemination, the department had only projected a cost out for two years. The first year cost was $180,100 for programming costs of $56,000. She elaborated that DPS maintained the state's criminal history repository, which was separate from the database managed by the court system. She expounded that the database was on a mainframe system and DPS would need to contract out the costs to have programming put in place to prevent the records from being disseminated when the department received background check requests. The additional cost in year one would be for temporary funding for one full-time criminal justice technician to research the records.

Ms. Purington noted that the bill applied to up to one ounce of marijuana for individuals who were over the age of

21 at the time the offense was committed. She stated that unfortunately the state criminal history repository did not always list the age of the individual, which would require DPS to conduct research to ensure the age of offense was within the scope of the legislation. Additionally, the department would have to research the dispositions that did not always have the underlying subsections, which would clearly identify the conviction was for under one ounce of marijuana. She explained that more recent convictions would be fairly easy to do, but older convictions would take a bit of time. The second-year cost was $114,700 for the full-time position. The department anticipated the costs in years one and two to be offset and funded through program receipts generated by the individuals paying the $150 fee for the requests.

Representative Stapp referenced the amendment [made to the bill in the House Judiciary Committee] charging a fee of up to $150 per request. He asked if it changed the way DPS removed the convictions and meant the department would not remove convictions until requested by individuals. He asked if it would extend the payment timeframe to perpetuity instead of removing all of the records at one time.

Ms. Purington responded that the change in the fee structure would result in a fee being collected by the department. She explained that the programming would have to be done regardless to prevent the records from being disseminated as requested and outlined in the bill. The department would still need to hire a full-time position if there were more than one or two requests coming in. She reiterated her earlier testimony that some of the requests would require research, while others would be easier.

Representative Stapp understood the software identification costs were fixed and would not change. He thought that in theory, once identified, the department should have the ability to remove all of the convictions meeting the criteria in a given amount of time. He believed the department would be able to sunset the position after that point. However, he reasoned that under a fee for service model, the department would need to have the position on payroll in perpetuity because the department did not know the number of years in the future that people would make the requests. He asked if his assessment was fair.

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Ms. Purington responded yes, but the department anticipated the bulk of the requests to be in the first two years. She agreed that subsequent years were unknown, and the department had not been comfortable projecting farther out.

Representative Stapp stated he thought the position should be a long-term non-permanent position that sunset after a couple of years. He asked if the position would continue in perpetuity.

Ms. Purington answered that ideally, if the position was not addressing individuals' concerns full-time, their remaining time could be spent researching the records. She agreed that programmatically, the department could look at the existing statutes that clearly identify the people convicted of possession of under one ounce of marijuana when over the age of 21 at the time of the offense. She relayed that unfortunately some of the convictions in the system only had a four-digit offense code identifying that a conviction was for marijuana; therefore, it would need to be researched. She explained that it was not possible to universally clear out the database for all of the qualifying convictions.

Representative Tomaszewski thought there was some confusion about the fee. He pointed to language on page 3, lines 5 through 6 of the bill: "…pays a fee established by the agency in regulation in an amount that is not less than $150." He observed that $150 was the minimum price and there was no maximum. He asked if his understanding was accurate.

Ms. Purington agreed. She relayed that the fiscal note included a baseline of $150.

Representative Josephson asked if the department believed it had fiscal receipt authority or that the funds would go to the general fund.

Ms. Purington answered the department believed it had the receipt authority based on its existing legislative authority to take receipts for background checks in general. The department thought the receipts that would be generated under the bill fell under the same scope.

Representative Coulombe asked if there would be a $150 charge for the removal of each conviction or per person.

Ms. Purington answered that the department viewed the language to mean per conviction. She elaborated that the numbers added up as the department looked at convictions. There were some individuals who would have multiple convictions that fell within the scope of the bill.

Representative Coulombe stated her understanding that it would be a minimum fee of $450 if someone had three convictions they wanted to clear.

Ms. Purington answered that was the way the department viewed the bill language. She relayed the department would look at the numbers to see how many individuals fell withing the scope of the bill and would then determine whether it would do it on a per individual basis rather than a per conviction basis. She agreed the fee seemed excessive for individuals with multiple convictions.

Representative Coulombe stated there was a difference between CourtView and what DPS did. She detailed that CourtView was a public facing website whereas DPS would be removing convictions that would show up on a background check.

Ms. Purington agreed. She explained that CourtView was the court system's records management system. The state's criminal history repository [under DPS] was the state's official record and was the central registry for all criminal convictions. She elaborated that by statute individuals often had to have a particular statutory authority for a background check for certain positions or requirements. She shared that it was called an "any person report" meaning any person was entitled to the report. She expounded that the background checks authorized under AS 12.62.160(b)(8) were already somewhat limited because they did not display non-conviction information. She noted that if a person had their charges dismissed or they were found not guilty, the information would not display on the record. Additionally, arrests that were over 12 months old without a disposition were also not displayed on the record. She remarked that it was different than the background checks authorized under other statutes. For example, the information would not be redacted when dealing with children and vulnerable adults.

Representative Hannan asked if there were any other crimes or former crimes that did not show up in a person's criminal background check after paying a fee.

Ms. Purington replied in the negative.

Representative Hannan provided a scenario where twin brothers were convicted of the same crime on the same day and both needed background checks. She elaborated that one of the brothers paid a fee to have and appeared to have not been convicted, while the other brother did not pay the fee and his background check showed the conviction, meaning he was ineligible to apply for the State Trooper Academy. Under the scenario, one brother was eligible to enter the academy, while the other brother was not. She asked if it seemed incongruent with the systems Ms. Purington generally worked with.

Ms. Purington answered that it would be different than most of the background checks processes followed by the department.

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Co-Chair Foster OPENED public testimony.

DAVID MORGAN, GOVERNMENT AFFAIRS ASSOCIATE, REASON FOUNDATION, ATLANTA (via teleconference), stated that eight years after legalization, many Alaskans still had criminal records for low level marijuana possession. He stated that a one size fits all approach of lifelong criminal records did not make sense, especially considering that marijuana possession was no longer considered a crime in Alaska. He elaborated that nearly 90 percent of employers nationwide conducted background checks on job applicants and research suggested that applicants with criminal convictions were 50 percent less likely to receive a callback. He stated that to the extent that low level marijuana possession conviction records acted as a barrier to employment and made it harder for people to stay on the right side of the law, the relief provided under the bill would promote public safety while saving taxpayer dollars. He thanked the committee for its time and consideration.

Co-Chair Foster CLOSED public testimony.

Co-Chair Foster relayed amendments to the bill were due by Wednesday at 5:00 p.m.

HB 28 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the schedule for the following morning.

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ADJOURNMENT

3:27:52 PM

The meeting was adjourned at 3:27 p.m.