

HOUSE FINANCE COMMITTEE
May 5, 2023
9:38 a.m.

9:38:14 AM

[Note: Meeting continued from 5/4/23, 1:30 p.m. See separate minutes for detail.]

CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 9:38 a.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

None

ALSO PRESENT

Angie Kemp, Director, Criminal Division, Department of Law; Kaci Schroeder, Assistant Attorney General, Criminal Division, Department of Law; Allan Riordian-Randall, Staff, Representative Stanley Wright; Lisa Purinton, Legislative Liaison, Department of Public Safety; Alexei Painter, Director, Legislative Finance Division; Nancy Meade, General Counsel, Alaska Court System; Brodie Anderson, Staff, Representative Neal Foster; Representative Kevin McCabe, Sponsor.

PRESENT VIA TELECONFERENCE

Sidney Wood, Deputy Director of Institutions, Department of Corrections.

SUMMARY

HB 3 GOLD AND SILVER SPECIE AS LEGAL TENDER

CSHB 3(FIN) was REPORTED out of committee with six "do pass" recommendations, one "no recommendation" recommendation, and two "amend" recommendations and with two previously published zero notes: FN1 (ADM) and FN2 (CED).

HB 28 ACCESS TO MARIJUANA CONVICTION RECORDS

CSHB 28(FIN) was REPORTED out of committee with eight "do pass" recommendations and one "no recommendation" recommendation and with one new fiscal impact note from the Department of Public Safety and one previously published zero note: FN1 (AJS).

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

CSHB 66(FIN) was REPORTED out of committee with two "do pass" recommendations, five "no recommendation" recommendations, and two "amend" recommendations and with one new zero note from the Department of Law and four previously published zero notes: FN1 (COR), FN2 (DFC), FN4 (DPS), FN7 (AJS); and two previously published fiscal impact notes: FN5 (ADM) and FN6 (ADM).

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."

[9:39:51 AM](#)

Co-Chair Foster relayed that the committee would consider amendments to the bill. He reviewed individuals available for questions.

9:40:25 AM

AT EASE

9:41:18 AM

RECONVENED

Co-Chair Foster reiterated that the committee would hear amendments to the bill. There was a total of nine amendments.

Representative Stapp MOVED to ADOPT Amendment 1, 33-GH1482\B.10 (Radford, 5/2/23) (copy on file):

Page 2, line 22, following "a":
Insert "schedule IA, IIA, IHA, or IVA"

Page 2, lines 23 - 24:
Delete "AS 11.71.010 - 11.71.030 or 11.71.040(a)(1)
for schedule IVA controlled substances"
Insert "AS 11.71.010-11.71.040"

Representative Josephson OBJECTED.

Representative Stapp explained that the amendment looked to clarify some of the language in the bill. He believed Amendment 3 may suit the purposes of his intent better. He clarified that his intent was to clarify language in the bill regarding punishment related to controlled substances. He stated his understanding that Amendment 1 may unintentionally delete some precursors to methamphetamine developments. He requested to hear from the Department of Law (DOL) on the intent.

ANGIE KEMP, DIRECTOR, CRIMINAL DIVISION, DEPARTMENT OF LAW, responded that Amendment 1 changed the statutes listed out that encompassed meth precursors. She explained that by listing the specific scheduled substances, those particular precursors may not be scheduled. She elaborated that what had previously been captured by the use of the language would not be covered. For example, a person manufacturing methamphetamine and in possession of those precursors would not be encompassed by the redrafting [under Amendment 1].

Representative Stapp asked Ms. Kemp to explain what a meth precursor is.

Ms. Kemp replied that a meth precursor included items used to develop and manufacture methamphetamines. She detailed that meth was manufactured using household chemicals such as battery acid. Many of the items were not scheduled substances.

Representative Stapp WITHDREW Amendment 1 after the explanation from DOL.

[9:44:38 AM](#)

Representative Coulombe MOVED to ADOPT Amendment 2, 33-GH1482\B.14 (Radford, 5/3/23) (copy on file):

Page 2, lines 23 - 24:

Delete "or 11.71.040(a)(1) for schedule IVA controlled substances"

Insert "that is not a schedule IVA, VA, or VIA controlled substance"

Page 2, following line 27:

Insert a new bill section to read:

"* Sec. 2. AS 11.41.120(a) is amended to read:

(a) A person commits the crime of manslaughter if the person

(1) intentionally, knowingly, or recklessly causes the death of another person under circumstances not amounting to murder in the first or second degree;

(2) intentionally aids another person to commit suicide; or

(3) knowingly manufactures or delivers a schedule IVA controlled substance in violation of AS 11.71.010(a)(4), 11.71.030(a)(2), or 11.71.040(a)(1) [AS 11.71.010 - 11.71.030 OR 11.71.040(a)(1) FOR

SCHEDULE IVA CONTROLLED SUBSTANCES], and a person dies as a direct result of ingestion of the controlled substance; the death is a result that does not require a culpable mental state; in this paragraph, "ingestion" means voluntarily or involuntarily taking a substance into the body in any manner."

Renumber the following bill sections accordingly.

Page 5, line 11:

Delete all material.

Renumber the following bill sections accordingly.

Page 5, line 14, following "Act,":

Insert "AS 1 1.41.120(a), as amended by sec. 2 of this Act,"

Page 5, line 15:

Delete "sec. 2"

Insert "sec. 3"

Delete "sec. 3"

Insert "sec. 4"

Page 5, line 16:

Delete "sec. 4"

Insert "sec. 5"

Page 5, line 17:

Delete "sec. 5"

Insert "sec. 6"

Representative Cronk OBJECTED for discussion.

Representative Coulombe explained that the amendment would remove schedule IVA, VA, and VIA controlled substances from the murder in the second degree statute as written in HB 66. The amendment allowed a manslaughter charge for administering, delivering, or giving another person a schedule IVA controlled substance if it resulted in death. She felt that lower level drugs such as Xanax, Valium, Ambien, and Adderall did not belong in the murder in the second degree statutes. She shared that she had been working with other members and was struggling to find the right balance of where all of the drugs best fit. She was uncertain the amendment would accomplish her goal. She stated that certainly causing a death should be a chargeable offense; however, she was uncertain murder in the second degree was appropriate for someone giving their friend or relative Xanax and not knowing some underlying condition that contributed to their death. She believed the amendment needed more work. She WITHDREW the amendment.

[9:46:39 AM](#)

Representative Ortiz MOVED to ADOPT Amendment 3, 33-GH1482\B.11 (Radford, 5/3/23) (copy on file):

Page 2, line 13:

Delete "or"

Insert "[OR]"

Page 2, lines 22 - 27:

Delete all material and insert:

"{6) another person dies as a direct result of ingesting a controlled substance that is knowingly manufactured or delivered by the person in violation of {A) AS 11.71.010 -11.71.030; or II substances.

(B) AS 11.71.040{a}(1) for schedule IVA controlled substances

* Sec. 2. AS 11.41.110 is amended by adding new subsections to read:

(c) A death under (a)(6) of this section is a result that does not require a culpable mental state.

(d) In (a)(6) of this section, "ingesting" means voluntarily or involuntarily taking a substance into the body in any manner."

Renumber the following bill sections accordingly.

Page 5, line 14, following "Act,":

Insert "AS 11.41.110(c) and (d), added by sec. 2 of this Act,"

Page 5, line 15:

Delete "sec. 2"

Insert "sec. 3"

Delete "sec. 3"

Insert "sec. 4"

Page 5, line 16:

Delete "sec. 4"

Insert "sec. 5"

Page 5, line 17:

Delete "sec. 5"

Insert "sec. 6"

Representative Cronk OBJECTED for discussion.

Representative Ortiz explained the intent of the amendment was to clarify language. He recalled that in the original presentation of the bill there had been some confusion on page 2 beginning on line 13 through the next page. He

stated there had been uncertainty on lines 21 through 28. The amendment did not change the overall intent of the law but attempted to clarify the section to make it more understandable. He asked to hear from the department.

Ms. Kemp agreed that the amendment was clarifying and accomplished what was previously proposed but organized it differently in a way that may be easier for practitioners to apply.

Representative Stapp supported Amendment 3. He believed the amendment articulated what he had attempted to do in Amendment 1.

Representative Cronk WITHDREW the OBJECTION.

There being NO further OBJECTION, Amendment 3 was ADOPTED.

[9:49:08 AM](#)

Representative Josephson MOVED to ADOPT Amendment 4, 33-GH1482\B.6 (Radford, 4/21/23) (copy on file) [Note: due to the length of the amendment it has not been included here. See copy on file for detail].

Representative Cronk OBJECTED for discussion.

Representative Josephson explained the amendment. He stated there were some relics in Title 11.71 relating to marijuana use and possession. He shared that in 2014 he had voted against the initiative legalizing marijuana, and no one had asked him to offer the amendment. He believed the amendment was germane because there were sections of the bill that tangentially addressed all of the schedules. He stated that there were relics on the books specifying that if a 21-year-old were to offer a drag of marijuana to an 18-year-old it would be a class B felony. He provided another example about two brothers who were three years apart. He explained that if the older brother offered the younger brother a drag of marijuana it was a class B felony. He stated it subjected the older brother to up to 10 years in jail. He expounded that the individual would be subject to the full 10 years if they had numerous felonies. He stated, "I just think that we're so far beyond this at this point." He noted that if an adult gave a minor alcohol, the first instance was a class A misdemeanor and the second instance was a class C felony. The amendment would only soften the

penalty to a class C felony. He underscored that the facts he had just described would still be a felony. He considered that someone may think the legislature needed to do better than that. He stated that the problem was the next step would be a class A misdemeanor, which was a mixed V or VI and into the next level of crime that created a graduated scale problem. Currently, if someone gave marijuana to a 19 or 20-year-old it would be a class A misdemeanor. He did not want the amendment to revise the schedule V class A misdemeanors. He clarified that the amendment did not change the penalty for giving marijuana to a 17-year-old. He asked why it was a class B felony and not a class C felony for 18-year-olds. He believed the reduction in penalty was still too harsh.

[9:52:40 AM](#)

Representative Stapp asked for comment on the amendment by the department.

Ms. Kemp answered that the effect of the amendment was as Representative Josephson had explained. The amendment would reduce the penalties associated with the distribution of marijuana to someone who was 18 years old or older. The amendment reduced the crime from a class B felony to a class C felony and changed the presumptive jail time range to zero to two years versus one to three years for a class B conviction.

Representative Stapp asked for the legal age for marijuana in Alaska.

Ms. Kemp replied that the statutes had to be read in conjunction with AS 17.38, which set the legal age at 21 or older.

Representative Cronk WITHDREW the OBJECTION.

There being NO further OBJECTION, Amendment 4 was ADOPTED.

[9:54:47 AM](#)

Representative Tomaszewski MOVED to ADOPT Amendment 5, 33/GH1482\B.13 (Radford, 5/3/23) (copy on file):

Page 3, line 28:
Delete "20"

Insert "21 (20]"

Page 4, line 21:

Delete "10 to 14"

Insert "12 to 16 [10 TO 14]"

Page 4, line 23:

Delete "15 to 20"

Insert "17 to 21 [15 TO 20]"

Representative Josephson OBJECTED.

Representative Tomaszewski explained the amendment. He discussed that the bill would change the first offense for manufacturing and delivering of a schedule IA substance from 7 to 11 years. He highlighted that a second offense had jail time of 10 to 14 years. He explained that technically a person could serve a longer jail term for a first offense than on a second offense. The amendment increased the second and third offenses by two years. He pointed to page 4, line 21 of the bill where the amendment would increase the jail time [for a second offense] from 10 to 14 years to 12 to 16 years. A third offense would increase from 15 to 20 years to 17 to 21 years.

[9:56:24 AM](#)

Co-Chair Foster asked the department about the original impetus for the overlap discussed in the prior hearing. He asked for the reasoning.

KACI SCHROEDER, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF LAW, answered that the relevant language was located in Section 4. She believed the previous discussion had revolved around the enhanced penalty of 7 to 11 years when someone was manufacturing or delivering a schedule IA controlled substance. She elaborated the provision had been added by the House Judiciary Committee in an effort to recognize the seriousness of the [opioid] epidemic and the seriousness of delivering a schedule IA controlled substance. The provision was a recognition of the seriousness of the drugs and the damaging effects they could have. She clarified that the 7 to 11 years for a first time offense was only for manufacturing and delivering a schedule IA drug. The presumptive range for general class A felonies was lower without the enhancement.

Representative Josephson recommended briefly holding the amendment until after Amendment 6. He explained that if Amendment 6 passed, it may change members' feelings about Amendment 5. He noted that Amendment 6 dealt with the same section.

Co-Chair Foster listed ways to deal with the suggestion.

Representative Tomaszewski was amenable to waiting on his amendment.

Co-Chair Foster rolled Amendment 5 until after Amendment 6.

[9:59:29 AM](#)

Representative Josephson MOVED to ADOPT Amendment 6, 33-GH1482\B.3 (Radford, 4/11/23) (copy on file):

Page 4, line 19, following "delivery":
Insert "under AS 11.71.021(a) (1) "

Page 4, line 20, following "substance":
Insert "set out in AS 11.71.140(c) (29) "

Representative Cronk OBJECTED.

Representative Josephson explained the amendment. He did not recall whether the provision at hand was added by the department or the House Judiciary Committee. He addressed his concern that the provision created the problem Representative Tomaszewski had illustrated. Additionally, it swept up all of the schedule IA drugs inside it and included Oxycodone - which could be a derivative of all sorts of things, but also something prescribed by a doctor. He understood the department did not want the legislature to split out schedules because it made things slightly more complicated. He remarked that earlier in the day the co-chair referred to the bill as the "Fentanyl bill." He was highlighting the Fentanyl problem by citing [AS 11.71.140](c)(29) and leaving the other law related to schedule I alone, while escalating or aggravating [the crime of] delivery or manufacturing of Fentanyl.

Co-Chair Foster asked for verification the intent was to go after Fentanyl and to separate things like Oxycodone in

terms of how Representative Tomaszewski's amendment [Amendment 5] would apply.

Representative Josephson agreed. He noted that Representative Tomaszewski's amendment still could have application to Fentanyl.

Co-Chair Foster was glad the subject had been brought up. For example, he knew many snow machine racers who had broken many bones over the years. He believed Oxycodone was prescribed. He heard a number of the individuals say they take their old Oxycodone out on rides and in races to have in the event of crashes. He saw the difference between Oxycodone and Fentanyl and was supportive of the amendment. He asked to hear from the department.

10:03:06 AM

Ms. Kemp replied that the department had concerns about breaking out various substances within the same schedule. She understood where Representative Josephson was coming from related to Oxycodone, which was a manufactured substance. She elaborated that there were many other examples within the same schedule including Carfentanil, which according to the Department of Justice was 100 times more potent than Fentanyl. She explained that Carfentanil is an elephant tranquilizer that is also abused and fell within the same IA schedule. Similarly, heroin was also within the same schedule and had other very serious concerns and was among the drugs contributing to overdoses. The concern was that without further research or consideration about how the various substances were scheduled through the work of the Controlled Substance Advisory Committee, the department would have concerns about trying to break substances out.

Ms. Kemp stated that there were practical concerns related to trying to separate various substances and there was the application. She referenced the example used by Co-Chair Foster. She understood that the notion of prosecutorial discretion was not very popular when talking about some of "these" very important issues, but the example provided by Co-Chair Foster would not likely be pursued by the department as a criminal charge. She expected that someone in need of pain medication due to an accident on the slope would not be something pursued by the department as a class A felony. The amendment also brought up the issue of

proving a particular substance was in fact Fentanyl. She elaborated that there were currently some of the challenges already, but if the substance was mixed with two schedule IA controlled substances, the department would have to prove the individual knew it was Fentanyl they were delivering to another individual. The department respected what Representative Josephson was trying to accomplish, but given what was occurring, it would create issues. She suggested the work may be better suited for the Controlled Substance Advisory Committee. She elaborated that the committee worked with medical providers and considered risk to safety, community, and the likelihood of overdose when considering how to schedule a drug.

[10:06:25 AM](#)

Co-Chair Foster remarked that Ms. Kemp made good points. He understood it was more than Fentanyl and Oxycodone and that heroin was definitely not considered to be something like Oxycodone. He thought the prosecutorial discretion was a good point. He was a bit concerned, but he may side with the department on the amendment. He was willing to hear more discussion. He referenced Ms. Kemp's statement that the Controlled Substance Advisory Committee could determine which of the drugs should be perhaps removed from the specific category. He asked if it was better to perhaps pull in one innocent person. He found the big issue to be the prosecutorial discretion component.

Representative Stapp discussed that several years ago the police in Fairbanks were having a hard time getting individuals for "bath salts" due to the definitions in state statute. Individuals were able to alter the substance outside of drug definitions in state law. He asked if the amendment would make it easier or more difficult for DOL to go after Fentanyl. He thought individuals could perhaps change some of the ingredients and a product could then fall outside of the Fentanyl statute. He asked for comment from the department.

Ms. Kemp answered it would be a challenge if there were mixed substances. She stated it would be specific to schedule IA controlled substances where there was a mixture of the substances. She explained it would create one other step the department would have to prove that an individual knew they possessed Fentanyl when the product was delivered.

Representative Stapp stated his understanding it would be more difficult for the department to achieve its objective if the amendment were adopted. He believed there would be a greater burden of proof in the event Fentanyl was mixed with other substances. He asked if his understanding was accurate.

Ms. Kemp agreed. She replied that it would create some challenges for the department and increase litigation.

10:10:09 AM

Co-Chair Edgmon remarked that the discussions were complicated. He stated that the legislature seemed to pass tougher on crime bills annually and in many instances, it did not have the ability to go back to revisit some of the "one size fits all" criminal code changes enacted. He was listening to the conversation with an ear to both sides of the argument. He used an example of young Alaska Native males in villages, who predominately accounted for 20 to 25 percent of incarcerated individuals. He was leery of putting something into statute that could unwittingly bring someone into a long-term prison sentence. He stated that the legislature could pivot in the coming year or two and pass a targeted piece of legislation. He remarked that if the problem was Fentanyl, in certain circumstances he was amenable to toughening up unclassified felonies, but he was sensitive towards reaching too much. He elaborated there would be more bills in the future dealing with Fentanyl and other things. He did not want a young Native male to get caught up in a situation where he was in jail for many years because he did something stupid.

10:11:59 AM

Representative Ortiz offered conceptual Amendment 1 to Amendment 6 in an effort to address concerns raised by the department and Co-Chair Edgmon. He pointed to line 5 where the conceptual amendment would add "(69)" to AS 11.71.140(c)(29) in order to cover the concerns raised about the exclusion of Carfentanil. He explained that the amendment would still protect concerns on the other side about avoiding something that was too broad that could catch people in the web before any changes could be made.

Co-Chair Foster stated that Representative Josephson's amendment was to specifically address Fentanyl. He asked for verification that the conceptual amendment would include Fentanyl and Carfentanil.

Representative Ortiz MOVED to ADOPT conceptual Amendment 1 to Amendment 6.

Representative Cronk OBJECTED. He did not have sympathy for people who deal drugs due to issues he had seen. He relayed that he had heard from all of the villages he represented that they wanted something done. He elaborated that villages were being ruined by drug dealers distributing heroin, meth, and Fentanyl. He underscored that villages were crying out and wanted something done.

Representative Galvin supported the conceptual amendment. She asked to hear from the legal authority in the room on whether it would encompass the current problem. She remarked that the laws the legislature made had consequences and she agreed with Co-Chair Edgmon and Co-Chair Foster that she did not want unintended consequences. She believed rural and urban Alaskans were very frustrated with what was happening to the state's youth. She highlighted that the only piece referring to best practices of reducing deaths had been included by the bill sponsor from the Department of Health. She called attention to the idea that it may be one piece, but the committee had heard from experts in the area that deterrents may not be the answer (there was no evidence of it). She continued that it was not true for "what we see in here." She elaborated that there were many different ways to be doing something as a state. She wanted to ensure the legislature was aware of that. She hoped to see more coming the legislature's way that would by evidence, detract and lessen deaths. She felt the current bill was important because of unintended consequences that may happen.

[10:17:18 AM](#)

Representative Stapp opposed the conceptual amendment. He appreciated the maker's intent, but he thought they were getting in weeds trying to set up hard guiderails on definitions in statute. He knew there were other amendments relating to good time that may be able to alleviate the overarching argument and what Co-Chair Edgmon had referenced earlier. His concern was that he did not want to

create a situation that overburdened the department on details and veered from the intent of the underlying bill, which was to try to address the epidemic in the state.

Co-Chair Foster stated they could err on the side of being all encompassing of the drugs in the schedule I category including Fentanyl, Carfentanil, Oxycodone, heroin, GHB, and so forth and fix it later by pulling certain categories out. Alternatively, the committee could err on the side of carving out a couple of the drugs out including Fentanyl and Carfentanil and add different drugs back later.

Representative Josephson clarified that the remaining schedule I would be criminal and would be Class A felonies for children and Class B for adults. He explained that the existing law would remain. He clarified that the amendment would not legalize schedule I drugs. He explained that it would not bump up schedule I to the special circumstances the department had asked for. He noted the department did not ask for the provision which had been added by the House Judiciary Committee. He stated that when the administration crafted the bill, the concept had not been included.

Co-Chair Foster asked for clarity on Representative Josephson's statement that "this was not their concept."

Representative Josephson clarified that he was referring to increasing the schedule I deliveries.

[10:20:18 AM](#)

Representative Galvin asked about the use of the word "discretion." She wondered if the amendment would narrow discretion in a way that would ensure that infractions including the particular drugs would be adjudicated. She referenced Ms. Kemp's earlier statement in response to an example used by Co-Chair Foster that discretion would be used. She used an example of someone backpacking or in a casual circumstance where a person ended up getting another drug. She thought that passing laws that allowed for more discretion may not be the best avenue. She considered they may want to make it easier in that the law was able to be clear. She was uncertain the legislature wanted to add more and more discretion as it wrote laws.

[10:21:41 AM](#)

Ms. Kemp responded returned to an example used earlier when Co-Chair Foster had described a situation involving two friends out on snow machines where one got hurt and the pair had taken Oxycodone with them in the event of an accident. She stated that from DOL's perspective, it was discretionary whether to charge in that instance. She explained that many laws had some level of discretion where it was clearly not the intent of the legislature to capture that type of conduct or trying to capture the type of conduct where people were delivering Fentanyl or Oxycodone to people for profit. She understood it was an uncomfortable subject, but there was some level of discretion expected throughout the criminal code.

Representative Galvin asked whether it would be prudent as a rule for the legislature to establish broad opportunities for more discretion in any sort of law. She felt it was not good practice.

Ms. Kemp replied that she heard the point. She thought perhaps it was more of a philosophical discussion about some of the concepts. She referenced Representative Galvin's earlier comment about having more information about the effects of some of the narcotics. She stated it was something the Controlled Substances Advisory Committee was obligated to work with in terms of deciding where things were scheduled including what rehabilitative measures should be put in place.

[10:24:10 AM](#)

Representative Galvin stated the pieces in her mind were not rehabilitative pieces, but were about how to create policy with evidenced-based strategies that would result in fewer deaths. She remarked there were some behavioral pieces, but they were not necessarily things related to rehab and such, but about growing an awareness. She stated that deterrence could work if there was a large awareness campaign to help individuals understand what the consequences could be for illegal activity. She stated her understanding that without all of the pieces in place it may not lessen the deaths.

[10:25:48 AM](#)

Co-Chair Foster returned to conceptual Amendment 1 to Amendment 6 and reminded members that in addition to

Fentanyl, it would add Carfentanil. He asked Ms. Kemp for any additional thoughts on the proposed conceptual amendment.

Ms. Kemp respected what Representative Ortiz was trying to accomplish and she believed the conceptual amendment accomplished the goal based on the example she had provided; however, she clarified that her example was limited to one drug, but there were many within schedule IA. She explained there were multiple other scheduled substances including Alfentanil. There were a number of examples of very serious substances scheduled within IA and trying to separate out very serious drugs like Fentanyl and Carfentanil with high potency values would potentially create real consequences for the department.

Representative Cronk thought they were downplaying the effect drugs had on people. He stated that getting hooked on Oxycodone was merely a gateway to more serious drugs. He shared that a young female constituent had visited his office and had told him she had asked her friends what they were doing on a Saturday and the reply was they were doing meth that day. He underscored it had become normalized. He relayed another example of a person parked outside of a boarding school selling "gummy bears." He stated, "These people know what they're doing." He wanted to give the department the tools and he wanted to ensure DOL had every tool to be able to help.

Co-Chair Edgmon agreed with Representative Cronk to an extent, but he did not want to pass a law that went too far. He understood being tough on crime and he would be there in the end. He stated it was a very delicate conversation. He remarked that in a perfect world all of the committee members would have legal experience to be able to understand the department's perspective. He stated there was one member on the committee who had been a prosecutor and the other members were all laypersons. He stated that based on his aforementioned comments and Ms. Kemp's testimony, he would likely oppose the conceptual amendment. He clarified that it did not indicate his intent on the underlying amendment.

Representative Josephson respected the tenor and mood behind Representative Cronk's position, and it explained why he personally had opposed SB 91 [omnibus criminal justice system reform legislation passed in 2016]. He

stated that the narrow matter before the committee did not concern methamphetamine, which was a schedule II substance. He agreed methamphetamine was a problem, but it would be another amendment to make the bill even tougher.

10:30:05 AM

Co-Chair Foster reviewed that conceptual Amendment 1 to Amendment 6 would add Carfentanil to Fentanyl.

Representative Cronk MAINTAINED the OBJECTION to conceptual amendment 1 to Amendment 6.

A roll call vote was taken on the motion.

IN FAVOR: Hannan, Josephson, Ortiz

OPPOSED: Cronk, Galvin, Stapp, Tomaszewski, Coloumbe, Edgmon, Johnson, Foster

The MOTION FAILED (3/8).

Co-Chair Foster returned to Amendment 6.

Representative Josephson referenced Ms. Kemp's mention of the difficulty with the lab work. He thought lab work would have to be done in any case to determine whether Fentanyl was mixed with a schedule II substance.

Ms. Kemp agreed. She clarified the point she had been trying to illustrate. She explained that when speaking to the mens rea that applied to a particular substance, the department had to prove the individual knew they were delivering that particular substance. She stated it was not so much related to what the substances tested positive for after lab work. She used an example where a substance was a combination of heroin and Fentanyl. She believed people knew it was fairly common that Fentanyl was mixed with fillers and other substances. She explained that if the drug was mixed, the challenge would become proving the substance was specifically Fentanyl versus simply a IA controlled substance.

Representative Josephson asked if there was no mental state that had something closer to strict liability for delivering a substance [i.e., Fentanyl]. For example, a speeding ticket fell under the strict liability category.

He explained that with a speeding ticket, "we don't care what your brain was telling you, you did it."

[10:33:10 AM](#)

Ms. Kemp responded that she was reluctant to say that the legislature could not accomplish what Representative Josephson was asking about. She stated that current law required a mental state specific as to the delivery of the substance irrespective of the amendment. She elaborated that the department had to prove mens rea as to the schedule IA substance.

Representative Cronk asked if the amendment was positive or negative for the department.

Ms. Kemp replied that the bill would give DOL and prosecutors powerful tools. She respected some of the comments related to goals in sentencing related to deterrents and whether those things had practical consequences. She stated it would go a long way in setting a precedent that Fentanyl was the current "drug du jour" that was causing countless deaths, overdoses, and creating real problems for Alaska's communities. She believed the adjustment to the sentencing range under the legislation would have a positive effect on deterrence. She relayed that the amendment would not create the overall framework and would narrow the field to Fentanyl. She remarked that ten years back, Oxycodone, Oxycontin, and heroin had been the drugs primarily plaguing Alaskan communities. The department had concerns related to the proposed amendment and opposed it.

Representative Ortiz recalled from the initial review of the legislation that without the hardening of the potential sentences, prosecutions and convictions only amounted to two cases in the past ten years.

[10:37:02 AM](#)

Ms. Kemp believed what had been testified previously related specifically to the substances resulting in a person's death and the surrounding homicide prosecutions. She relayed there were countless incidents within the past several weeks of major seizures of Fentanyl coming into communities and creating real issues across the state.

Representative Ortiz clarified he was not intending to say that Fentanyl and some of the other issues were not large. He stated there was a difference between issues plaguing society and the state's ability to address the issue. He highlighted that while they may feel good about passing the legislation because it was tougher on the issue, it did not necessarily equate to resolving or improving on the issue.

Ms. Kemp understood what Representative Ortiz was saying. She suspected the issue was that the bill was only one piece of legislation and there may need to be other pieces of legislation to address Representative Ortiz's concern related to how to stop drugs from coming to Alaska regardless of whether the state could prosecute once it arrived. She could only speak to the current bill and perhaps answer other questions.

Co-Chair Edgmon requested a wrap up on the amendment before a vote.

Representative Hannan directed a question to Ms. Shroeder who had been present for testimony given previously by John Skidmore. She believed Representative Ortiz was reflecting back to the specific testimony. She recalled Mr. Skidmore had told the committee that in the last decade there were five to seven cases that could have been prosecuted at the higher level if the bill had been in place at the time.

Ms. Schroeder answered that the low number of five to seven was specifically related to the murder in the second degree language; however, amendments had been made to the bill that expanded its scope. The bill also dealt with the manufacture and delivery of drugs and there were far more cases under that umbrella than under the homicide umbrella.

Representative Josephson thought the discussion had been important. He reviewed his concerns. He stated that the department and the law preferred not to break out the schedules and they referred them to the advisory committee. He has spoken with the deputy commissioner about the advisory committee, and he believed it was a good thing. However, he pointed out that the legislature was not charging the advisory committee with any specific task. He did not know that the advisory committee would come back and discuss that there had been discussion on including few [drugs] or all [drugs] now and pull others out later. He did not believe the advisory committee had any instruction

under law to say that the legislature wanted the advisory committee to break the schedules down. Instead, the drugs were all swept up into certain schedules. He was told that when SB 91 came up, former Senator Bill Stoltze had wanted to make a point and was frustrated about the bill and successfully moved GHB (a common date rape drug) away from Ketamine, which was also sometimes used as a date rape drug. He used the example to illustrate there were already existing oddities in the schedules.

Representative Josephson believed the director's best argument pertained to heroin mixed with Fentanyl. He stated that the committee had been told HB 66 was a Fentanyl bill. He emphasized that the amendment did not reduce penalties. He spoke to his concern about the bill. He noted that the committee had been told that the prosecutors would use discretion. He remarked that he had perhaps been too aggressive of a prosecutor. He highlighted a scenario where one of the charges was connected to a burglary and law enforcement did a frisk and found possession or knew there was delivery. He stated that even if he thought the amount was de minimus or a drug had been prescribed and simply borrowed, he was going to bring it to the grand jury because it was a bargaining tool to reduce the number of counts against someone (instead of having three there were four) and it strengthened the prosecutor's hand with the public defender. He thought that when the public heard that the prosecutors would not do something in a certain way, they had a right to pause and ask how they would know. Additionally, the department did not ask for the language, which had been added by the House Judiciary Committee. He remarked on the mood in the Judiciary Committee during the discussion and noted one member had suggested there should be the death penalty for some of the cases. He did not have a good handle on the question of the culpable mental state. He concluded by saying, "If we're going to call out something, let's call out the worst of the problem and that's Fentanyl." He asked for members' support.

Representative Cronk MAINTAINED the OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Galvin, Hannan, Josephson, Ortiz, Coloumbe, Edgmon, Foster

OPPOSED: Stapp, Tomaszewski, Cronk, Johnson

The MOTION PASSED (7/4). There being NO further OBJECTION, Amendment 6 was ADOPTED.

[10:44:41 AM](#)

Co-Chair Foster returned to Amendment 5 that had previously been rolled down the list.

Representative Tomaszewski MOVED to ADOPT Amendment 5, 33/GH1482\B.13 (Radford, 5/3/23) (copy on file):

Page 3, line 28:
Delete "20"
Insert "21 (20]"

Page 4, line 21:
Delete "10 to 14"
Insert "12 to 16 [10 TO 14]"

Page 4, line 23:
Delete "15 to 20"
Insert "17 to 21 [15 TO 20]"

Representative Tomaszewski remarked that the amendment addressed the overlap in years to conviction. The sentencing range was currently 7 to 11 years for a first time offense. The sentencing for second and third offenses would be moved according to the amendment.

Representative Stapp OBJECTED.

Representative Stapp asked what Amendment 5 would do in light of the passage of Amendment 6.

[10:45:58 AM](#)

Ms. Kemp answered that the amendment likely had further consequences than anticipated. She explained that the amendment would adjust penalties for all class A felony offenses. She highlighted assault in the first degree, manslaughter, and robbery in the first degree as examples of other class A felonies. The amendment would have far reaching consequences that were not specific to controlled substances. The amendment would have broad sweeping effects on the way business was conducted in the department.

Representative Stapp assumed that the amendment would apply to the change made in the previous committee of referral pertaining to the initial sentencing. He asked what the initial sentencing had been prior to the change.

Ms. Kemp asked for clarification on the question. She asked if Representative Stapp was asking for the previous sentencing range for any class A felonies.

Representative Stapp remarked that the previous sentencing ranges were out of whack because a previous committee of referral changed one of the sentencing ranges. He asked for the initial sentencing range in the bill prior to the change made in committee.

Ms. Kemp responded that a class A felony offense for a first felony offense currently carried a presumptive sentencing range of four to seven years. Examples of class A felonies included assault and robbery in the first degree unless there were enhancements or specific circumstances that applied. She stated that what the committee talked about related to the previous amendment was related to one of the specific circumstances that enhanced the penalty. The previously adopted amendment [Amendment 6] enhanced the penalty only for the specific substance. She explained that any other class A controlled substance distribution charge would fall within the four to seven presumptive term.

Representative Stapp stated that the issue with Amendment 5 was the sentencing ranges applied to many things outside of the drug-related scope of the bill. He assumed the change in the range from the previous committee of referral that put the other ranges out of whack, hence the concept behind the amendment, also did the same thing to the assumptive [presumptive] sentencing range.

Ms. Schroeder replied that the previous committee of referral inserted the sentencing range of 7 to 11 years for delivering a schedule IA controlled substance and made it an enhanced penalty within the class A sentencing structure. She stated it was in line with the other enhanced penalties for other class A felonies. She pointed to page 4, line 3 through 9 of the bill that included language about possessing a firearm, using a dangerous instrument while committing a class A felony. She clarified that the enhanced penalty for the crime was a range of 7 to 11 years. She would not characterize the sentencing ranges

as being out of whack necessarily. The amendment was consistent with the structure that was already in class A felonies.

Representative Stapp stated his understanding that the amendment made in the House Judiciary Committee had aggravators pertaining to the underlying bill, while the amendment did not have the aggravators. He asked if his understanding was accurate.

Ms. Schroeder answered that the amendment made in the House Judiciary Committee created an enhanced penalty. She clarified that she was using a different term because aggravator was the legal term. She explained that Amendment 5 did not touch the enhanced penalty, it touched the ranges that applied to all class A felonies.

[10:50:44 AM](#)

Representative Josephson thought the department's point was that even though it looked odd to have a first offense with a sentencing range of 7 to 11 years and a second offense of 10 to 14 years, it had not been challenged in court as violating some rational basis test or something similar.

Ms. Kemp answered not that she was aware of. She relayed that it may have been litigated but thus far it had not been seriously called into question.

Representative Tomaszewski in light of the discussion he WITHDREW Amendment 5.

[10:51:43 AM](#)

AT EASE

[10:54:44 AM](#)

RECONVENED

Co-Chair Foster noted members needed to meet on the budget. He would recess the meeting and hoped to reconvene at 12:30 p.m.

[10:55:35 AM](#)

RECESSED

[12:40:57 PM](#)

RECONVENED

Co-Chair Foster relayed that the committee was on Amendment 7. He noted that Amendment 5 had been withdrawn and Amendment 6 had passed by a vote of 7/4.

Representative Ortiz WITHDREW Amendment 7, 33-GH1482\B.12 (Radford, 5/2/23) (copy on file).

Representative Hannan MOVED to ADOPT Amendment 8, 33-GH1482\B.9 (Radford, 5/2/23) (copy on file):

Page 1, line 3:

Delete "relating to the computation of good time;"

Page 4, line 24, through page 5, line 10:

Delete all material.

Re-number the following bill sections accordingly.

Page 5, line 16, following the first occurrence of "Act,":

Insert "and"

Page 5, lines 16 - 17:

Delete "and AS 33.20.010(a), as amended by sec. 5 of this Act,"

Representative Cronk OBJECTED.

Representative Hannan explained that the amendment would remove the deletion of eligibility for good time from the bill. She stated that tough on crime bills with sentencing had little effect on crime rates. She elaborated that in the circumstance under discussion sentencing length did not prevent deaths. She wanted to talk about what good time release did. She stated that she hated to think of the word "good" as the problem, but it was. She detailed that most inmates were eligible for good time, which was one-third of their sentence.

Representative Hannan provided a hypothetical scenario where a person had a 30-year sentence for a drug conviction. Without good time the individual served all 30 years. With good time the individual could serve 20 years with 10 years of good time. She noted the scenario disregarded whether good time was taken from the individual for behavior in prison because for many people whose good time was granted, it still came back as a management tool.

Representative Hannan explained that every time a person had an infraction or violation in prison, some of their good time could be taken and restored to their sentence. She detailed that when the person served 20 years and was released with 10 years remaining on their sentence, they were still under supervision of the Department of Corrections (DOC) via parole. She furthered that the person's behavior was still monitored for the next 10 years including urine tests and association with others. She believed many individuals sentenced for drug crimes were addicts. She remarked that the individuals may not have been through treatment while in prison because due to limited programming in prisons, treatment was provided while an individual was released on parole under good time and living in a halfway house.

Representative Hannan highlighted that if a person was no longer going to be monitored for good time release that had been removed from their sentence, they walked out of the doors as a free agent, but they likely had not been through drug treatment or programming to accept the ability to work as a good citizen. She stressed that very high rates of recidivism existed with all crimes in Alaska, especially drug crimes. The element of using good time as a tool to manage population while in prison and outside, led to lower recidivism. She believed it was the goal in the end. She thought people were distracted by the term "good" that it somehow implied a person was virtuous, but it was not the case. She stated it was about how the state managed the population in the prison and for a period of time after a sentence had been served. She did not want to return to a time when full sentences had been served and people walked out of prison without any reentry programming to avoid reoffending. The amendment stripped out the provisions of the good time computation from the bill. All of the other sentencing and penalties remained in the bill.

[12:46:42 PM](#)

Representative Josephson requested to ask DOC a question. He provided a scenario where a person was sentenced to three years with no probationary period. He elaborated on the example where the person did well in custody and received one-third off their sentence, resulting in release after two years. He asked for verification there was no way to recall the good time if the individual subsequently

committed a crime during that one-year window after release.

SIDNEY WOOD, DEPUTY DIRECTOR OF INSTITUTIONS, DEPARTMENT OF CORRECTIONS (via teleconference), responded that if it was a crime against the state that involved a three-year sentence, the individual would be released to mandatory parole for the one-year period. He relayed that if the individual committed a new crime during the one-year period it would be a violation of their mandatory parole and the individual would be subject to return to serve the remaining year or some portion of it.

Representative Josephson asked for verification that good time could be recalled and an individual [out on good time] was still theoretically "on paper."

Mr. Wood agreed it was true if the person was released to mandatory parole supervision.

Representative Josephson reasoned the situation would primarily involve felons. He asked if some [felons] were not released to parole supervision.

Mr. Wood answered that mandatory parole supervision included crimes against the state (felony or misdemeanor) and one or multiple crimes with sentences totaling two years or more and good time. He explained that the term of mandatory parole was equal to the amount of good time the sentence was reduced by.

Representative Josephson did not know what constituted a crime against the state.

Mr. Wood clarified that it was a crime outlined in statute versus a municipal or city crime. For example, the Municipality of Anchorage had its own criminal code, though it was not the case for all communities.

[12:50:16 PM](#)

Representative Stapp stated the goal was to give harsher penalties to individuals trafficking Fentanyl that results in the death of another individual. He remarked that the sentence would be more than two years based on the underlying provisions of the bill. He asked what it would

look like if the same individual had access to good time that was currently not in statute.

Ms. Kemp replied that if someone was subject to the 7 to 11 year presumptive range, the removal of the provisions in the bill would make them eligible for good time. She added they would be eligible because it was a sentence of two years or more.

Representative Stapp asked to hear from DOC.

Mr. Wood answered if an individual had a sentence in the 7 to 11 year range and there was good time, they would receive one-third. For example, the individual would receive three years off a nine-year sentence.

Representative Stapp provided a hypothetical scenario where an individual was sentenced to a maximum of 11 years. He stated his understanding that [with good time] an individual would get 3.5 years off, which would be revoked in the event of a probation violation.

Mr. Wood agreed.

Representative Cronk provided a scenario where a person sold Fentanyl to an individual who subsequently died. He asked if the amendment would make the person eligible for good time.

Ms. Kemp replied that the amendment pertained specifically to individuals convicted of an 1171/misconduct involving a controlled substance in the first degree through misconduct involving a controlled substance in the fourth degree. The amendment did not necessarily deal with good time for the commission of a homicide.

[12:53:10 PM](#)

Representative Josephson explained that under the current version of the bill, a dealer of virtually anything who killed someone would be punished more harshly. The individual would receive 5 to 99 years instead of up to 20 years and would not be eligible for good time. He asked if his understanding was accurate.

Ms. Kemp agreed. She explained the bill moved the offenses into the category of murder in the second degree, which did

not have eligibility for good time. The typical range of jail time for murder in the second degree was 15 to 99 years.

Representative Hannan provided wrap up. She did not believe the amendment was soft on crime. The amendment recognized the need for supervision of people who served time before they were free citizens with all of their rights restored such as voting and gun ownership etcetera. The amendment recognized that the period of leaving prison and functioning well in society was the most vulnerable and if the state did not deal with treatment and supervision there, the likelihood of recidivism was very high. Secondly, it was not just that a person had committed a murder, it was all of the drug crimes. She thought removing good time took some of the tools used for successful management of drug offenses out of the state's hands. She did not believe it was the bill's original goal. She hoped members would support the amendment.

Representative Cronk asked if the provision the amendment would remove had been part of the original bill.

Ms. Schroeder answered in the affirmative.

Representative Josephson asked if the original bill had contained the same language as written in subsection 5 on page 5 of the bill.

Ms. Schroeder replied affirmatively.

Representative Stapp stated his understanding that if the amendment passed there would be no good time for murder in the second degree, but there would be good time for all of the other drug provisions.

Ms. Kemp responded that Representative Stapp was correct as it related to offenses captured "in this component."

Representative Galvin thought she had heard in a prior hearing that the threat of taking good time away was an important tool related to behavior in prison and for individuals working in prisons to feel safer. Additionally, it was her understanding that there was a sense that good time worked well as a tool for lesser crimes.

Mr. Wood answered that good time was a useful tool for DOC in terms of incentivizing good behavior within corrections facilities, but it was one of many tools.

[12:58:57 PM](#)

Representative Hannan clarified that when the legislation had first been described to the legislature and the public, there was a focus on enhancing crimes for drug dealing that resulted in death. She was concerned that the bill also changed statute in areas for other drug crimes. She believed it was a ripple effect that was not justified. She stated the bill could still get tough on Fentanyl dealers killing people; however, she thought it was bad policy to include all other drug crimes with no good time. She did not believe it would aid in reducing drug crimes overall. She stated that the vast majority of people who end up in prison in Alaska had diagnosed mental illnesses and for many of them it was a coexisting addiction. She stressed the importance of having all of the tools available in order to enable people to return as functioning individuals in their communities [once out of jail]. She had not heard any research showing that keeping people in prison all of their days improved their behavior when they returned to society. She believed good time as a tool while people's sentences still loomed over them on parole was a benefit to ensuring reduced recidivism. She urged members' support.

Representative Cronk MAINTAINED the OBJECTION to Amendment 8.

A roll call vote was taken on the motion.

IN FAVOR: Hannan, Josephson, Ortiz, Stapp, Tomaszewski, Coloumbe, Galvin, Edgmon, Foster

OPPOSED: Cronk, Johnson

The MOTION PASSED (9/2). There being NO further OBJECTION, Amendment 8 was ADOPTED.

[1:02:04 PM](#)

Representative Josephson WITHDREW Amendment 9, 33-GH1482\B.5 (Radford, 4/13/23) (copy on file).

Co-Chair Foster noted the amendment process was concluded. He asked for any comments on the bill.

Representative Josephson remarked that the bill had been moderated considerably in some ways during the current meeting. He considered what his headline would be if he were a journalist reporting on the bill. He summarized that the state was moving from manslaughter to murder in the second degree with no good time for many drug penalties for distribution when someone died. He explained it was a completely different kind of criminality where in one instance a person was unable to resist or run from the drug and in another instance they were asking for the drug. The bill had taken that category and "amped it up considerably" under Section 2. Additionally, the bill increased the penalty for a first offense for Fentanyl. He stated that if he were a journalist he would say there was no other way than to describe the legislation than as a tough on drugs bill.

[1:04:53 PM](#)

Representative Galvin hoped it made the front page of every newspaper that the state was tough on drugs and drug dealers. She stated the bill was very complicated and she understood that one of the most important pieces was that people needed to know about it for it to be effective. People needed to understand that Alaska was not going to be someone's friend if they were bringing drugs into the state and selling them to others. She understood that perhaps the legislation was not perfect, but she felt it sent the right signal. She hoped everyone got the message.

Co-Chair Johnson MOVED to REPORT CSHB 66(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

There being NO OBJECTION, it was so ordered.

CSHB 66(FIN) was REPORTED out of committee with two "do pass" recommendations, five "no recommendation" recommendations, and two "amend" recommendations and with one new zero note from the Department of Law and four previously published zero notes: FN1 (COR), FN2 (DFC), FN4 (DPS), FN7 (AJS); and two previously published fiscal impact notes: FN5 (ADM) and FN6 (ADM).

Co-Chair Foster thanked the department.

[1:08:08 PM](#)

AT EASE

[1:13:58 PM](#)

RECONVENED

#hb28

HOUSE BILL NO. 28

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

[1:14:18 PM](#)

Co-Chair Foster asked for a brief synopsis of the legislation.

ALLAN RIORDIAN-RANDALL, STAFF, REPRESENTATIVE STANLEY WRIGHT, briefly reviewed the bill. He explained that the bill would limit access and background checks to marijuana conviction records for low level possession convictions. Additionally, the bill would codify the actions of the Alaska Court System so that in the future, no records addressed in the bill could be put back on CourtView.

Co-Chair Foster noted there were two amendments for consideration. He verified that Representative Tomaszewski and Representative Coulombe were both online.

[1:16:07 PM](#)

AT EASE

[1:17:26 PM](#)

RECONVENED

Representative Tomaszewski MOVED to ADOPT Amendment 1, 33-LS0271\S.3 (Radford, 5/2/23) (copy on file):

Page 3, line 3, following "case;":
Insert "and"

Page 3, line 4:
Delete "; and"
Insert "."

Page 3, lines 5 - 6:
Delete all material.

Co-Chair Foster OBJECTED for discussion.

Representative Tomaszewski explained that the amendment would delete the fee charged to the individual trying to get their name removed [from CourtView]. He detailed that [the fee] was not part of the original bill and had been added in later. Based on discussions with other committee members and the bill sponsor he felt it was egregious to have a fee of not less than \$150. The amendment would eliminate the fee.

Co-Chair Foster stated the amendment would delete the \$150 fee for a person to have their name removed. He asked if there were any questions or comments on the amendment.

Representative Coulombe remarked that she had a lot of experience hiring sales cashiers and people for retail jobs. She shared there were times when she had been unable to pursue someone because of "this kind of thing" on their record. She fully supported the bill and amendment. She highlighted that it was not a group who could afford \$150 minimum. She stated the last they had heard in committee was the fee was \$150 per conviction to be removed. She agreed with Representative Tomaszewski that the fee was too much. She supported the bill and amendment.

[1:19:40 PM](#)

Co-Chair Foster listed individuals available for questions.

Co-Chair Edgmon asked for the sponsor's staff to state their position on the amendment.

Mr. Riordian-Randall stated the sponsor viewed it as a friendly amendment.

Representative Stapp was in favor of the amendment and had a question about the impact on the fiscal note.

LISA PURINTON, LEGISLATIVE LIAISON, DEPARTMENT OF PUBLIC SAFETY, the amendment would impact the funding source, but not the total dollar value. She explained that the funds would come from general funds instead of program receipts (derived from the fee).

Representative Stapp stated the department was looking at hiring an individual to administer [the bill]. He surmised that if the amendment passed the individual would likely not need to stay on more than two years because the fee schedule would be eliminated. He asked if it would be appropriate to sunset that hire if the amendment passed.

Ms. Purinton replied affirmatively. She elaborated that when the Department of Public Safety (DPS) did its estimate for the fiscal note, it had used the total number of records that could be potentially impacted by the bill and had determined the research time it took existing staff to research other records. The department had estimated that while the person would not be actively serving the public in processing the requests, they would be researching historical records in order for existing staff to process the requests more quickly.

[1:22:10 PM](#)

Representative Stapp asked if it was fair to say that the process would be completed by FY 26.

Ms. Purinton answered that normally she would say yes, but she could guarantee it based on the current hiring environment.

Representative Stapp asked if FY 27 was fair.

Ms. Purinton agreed.

Representative Stapp MOVED to ADOPT conceptual Amendment 1 to Amendment 1, which would sunset the temporary hire by FY 27.

Representative Hannan OBJECTED for clarity. She supported the amendment conceptually but wondered how it pertained to Amendment 1. She reasoned that the proposed conceptual amendment was separate from Amendment 1 and pertained to the fiscal note.

Representative Stapp WITHDREW the conceptual amendment with the intention of offering it later.

[1:24:00 PM](#)

Representative Galvin stated the sponsor statement specified that the goal was to get Alaskans back to work, which she appreciated. She referenced Representative Coulombe's point that there were many people she had worked with who had difficulty finding their way to employment due to the barrier of having their name in the system from the infractions in addition to the cost [in the current bill]. She believed the cost "of all of this" balanced with getting Alaskans back to work made it easy for her to support the amendment and bill.

Co-Chair Johnson stated her understanding that the passage of the amendment passed would mean there would be an associated cost. She thought that the inclusion of the section in the bill resulted in a zero fiscal note because it would pay for itself with revenues generated.

Ms. Purinton replied it was the way DPS estimated it. She explained it was a bit of an unknown because the department did not know the number of people who would come forward. The department was anticipating there would be sufficient people to come forward who would pay the fee, which would cover the cost the department would incur to research the records and make the programming change.

Co-Chair Johnson highlighted that receiving fees [from individuals requesting to have their name removed from the system] would zero out the fiscal note.

Co-Chair Foster stated the fiscal note included \$189,000 that would have come from fees. It was his understanding that the passage of the amendment would mean there was no money because the amendment did not address backfilling the funds with UGF [undesignated general funds]. He surmised it meant the department would have to absorb the \$189,000.

Ms. Purinton answered that DPS would want to submit an amended fiscal note to specify the funding cost would need to come from UGF.

[1:27:13 PM](#)

Representative Josephson asked for verification that the Senate would have the ability to change the fiscal note [once it received the bill].

Co-Chair Foster agreed.

Representative Hannan asked if she was correct in assuming there would be a computer reprogramming cost if the bill passed regardless of whether one person paid \$150, or no one paid a fee. She thought there was additional cost related to individuals requesting the removal of their name out of the system because the cases would have to be researched individually. She surmised that the fund source would change if the fee was deleted and the workload differentiating between individuals who paid to have their name removed and those who did not would lessen because all would be treated the same. She asked if she was correct.

Ms. Purinton answered the department would have to pay a contract programmer to program the mainframe system to prevent the records from display. The second phase was to have an individual do the research. She explained that not all of the disposition information in the state's criminal history repository had the specific subsections referenced that clearly identified the qualifying records. She noted those were fairly easy to address. She explained that the research would pertain to cases where the department needed to verify the record was within the scope of under an ounce of marijuana and over 21 years of age at the time of the offense.

[1:29:35 PM](#)

AT EASE

[1:30:44 PM](#)

RECONVENED

Co-Chair Foster asked to hear from the Legislative Finance Division. He made a facetious remark [Mr. Painter had just entered the room]. He explained that Amendment 1 would eliminate the \$150 fee to have a person's name removed from past marijuana convictions. He elaborated that the passage of the amendment would mean there would be no DGF [designated general funds] for DPS, meaning the department would have to absorb the cost unless the committee did something to fix it. He asked about the process.

ALEXEI PAINTER, DIRECTOR, LEGISLATIVE FINANCE DIVISION, answered that the agency could provide a revised fiscal note based on the amended bill with fiscal note forthcoming. The committee could also draft its own fiscal note, which was usually adopted prior to moving the bill.

Co-Chair Foster stated his understanding that the committee could pass the amendment and use the terminology "with forthcoming fiscal note" when the bill was reported from committee.

Mr. Painter agreed that the agency would revise the fiscal note according to the change made in committee.

[1:33:16 PM](#)

Representative Josephson asked for verification that if the agency decided not to do a revised fiscal note it would have to absorb the cost.

Mr. Painter replied that the agency could submit a zero fiscal note. He explained that the other body could adopt an agency fiscal note or a committee fiscal note to add the money or the conference committee could adopt conference committee fiscal note adding funding. He stated that ultimately the fiscal note was a reflection of the fiscal impact of the bill that needed to be adopted into an appropriation bill. He explained that if the other body or conference committee felt the agency fiscal note was inaccurate, they could prepare their own.

Representative Hannan asked what the fiscal note had been before the House Judiciary Committee had added the \$150 fee.

Ms. Purinton replied that the department's fiscal note had been almost identical to the current note, but the funding source had been UGF instead of program receipts.

Representative Stapp asked if it was possible to have a zero fiscal note if there was an added PCN.

Mr. Painter answered that the agency would not request that. He detailed that the legislature had the ability to appropriate whatever amount it saw fit.

[1:35:21 PM](#)

Co-Chair Johnson asked if the committee could just revert back to the [department's] fiscal note submitted prior to the change made in the House Judiciary Committee.

Mr. Painter suspected the agency would just repeat its prior fiscal note, but it would be updated for the new bill version.

Co-Chair Foster WITHDREW the OBJECTION to Amendment 1.

There being NO further OBJECTION, Amendment 1 was ADOPTED.

Representative Ortiz MOVED to ADOPT Amendment 2, 33-LS0271\S.2 (Radford, 5/1/23) (copy on file):

Page 3, lines 7 - 22:
Delete all material.

Renumber the following bill section accordingly.

There was an OBJECTION.

Representative Ortiz explained that the amendment had no fiscal implications. He believed the amendment promoted good policy and would remove lines 7 through 22 on page 3 of the bill. He detailed that the section directed the court system to not publish anything about the past records of previous convictions for marijuana use on CourtView. He stated the committee had heard from the court system that it was already doing the work. He reasoned that the section was not needed. He was in full support of the bill and he thought it should be made as simple as possible. He suggested avoiding telling a separate body of government what it should or should not do when it had already taken the necessary action.

[1:38:01 PM](#)

Co-Chair Foster noted that the sponsor had reached out and requested that the language remain in the bill. He asked Mr. Riordian-Randall if the bill sponsor was opposed to the amendment.

Mr. Riordian-Randall agreed.

Representative Ortiz asked Mr. Riordian-Randall to elaborate on why the bill sponsor was opposed to the amendment.

Mr. Riordian-Randall believed the reasoning was that the language in the bill would codify the directive in statute.

He explained that though the court system was currently in favor of taking the same action, what a future administration would do was not known.

Co-Chair Foster summarized his understanding of the issue. He believed Representative Ortiz was indicating the court system was a separate body with separation of powers and he perhaps did not want to interfere in another part of government. Whereas the bill sponsor wanted to include the language to be certain. The court system was already removing names, but the bill sponsor wanted to include the language to make sure it was the case going forward.

[1:39:45 PM](#)

Representative Galvin asked for comment from the court system.

NANCY MEADE, GENERAL COUNSEL, ALASKA COURT SYSTEM, understood the bill sponsor wanted to keep the language in the bill as a belt and suspender approach. She detailed that as she had previously testified, the court system would prefer to see the language removed to avoid establishing additional precedent that the legislature had the ability to tell the court system what to put on its own website. Additionally, the court system found the language unnecessary because it had already removed the cases [online]. That being said, she did not vigorously oppose the language and it was the committee's call. She highlighted that the court system viewed CourtView and what was posted on the site as its purview, just like the legislature put what it wanted on BASIS. She stated that the legislature had done it before and putting the language in statute was the legislature's prerogative.

Representative Josephson directed a question to Ms. Meade. He remarked that lines 17 to 19 suggested a "wink-wink hey red flag here, we took something down and you may want to look into this." He asked if his interpretation was accurate.

Ms. Meade replied that she did not believe it was what was meant, and it was not what the court did. She explained that CourtView contained a notice specifying that many categories of cases were not on the website, and it was not to be used as an official criminal history background check. The website directed users to the Department of

Public Safety for the official criminal history background check information. The website also showed 15 categories of cases the court removed. The list included records of marijuana convictions for individuals over the age of 21 with no other criminal charges in the case. For example, the court did not put "State versus Josephson (case removed)" because it was marijuana.

[1:43:13 PM](#)

Representative Hannan asked about Ms. Meade's statement that the legislature had directed the court on CourtView in the past. She asked how many places in statute the legislature directed the court system on Courtview.

Ms. Meade answered that in 2015 the legislature passed a law specifying under AS 22.35 that the court system shall not publish on a publicly available internet site criminal cases that end with a dismissal or acquittal of all charges. She explained that the court had not previously done so because the court believed it appeared not to be a straightforward easy call that people should not get these. She relayed that the legislature had vigorously debated both sides of whether it should be happening. She elaborated that the supreme court did not take that step because it felt it was too controversial. The court followed the statute after the legislature implemented the law. Later under SB 91, the legislature had established a new way of disclosing cases called a suspended entry of judgement (SEJ) where if a person pled guilty, they got time to go through a probationary period. She explained that if the individual did everything right, the judgement was not entered. The SEJ statute specified that if the individual did everything right, a judgement would not be entered and the court system would remove the record from CourtView. She noted the court system had 15 categories it took off of CourtView.

[1:45:24 PM](#)

The OBJECTION was MAINTAINED.

Representative Ortiz provided wrap up on Amendment 2. He reiterated his full support for the bill. He explained that the purpose behind Amendment 2 was to promote good policy and the idea that the legislature should not step in where it did not need to step in, particularly on another branch

of government. He stated that the legislature valued the separation of powers in relationship to the court system and administration and the legislature should show it was only attempting to direct policy when needed. He remarked that the legislature would not necessarily feel good about the court system stepping into the legislature's purview when it was not needed. He stated the language was not needed in the bill and the issue was already being taken care of.

A roll call vote was taken on the motion.

IN FAVOR: Josephson, Ortiz, Galvin, Hannan
OPPOSED: Stapp, Tomaszewski, Coloumbe, Cronk, Edgmon, Foster, Johnson

The MOTION FAILED (4/7).

Co-Chair Foster noted the amendment process was concluded.

Co-Chair Johnson MOVED to REPORT CSHB 28(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

There being NO OBJECTION, it was so ordered.

CSHB 28(FIN) was REPORTED out of committee with eight "do pass" recommendations and one "no recommendation" recommendation and with one new fiscal impact note from the Department of Public Safety and one previously published zero note: FN1 (AJS).

#hb3

HOUSE BILL NO. 3

"An Act relating to specie as legal tender in the state; and relating to borough and city sales and use taxes on specie."

[1:50:00 PM](#)

Co-Chair Johnson MOVED to ADOPT the proposed committee substitute (CS) for HB 3, Work Draft 33-LS0087\S (Nauman, 5/4/23).

Co-Chair Foster OBJECTED for discussion. He asked his staff to explain the changes in the CS.

BRODIE ANDERSON, STAFF, REPRESENTATIVE NEAL FOSTER, relayed that the CS contained one change from the previous bill version. He directed attention to page 2, line 21. He detailed that the previous version of the bill used the House Finance Committee as the point of origin directing a study to be conducted. The CS changed the reference to the Legislative Budget and Audit (LB&A) Committee per the sponsor's request. He explained it had been suggested that the House Finance Committee may not be the most appropriate committee to direct a study and that LB&A was more suitable.

Co-Chair Foster WITHDREW the OBJECTION to the adoption of the CS. There being NO further OBJECTION, it was so ordered. He invited the bill sponsor to make any comments.

REPRESENTATIVE KEVIN MCCABE, SPONSOR, appreciated the committee hearing the bill and supported the change in the CS.

Representative Hannan asked if Legislative Legal Services had weighed in on the bill provision dictating a committee to take action and whether the legislature had the ability to do so under statute. Additionally, she wondered whether Legislative Legal had specified what would happen if the specific committee did not take action dictated by statute in the bill.

Representative McCabe responded that his office had not had any conversation specific to whether the legislature could direct LB&A to [direct a study]. He believed Legislative Legal had drafted the CS and no problem had been indicated; however, he had not specifically asked the question.

[1:54:29 PM](#)

Representative Hannan MOVED to ADOPT conceptual Amendment 1 to change the word "shall" to "may" on page 2, line 21. She was concerned that without a legal memorandum indicating the action was legal, the House Finance Committee could perhaps be establishing a mandate directing another committee to do something that it did not have authority over. She stated that if the bill passed, the record would indicate there was interest in LB&A doing so and LB&A would take the interest under advisement. She believed the bill

sponsor would also work with LB&A to implore the committee to take action.

Co-Chair Johnson OBJECTED.

Co-Chair Foster asked Representative McCabe for his opinion on the conceptual amendment.

Representative McCabe replied that he would not have a problem with changing the language to "may." He was unclear whether the House Finance Committee had received a legal opinion. He shared that the original bill did not have any memo addressing the topic [raised by Representative Hannan].

Co-Chair Edgmon heard the point by Representative Hannan but he highlighted that the word "shall" did not imply they [LB&A] must [take action], in the sense that there was a time frame attached it could be five or ten years later. He thought changing the word from "shall" to "may" in some ways changed the intent of the legislation. He did not support the amendment.

Representative Stapp valued the intent of the conceptual amendment, but he thought inserting the word "may" would render the bulk of the bill irrelevant. He elaborated the change would mean there was no action taken tied to any specific timeframe or date regarding legal tender. He believed the result would be a bill with no directive to do anything, which would undermine the concept of the bill. He did not support the amendment.

[1:57:53 PM](#)

Co-Chair Johnson referenced the statement [made by Representative Hannan] that the House Finance Committee would be giving direction to a committee it may not have jurisdiction over. She pointed out that by the time the bill passed it would be seen and voted on by the entire legislature. She stated that the entire legislature had the ability to direct other committees.

Representative Hannan provided wrap up on the conceptual amendment. She stated that the majority of the bill was not about the study. She did not believe in doing things that seemed to be confusing in their intent.

Co-Chair Johnson MAINTAINED the OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Galvin, Hannan, Josephson, Ortiz

OPPOSED: Stapp, Tomaszewski, Coloumbe, Cronk, Edgmon,
Johnson, Foster

The MOTION to adopt conceptual Amendment 1 FAILED (4/7).

Co-Chair Johnson MOVED to REPORT CSHB 3(FIN) out of committee with individual recommendations and the accompanying fiscal notes.

There being NO OBJECTION, it was so ordered.

CSHB 3(FIN) was REPORTED out of committee with six "do pass" recommendations, one "no recommendation" recommendation, and two "amend" recommendations and with two previously published zero notes: FN1 (ADM) and FN2 (CED).

Representative McCabe thanked the committee.

Co-Chair Foster reviewed the schedule for the next meeting.

#

ADJOURNMENT

2:02:06 PM

The meeting was adjourned at 2:02 p.m.