

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

March 14, 2023

3:01 p.m.

MEMBERS PRESENT

Representative Mike Prax, Chair
Representative Justin Ruffridge, Vice Chair
Representative CJ McCormick
Representative Dan Saddler
Representative Jesse Sumner
Representative Zack Fields
Representative Genevieve Mina

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 89

"An Act relating to the day care assistance program and the child care grant program; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 80

"An Act relating to competency to stand trial; relating to commitment based on a finding of incompetency; relating to administration of psychotropic medication; and relating to victims' rights during certain civil commitment proceedings."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 89

SHORT TITLE: DAY CARE ASSIST./CHILD CARE GRANT PROGRAM

SPONSOR(S): REPRESENTATIVE(S) COULOMBE

02/27/23	(H)	READ THE FIRST TIME - REFERRALS
02/27/23	(H)	HSS, FIN
03/14/23	(H)	HSS AT 3:00 PM DAVIS 106

BILL: HB 80

SHORT TITLE: INCOMPETENCY; CIVIL COMMITMENT

SPONSOR (s) : REPRESENTATIVE (s) JOSEPHSON

02/22/23 (H) READ THE FIRST TIME - REFERRALS
02/22/23 (H) HSS, STA, JUD
03/14/23 (H) HSS AT 3:00 PM DAVIS 106

WITNESS REGISTER

REPRESENTATIVE JULIE COULOMBE

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As prime sponsor, offered an introduction to HB 89.

DANIEL ROBBINS, Staff

Representative Julie Coulombe

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: On behalf of the prime sponsor, Representative Coulombe, gave a PowerPoint presentation and sectional analysis on HB 89.

BLUE SHIBLER, Executive Director

Southeast Alaska Association of the Education of Young Children

Juneau, Alaska

POSITION STATEMENT: Provided invited testimony in support of HB 89.

JEN GRIFFIS, Public Policy Manager

thread

Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony in support of HB 89.

HEATHER CARPENTER, Health Care Policy Advisor

Office of the Commissioner

Department of Health

Juneau, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 89.

REPRESENTATIVE ANDY JOSEPHSON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As prime sponsor, presented HB 80.

ALEXANDER SCHROEDER, Staff

Representative Andy Josephson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Josephson, prime sponsor, offered a PowerPoint presentation, gave a sectional analysis, and answered questions on HB 80.

ANGELA HARRIS, representing self
Anchorage, Alaska

POSITION STATEMENT: Provided invited testimony during the hearing on HB 80.

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

POSITION STATEMENT: Answered questions during the hearing on HB 80.

ACTION NARRATIVE

[3:01:23 PM](#)

CHAIR MIKE PRAX called the House Health and Social Services Standing Committee meeting to order at 3:01 p.m. Representatives Mina, Saddler, McCormick, Ruffridge, Sumner, Fields, and Prax were present at the call to order.

HB 89-DAY CARE ASSIST./CHILD CARE GRANT PROGRAM

[3:03:13 PM](#)

CHAIR PRAX announced that the first order of business would be HOUSE BILL NO. 89, "An Act relating to the day care assistance program and the child care grant program; and providing for an effective date."

[3:03:40 PM](#)

REPRESENTATIVE JULIE COULOMBE, Alaska State Legislature, as prime sponsor, gave a brief introduction to HB 89. She stated that there are two ways HB 89 would strengthen the child care system. It would expand the number of families who can afford child care by making subsidies more inclusive, and it would align the subsidy level to reflect the actual cost of care. After meeting with state departments and trade organizations,

she expressed the understanding that the hiring crisis is contributing to the unavailability of daycare, but there are many other factors, including the billing requirements on daycare centers. The result of this is the cost of care is not covered, and daycare centers are going out of business. She added that the COVID-19 pandemic contributed to this. She stated that while other solutions exist, HB 89 would address the accessibility problem. The proposed legislation would do this by increasing the number of families who could access the vouchers and the number of vouchers available. Connected to this, she said, there is a study which would investigate the actual cost of care, not the current market's cost. She stated that she would put forth an amendment to cover the cost of the study.

[3:07:18 PM](#)

DANIEL ROBBINS, Staff, Representative Julie Coulombe, Alaska State Legislature, on behalf of the prime sponsor, Representative Coulombe, presented a PowerPoint on HB 89 [hard copy included in the committee packet]. He began on slide 2 and stated that the proposed legislation would address the lack of affordable quality child care in the state, which has contributed to the following: labor shortages, endangerment of children, economic insecurity of families, and the decrease in workforce participation. He pointed out the proposed legislation would strengthen the child care sector by improving access for families, which in turn would send parents back into the workforce, as seen on slide 3. In reference to the next slide, he said, HB 89 would align the subsidy level to reflect the actual cost of care, which would strengthen the child care system by expanding the number of families who could utilize daycare vouchers. He pointed out on slide 5 that the child care crisis is a result of low wages, labor shortages, and declining numbers of child care providers. He continued that the decrease in labor force participation equates to worker shortages, as seen in the graph on slide 6. The graph relates that Alaska's child care workforce decreased 20 percent between 2018 and 2020.

MR. ROBBINS pointed to slide 7 which related that child care subsidies are inadequate and do not reflect the actual cost of care. He explained that providers lose money when they offer care to low-income families on subsidies; however, this does not affect only low-income families. To compensate, providers raise rates, affecting middle-class families who are ineligible for subsidies. In turn, many middle-class families cannot afford child care; therefore, a parent would need to stay home to care

for children. He moved to slide 8 which addressed the eligibility for subsidies. He stated that the threshold to receive subsidies for one earner is 85 percent of the state median income, or \$60,144. He noted that the federal poverty line in Alaska for a two-person household is \$24,640, which means the current eligibility threshold is 244 percent of the federal poverty line. He reasoned that this leaves most of the middle class without affordable care, which results in severe labor shortages across the state. The proposed legislation would raise the eligibility threshold to 300 percent of the federal poverty line, or \$73,920. He stated that the level of subsidy would be scaled by the Department of Health (DOH) based on need. He stated that the result would be an expanded number of families who could afford care, and this would allow more Alaskans to reenter the workforce.

3:11:10 PM

MR. ROBBINS, continuing to slide 9, pointed out the subsidy for child care is currently based on a market rate survey. He stated that this underestimates the cost of care, which puts providers at financial risk. He explained that because of inadequate subsidies for low-income families, providers are forced to raise rates, pricing some families out of child care. He stated that the proposed legislation would align subsidy rates with the actual cost of care, improving financial stability for providers and affordability for middle-class families. He expressed the opinion that a family with a household income of \$60,000 per year should not spend more than \$4,200 per year on child care costs. He compared this with \$6,600 per year now being spent. Referring to slide 11, he pointed out that parents are moving to part time employment or leaving work altogether. In other words, child care issues affect parents' employment. He pointed out on slide 12 a case study in Missouri where the state has introduced new programs with tax credits which would go directly to employers and the child care industry.

MR. ROBBINS moved to slide 13, pointing out the case study in North Dakota which looks at a solution to the child care issue by addressing affordability, availability, and quality. He said North Dakota has already spent over \$70 million on the program. Recapping the solution in the proposed legislation, he said the number of families who are eligible for child care subsidies under the Child Care Assistance Program (CCAP) would be expanded, making child care more affordable, which would help parents return to the workforce.

[3:14:19 PM](#)

MR. ROBBINS proceeded to the sectional analysis on HB 89 [copy included in the committee packet], which read as follows [original punctuation provided]:

Section 1: Amends AS 47.25.001(a)[2] to increase the maximum income threshold for state subsidies for child care to 300% of federal poverty line for the state.

Section 2: Amends AS 47.25.071(c) to calculate the true cost of providing child care in the state of Alaska, and allows the grant program to fund disbursements to beneficiaries at that amount.

Section 3: Adds a new section to make a conforming change to the federal reporting provisions for the child care assistance program.

Section 4: This is a conditional clause that gives the United States Department of Health and Human Services the authority to approve additional amendments to the state plan for day care assistance or determine that those amendments are not necessary.

Section 5: This is an effective date clause setting the effective date on the day after the date the United States Department of Health and Human Services approves the corresponding amendment to the state plan or determines that approval is not necessary.

[3:16:14 PM](#)

BLUE SHIBLER, Executive Director, Southeast Alaska Association of the Education of Young Children (AEYC), expressed gratitude for HB 89 and offered her support. She shared that AEYC is a nonprofit organization which provides child care referral services throughout Southeast Alaska. She shared that she is a former owner of a child care center. She stated that throughout her career she has engaged with families and watched parents struggle to afford child care. The families who receive child care assistance often cannot afford to pay the difference between the subsidy and the actual tuition fee. She expressed the belief that the proposed legislation would help close this gap and allow more families access to quality child care in Alaska. She expressed the concern that wages for child care workers should also be addressed, otherwise the state is expanding access to a system which is "about to crumble." In addition to being the director of AEYC, she stated that she also represents a coalition of healthcare providers and parents. She

stated that this group has recommended the funds from CCAP be used directly for wage stipends. She expressed the opinion that increasing access to child care for families should be done at the same time as increasing pay for child care providers.

[3:19:18 PM](#)

JEN GRIFFIS, Public Policy Manager, thread, voiced support for HB 89. She stated that thread is a statewide nonprofit which provides professional development for child care providers, supports programs, and helps connect parents to resources. She stated that finding affordable child care is becoming more difficult because early educators are leaving the workforce and child care programs are closing. She expressed the opinion that the unavailability of child care is having an impact on the workforce and economy. She stated that historically the gap between availability and need for child care in Alaska has been around 25 percent. Various programs and communities have reported declines in enrolment capacity to 40-60 percent, and this is attributed to workforce shortages in child care. She stated that federal stabilization funds provided during the COVID-19 pandemic helped support child care providers, but the third and final phase of funds have just been distributed. Data on the impact of the second phase of funds has been gathered and will be shared within the coming weeks. The preliminary analysis of the data demonstrates that the \$50 million in stabilization funds, which went directly to child care providers and programs, helped keep some businesses open.

MS. GRIFFIS continued that thread is advocating for direct support to early educators and child care programs in the upcoming fiscal year, but she argued that a more stable child care sector would require a shift in current assistance program policies. She stated that the proposed legislation would change the eligibility for CCAP, allowing more families to participate, and it would change how provider reimbursements are determined, providing for a more stable child care system.

MS. GRIFFIS stated that while thread supports the intentions behind HB 89, it has three recommendations to strengthen the proposed legislation. The first suggested recommendation would be to require the usage of the state's median income, as opposed to the federal poverty limit, in any eligibility changes to the CCAP. She said this consistency would help with program continuity. Per thread's second recommendation, she said, the cost-of-care language should be located in the portion of the statute which impacts the entire assistance program, not just

the Child Care Grant Program. The final recommendation would be to include cost-of-care language in the reimbursement determination modeling, but it should not be the exclusive measure. She indicated that other states use a multifactor analysis, including cost of care and other relevant geographical and market rate factors. She concluded that thread would advocate for policies which reduce child care costs for parents and increase support for child care providers.

[3:24:42 PM](#)

MS. GRIFFIS, in response to Representative Saddler, repeated thread's second recommendation. In response to a follow-up question, she stated that child care assistance is the reimbursement given to child care providers who serve families participating in CCAP, while the Child Care Grant Program provides direct support to child care providers.

[3:25:55 PM](#)

MS. GRIFFIS, in response to Representative Mina, voiced that the factors in a cost-of-care analysis can vary for different states. She reiterated that factors could include the geography, market rate, and actual cost of care. In response to a follow-up question, she stated that the current market rates would need to be considered in the context of the different communities.

[3:27:11 PM](#)

REPRESENTATIVE SUMNER pointed out the hard cap of 300 percent of the poverty line and questioned whether a phase out could be used instead. He surmised that a hard cap could create a situation where an incremental wage increase could have a negative value for those needing assistance for child care.

[3:28:14 PM](#)

REPRESENTATIVE COULOMBE responded that [a phase out] was discussed and considered. She stated that the proposed legislation is a working document and expressed appreciation for the input from testifiers. She deferred the question to DOH.

[3:29:08 PM](#)

HEATHER CARPENTER, Health Care Policy Advisor, Office of the Commissioner, Department of Health, concerning HB 89, stated

that participants in public assistance programs could be disincentivized to advance in the workplace by a "fiscal cliff." She stated that the legislature would ultimately decide which policy levers could be used to help families. She reminded the committee that the programs under consideration are [the Child Care Grant Program and CCAP]. She stated that the Child Care Grant Program pays providers directly for costs to "keep their doors open and hire staff," and CCAP is a subsidy paid by the state to help families directly with monthly child care fees. Because the federal government does not allow the fee to be completely waived, every parent has a copay, and if wages go up, the copay will increase. She suggested that raising the eligibility standards to 300 percent of the federal poverty level, as the legislation proposes, would help families. Whether eligibility is based on the state median income or federal poverty levels, the state would pay on both; however, she advised "it would sure be easier if they were all on one." Ms. Carpenter said other policy levers would include reducing family copays and raising reimbursement rates paid directly to providers. She explained that the rate is set currently by a market survey, which is set by the federal government, and this methodology has to be followed. She advised that the federal government would have to give permission for this to be changed.

[3:32:40 PM](#)

REPRESENTATIVE RUFFRIDGE expressed the appreciation that the proposed legislation is a working document. He referenced the presentation and questioned the statement on slide 8 which conveyed that DOH would scale the subsidy levels based on need. He commented that DOH is doing this now through copays. He questioned whether this would stay the same under HB 89.

MS. CARPENTER responded that the question partly addresses the reason the fiscal note is indeterminate for the proposed legislation. She said DOH is waiting for direction from the legislature before reducing the current scale. She explained that currently an individual earning up to 85 percent of the state's median income has to pay a 9 percent copay. She suggested that DOH could continue on this scale, or the proposed legislation could make a change. She added that any change to this would require a regulation change.

REPRESENTATIVE RUFFRIDGE referenced the proposed legislation's current form and, for clarification, stated that as a person's earnings nears the threshold of \$64,144, the maximum copay would be 9 percent, unless something is changed.

MS. CARPENTER responded that DOH would like guidance on this issue.

[3:35:14 PM](#)

REPRESENTATIVE FIELDS offered his support for the proposed legislation. He questioned whether language addressing the wages [for care providers] should be added, as it would address the stability of the workforce in addition to access [to child care].

MS. CARPENTER responded that this would "get tricky." She stated that the department would pay child care assistance to private providers, but it could not direct how the money is spent. The assumption is, if providers are paid more, they would increase pay rates, but this is not a guarantee.

[3:36:35 PM](#)

REPRESENTATIVE SADDLER questioned the definitions of child care, Head Start, and preschool. He also questioned the definition of "high-quality child care."

[3:37:27 PM](#)

MS. GRIFFIS responded that to build kindergarten-readiness skills for children under the age of five, the settings in Alaska would be licensed child care programs, Head Start, and pre-kindergarten. She stated that licensed child care falls under DOH, while Head Start and pre-kindergarten fall under the Department of Education and Early Development. These components together form the system. In response to a follow-up question, she explained that Head Start is a federally funded program. She stated that she could provide specific information on the program [after the hearing]. She stated that pre-kindergarten in Alaska is publicly funded education through the school districts. She continued that licensed child care is outside of the other two settings. The licensing would be done through the state, but the setting would have more flexibility. For example, pre-kindergarten would occur during school hours for half a day, with the summers off, and this does not always fit with a family's schedule. She explained that, because needs are different, thread advocates for a mixed delivery system to make sure a variety of options are available.

REPRESENTATIVE SADDLER confirmed that [licensed] child care would be characterized by flexibility in hours. He questioned whether an educational element of child care exists.

MS. GRIFFIS responded that high-quality child care centers would have elements of pre-kindergarten and Head Start. The distinction for high-quality child care is the licensure, regulations, and funding. She stated that high-quality child care programs would have the same type of education and structure as pre-kindergarten.

REPRESENTATIVE SADDLER expressed the understanding that "high quality" does not imply a difference in quality; it simply is a matter of how the center is regulated, funded, and licensed. He questioned whether low-quality child care exists.

MS. GRIFFIS responded that unlicensed child care would be considered low quality. In regard to affordability, accessibility, and quality, she said the desire is to have affordable access to high-quality child care. She offered to follow up with more information on Alaska's Quality Recognition and Improvement System (QRIS). She said the rating system has five levels, with defined quality measures for each level, and QRIS training, support, and assistance is available for programs.

[3:43:54 PM](#)

REPRESENTATIVE FIELDS commented that some states pay for quality. He voiced the opinion that the legislature could support the department by making direct payments or reimbursements to providers who achieve higher levels of training and certification.

[3:44:33 PM](#)

REPRESENTATIVE RUFFRIDGE commented that the proposed legislation addresses recalculating the actual cost of child care. He expressed the assumption that this would entail a study and questioned the timeframe for this type of study.

MS. CARPENTER responded that the department intends to do a market rate survey alongside a cost-of-care survey, with an added actuarial study. She stated that the department is starting the procurement process in order to have information for the next legislative session.

[3:45:42 PM](#)

MS. CARPENTER, in response to Chair Prax, offered to provide details in writing on the studies. She added that some of the COVID-19 relief money can be used for the studies. In response to a follow-up question, she expressed the hope that the plan would be before the committee by the end of the week.

[3:47:10 PM](#)

REPRESENTATIVE SADDLER, referencing the presentation, sited that the number of child care workers has decreased by 20 percent since 2018. He questioned whether this reduction corresponds to the same rate of decline in the total workforce in the state.

MS. CARPENTER responded that the department does not have this data. She stated that DOH has been working with the Department of Labor and Workforce Development (DLWD) on demographics concerning who could be served by the proposed legislation. She stated that the answer would come best from DLWD.

[3:48:20 PM](#)

CHAIR PRAX announced that HB 89 was held over.

[3:48:41 PM](#)

The committee took an at-ease from 3:48 p.m. to 3:54 p.m.

HB 80-INCOMPETENCY; CIVIL COMMITMENT

[Contains discussion of SB 53.]

[3:54:31 PM](#)

CHAIR PRAX announced that the final order of business would be HOUSE BILL NO. 80, "An Act relating to competency to stand trial; relating to commitment based on a finding of incompetency; relating to administration of psychotropic medication; and relating to victims' rights during certain civil commitment proceedings."

[3:55:42 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, as prime sponsor, introduced HB 80. He stated the proposed legislation is concerned with criminal sentencing and competency

in Title 12 and the health section in Title 47 of the Alaska statutes. He stated that the proposed legislation could have a large effect on the Department of Family and Community Services (DFCS). He shared that the bill had been conceived 13 months ago after Angela Harris had been randomly stabbed and left paralyzed. He stated that Ms. Harris has testified twice during the hearing on [SB 53], which is sponsored by Senator Claman. He continued that the proposed legislation would not address crimes in regard to the human conditions of passion, motivation, and jealousy; rather, it would address the type of criminality unexplainable in motivation, with the perpetrator lacking the sanity to stand trial. He explained that it was found in Ms. Harris's case that Corey Ahkivgak, the perpetrator, had extensive red flags and had committed multiple previous random attacks, one being two months prior. He expressed the understanding that mentally ill individuals, on the whole, are not violent, and the proposed legislation would be targeting the illness of psychosis. He expressed the opinion that the state is doing an inadequate job of protecting the public in this regard.

[4:03:35 PM](#)

REPRESENTATIVE JOSEPHSON explained the current court process concerning a charged individual. If a mental evaluation is needed, and the defendant is not rational, under the current law for a felony, the court "shall" order a commitment up to 90 days, and for a misdemeanor it "may" order a commitment up to 90 days. He stated that during the commitment period the Alaska Psychiatric Institute (API) would attempt to restore the person to sanity. As an aside, he identified a series of reports which relate that Alaska has been underfunding the effort to help [mentally unstable] individuals. He cited that in its report, the University of Nevada Las Vegas (UNLV) advised that the implementation of recommendations would require significant resource allocation. He suggested to the committee that the financials be put aside, to first decide the fix and address the cost, and then determine the state's investment.

REPRESENTATIVE JOSEPHSON, continuing the discussion of the current law, expressed the understanding that individuals in Alaska who have been committed for the 90-day period are not receiving effective treatment. He explained that after the 90-day period, the matter would come back to the courts if the individual were not restored. He stated that the court has discretion for a violent felony committed against another person, and under the current law an individual can be held for

up to a year. He stated that research has found this to be "the low end" in respect to the rest of the country, as some states have no time limits on commitment. He stated that the proposed legislation, along with [SB 53], would change this to a two-year limit, giving a more reasonable window to restore an individual to competency. He expressed the understanding that the proposed two-year limit has raised questions about civil liberties, resources, and further delay. He explained that, before the court would extend the restoration timeframe, the following would be addressed: whether the crime had involved force against a person; whether releasing the individual would be dangerous to other people; and the probability the individual would regain competency within a reasonable period of time. If an individual is not restored to competency, he said, the key problem would be the next step.

[4:09:27 PM](#)

REPRESENTATIVE JOSEPHSON pointed out that a bill passed in 2008 requires incompetent individuals with a court dismissal to move into Title 47, the civil commitment stage. He referred to AS 12.47.110, which read as follows:

(e) A defendant charged with a felony and found to be incompetent to proceed under this section is rebuttably presumed to be mentally ill and to present a likelihood of serious harm to self or others in proceedings under AS 47.30.700 - 47.30.915. In evaluating whether a defendant is likely to cause serious harm, the court may consider as recent behavior the conduct with which the defendant was originally charged.

REPRESENTATIVE JOSEPHSON argued that the problem with this law is it does not say what to do next. He explained that the case would be dismissed if a person is declared unfit for trial. To stand trial, a person would have to understand the charge and be capable of helping with his/her own defense. Not being able to do this would violate the person's due process rights. He stated that a gap in the law is created because "there is no one that steps up to the plate after the case is dismissed." He said under Title 47 anyone can file a petition to commit another person, but no state agencies are obligated to file the petition. He explained that the proposed legislation would appoint the Department of Law (DOL) to report to DFCS when an individual's case is dismissed, and a three-day window would be given for the petition to be filed. He advised that a "buck

stops here moment" should exist. He expressed the opinion that the current law is both overinclusive and underinclusive. He continued that, under the current law, when a person is deemed incompetent but not a threat to the public, the judge still could send the individual to be restored. He stated that this would be considered overinclusive. He stated that the law is underinclusive because a judge is not required to commit a person for some of the "red flag" misdemeanors.

[4:14:15 PM](#)

REPRESENTATIVE JOSEPHSON offered a comparison of [SB 53] and HB 80 and stated the current versions line up. He suggested that [SB 53] is tougher on involuntary commitment and expressed concern about its efforts regarding out-patient restoration. Instead, he suggested that a system needs to seamlessly retain the individual. He stated that the current law contains mixed issues. The law says these proceedings will be "stayed" during the effort to restore competency. He surmised that this means the individual cannot meet bail; however, he explained there is a constitutional right to bail, so the issue becomes mixed. He voiced the opinion that a chain of custody should exist until the individual has been treated and can be released.

[4:16:26 PM](#)

REPRESENTATIVE JOSEPHSON, in summary, stated that HB 80 would: extend the period a person is held for treatment from one year to two years; require DFCS to be informed of the need to file a petition; allow the victim to have the right to track the criminal case and the civil commitment proceedings; codify Sell v. United States 539 U.S. 166 (2003); change the statute of limitations from 5 years to 10 years for certain cases; allow telephonic examinations to determine competency; and make better distinctions between less severe cases and violent cases.

[4:19:43 PM](#)

REPRESENTATIVE SADDLER questioned whether competency to stand trial would equate to sanity.

REPRESENTATIVE JOSEPHSON responded in the negative. He stated that he has incorrectly interchanged some terms. He clarified that if someone is not sane, he/she may be insane; however, "not guilty by reason of insanity" is seldom used. He stated that "competency" would mean someone who could help with his/her trial.

REPRESENTATIVE SADDLER confirmed that "competence" would be a person's ability to meaningfully participate in his/her own defense. He suggested that "restoration to sanity" would presume that a level of sanity could be restored. He questioned the establishment of a baseline and whether an individual would be restored to "competency" or "sanity."

REPRESENTATIVE JOSEPHSON expressed the opinion that the individual would be restored to competency.

[4:22:22 PM](#)

ALEXANDER SCHROEDER, Staff, Representative Andy Josephson, Alaska State Legislature, on behalf of Representative Josephson, prime sponsor of HB 80, in response to Representative Saddler's question, explained that someone could pursue a plea of "not guilty by reason of insanity" and still be competent for trial. He further explained that one deals with the moment of the crime, while the other deals with the moment of participating in the trial.

[4:22:52 PM](#)

REPRESENTATIVE FIELDS thanked the sponsor for introducing the proposed legislation. Concerning a psychotic person who cannot be restored to competency to stand trial, he questioned the process of supervising these people, so the public is not endangered. He questioned whether the proposed legislation would address this.

REPRESENTATIVE JOSEPHSON responded that the proposed legislation would require DOL to notify DFCS when a person who was not restored to competency is released. He reiterated that a petition would need to be filed within three days to retain the person. In response to a follow-up question, he stated there is a mechanism in the proposed legislation which would detain the individual at API, and this process would be seamless. He expressed uncertainty concerning the state's current handling of individuals who cannot be restored. He added that 9 years ago a UNLV report indicated API had 10 beds but needed 35 beds. He continued that UNLV issued another report which estimated the capital costs for API to address this.

REPRESENTATIVE FIELDS offered the opinion that the state should be able to administer psychotropic drugs involuntarily to

dangerous people. He questioned whether people would be monitored after they are medicated and released.

REPRESENTATIVE JOSEPHSON stated that probation officers would do this type of thing concerning Title 12, not Title 47. He stated that many people are brought to competency, so there is a winnowing out. He expressed uncertainty concerning whether the state would currently follow up on a released individual who has been medicated.

[4:27:11 PM](#)

REPRESENTATIVE SUMNER, per the proposed legislation, questioned the purpose of having DFCS file the civil commitment instead of DOL. He expressed concern over DFCS's 60-percent turnover rate and questioned whether, from a personnel stance, DFCS would "drop the ball."

REPRESENTATIVE JOSEPHSON responded that agency turnover is unknown, as DOL had significant turnover last year. He stated that DOL participates in the dismissal cases in the courtroom, and the files with the evaluations would be at API, [which is a part of DFCS.] When an individual is not restored and he/she is an imminent threat to public safety, he said, DFCS would contact the Civil Division of DOL to ask for a petition to commit.

[4:29:05 PM](#)

REPRESENTATIVE RUFFRIDGE expressed concern about using the word "seamless" when describing a government process. In reference to the process of deeming a person incompetent after two years, he questioned how this would become a civil issue. He expressed the opinion that the process crosses a boundary, as the criminality which had occurred was not addressed.

REPRESENTATIVE JOSEPHSON responded that it has become a civil issue because "there's no other place to go," and the case can be brought back in the future if the person is restored to competency. He continued that the tool exists now to civilly commit people under Title 47. He asserted that the proposed legislation would assign an agency to be responsible for this instead of "letting it languish and we watch the next event happen."

REPRESENTATIVE RUFFRIDGE expressed the opinion that under a civil commitment an individual would end up in a less structured environment. He expressed the understanding that guilt cannot

be assigned to an individual who cannot stand trial and suggested that at the end of two years the individual would become "not guilty by reason of insanity." He reasoned that there should be a place for these individuals - a third option which would be a more secure commitment - not 30 years inside of API's general population.

REPRESENTATIVE JOSEPHSON responded that the use of "not guilty by reason of insanity" is disfavored in Alaska. He explained that when a criminal case is dismissed, API becomes involved. At this point, the person would be considered simply "not guilty." From here the case is dismissed without prejudice, and the person is simply allowed to go. He referred to the initial involuntary commitment procedures in AS 47.37.100. He stated that, per these procedures, a screening investigation would be done of the individual by a local mental health professional. Within 48 hours after the screening the judge may issue an order indicating the person is believed to be mentally ill. This would require the individual to be gravely disabled or present a likelihood of serious harm to self or others. He explained that this is the present system; however, the question of responsibility is unanswered.

[4:34:31 PM](#)

ANGELA HARRIS, representing self, began her invited testimony by recounting the story of her attack. She shared that she had been stabbed on February 13, 2022, while returning books to the library. She shared that she and her family have lived in Alaska since 2005, and she is a mother of four children. She stated that the assailant, Corey Ahkivgak, severed her spine with a knife. While she was in surgery he had been captured by the police. She stated that since the stabbing, she is paralyzed, her home had to be modified, her parents had to relocate, and her spouse had to quit his job. After attending physical therapy for approximately nine months, she is no longer in recovery. She shared that she sees a counselor to treat the PTSD [post-traumatic stress disorder] from her assault.

MS. HARRIS stated that Mr. Ahkivgak has a history of assaulting women, which began in 2018 when he violently attacked his mother with a frying pan. She stated that in December 2021, he attacked two different women. After being declared incompetent and not restorable, he had been released back into the public on January 6, 2022. She stated that he stabbed her 38 days after this release, and once again he has been declared incompetent and not restorable, which means he may be released after his

next commitment proceedings. She argued that the state needs to improve the mental health system, particularly in reference to violent offenders. She pointed out the loopholes in the current laws, adding that the victims should not be left to pursue civil commitment. She maintained that Mr. Ahkivgak has more resources at his disposal than she does as a victim, and her assault is an example of why better health care facilities and laws are needed. She stated that API serves the entire state, yet it operates on a very limited capacity, with only 10 beds designated for restoration. She reasoned that the moment an offender commits a violent act to a fellow citizen, his/her rights should be weighed against the victim's rights to safety.

MS. HARRIS stated that the proposed legislation is forcing a necessary conversation about how the state deals with competency restoration. She argued that the current wait time for a bed is inexcusable, especially when violent offenders can be let off without appropriate restoration treatment. She continued that the proposed legislation would address one of her primary concerns - closing the loophole. She explained that HB 80 would do this by allowing a civil commitment to be filed when a person has had all charges dropped because he/she is incompetent and not restorable. She stated that Mr. Ahkivgak should not have been released to the public, and an involuntary commitment petition should have been filed. She stated that HB 80 would address this duty.

[4:40:36 PM](#)

REPRESENTATIVE FIELDS thanked the testifier. He compared the timeframe of her attack with the time it would take for the number of committee referrals for the proposed legislation. He expressed concern that the legislation would not reach the floor in the current year and offered the hope the situation could be addressed more quickly, as families are at risk every day. He expressed the understanding that Ms. Harris's perpetrator would be available for release within the next few months. Deferring to DOL, he questioned the justice system's current options concerning the release of manifestly dangerous people.

[4:42:01 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Office of the Administrative Director, Alaska Court System, explained, if a person is found incompetent after a number of attempts at restoration, the current statute requires a criminal case to be dismissed. This dismissal would include an unlikelihood of

restoration because of a mental condition or an inability to get into API for restoration. She stated that this statute says the case "shall" be dismissed, ending the criminal case. In this situation the proposed legislation would require involuntary civil commitment proceedings to be filed in three days for an evaluation. She suggested that serial commitments could result from the evaluation, as health professionals could file a petition for a 30-day commitment, a 90-day commitment, and then a 180-day commitment. If someone is deemed mentally ill and likely to cause harm to self or others, subsequent 180-day commitments can be filed. She stated that some individuals are held under serial 180-day commitments, but this is rare.

[4:43:40 PM](#)

REPRESENTATIVE RUFFRIDGE thanked Ms. Harris for the testimony and expressed the opinion that an apology is owed. He maintained that a significant breakdown of the process had happened, and the state should be making progress in order to make communities safe. He expressed the understanding that there is not a process for individuals in the state who have committed a crime but cannot be restored to competency because of significant mental health issues. In regard to restoring competency, he questioned whether an individual would be free if he/she is not restorable.

MS. MEADE responded in the affirmative. She stated that there is not a place under the current statute for individuals who fall into this category. The criminal case would get dismissed, and under current law this would be "the end of it." She stated that with the proposed legislation at least a civil process would begin, but an institution for criminally incompetent, dangerous individuals does not exist. She expressed the understanding that API can try to restore individuals and hold them under commitments, but it is not an institution for criminally incompetent defendants.

REPRESENTATIVE RUFFRIDGE, with a follow-up question, asked whether all criminally incompetent people, who are not going through restoration, would be free in public.

MS. MEADE responded that this is not exactly correct. She stated that individuals found incompetent would remain in jail, not on bail, during the pretrial phase; however, once they meet the bail conditions, they could be out. She said if individuals are violent, there would be conditions to keep them, and some would be at API. In response to a follow-up question, she

stated that [Mr. Ahkivgak's] restoration process was completed, and the case was dismissed because he was not restorable. She stated that someone in this situation could be under a civil commitment, but another person would need to file the petition. She stated that the proposed legislation would require that this be filed.

REPRESENTATIVE RUFFRIDGE questioned whether, under the proposed legislation, API would be the only place for an individual to be civilly committed.

MS. MEADE responded that the court system would be able to grant a petition for a three-day evaluation, and the evaluation could happen in a number of facilities; however, with a question on subsequent petitions, she would have to defer to DFCS.

[4:49:35 PM](#)

REPRESENTATIVE MINA thanked Ms. Harris for her testimony. She acknowledged the need to change the "problematic" system. She voiced the understanding that, under the current statute, once the clock starts, the individual has one year in the restoration process. She expressed the assumption that the one year would include an individual's time on API's waitlist. Once the individual is in the competency process, she questioned the average number of days a case would take.

[4:51:35 PM](#)

REPRESENTATIVE JOSEPHSON responded that a four-year-old report by Agnew Beck Consulting, titled "Forensic Psychiatric Hospital Feasibility Study," found that then the average length of stay at API had been 75 days, and the 10 beds available had served around 50 individuals a year. He stated that people had waited as long as 150 days for a bed. With the initial 75 days, this would total 225 days. He said, "We are pushing the outer limits that the law will go." For example, if the crime is a misdemeanor for a year sentencing, the estimated 225 days could go towards the sentencing.

[4:53:30 PM](#)

REPRESENTATIVE MINA requested a follow up from API with an updated number.

[4:54:26 PM](#)

MR. SCHROEDER presented a PowerPoint on HB 80, titled "An Act Related to Competency to Stand Trial" [hard copy included in the committee packet]. He highlighted four key U.S. Supreme Court cases seen on slide 2, which have historically impacted the area of law concerning HB 80. He stated that Dusky v. United States 362 U.S. 402 (1960) laid out that a defendant's ability to assist in his/her legal defense is a due process right. He stated Jackson v. Indiana 406 U.S. 715 (1972) determined a defendant who is incompetent to stand trial cannot be held for competency restoration for an unlimited amount of time. He added that an exact timeframe had not been determined, and states vary on this point. He described Alaska as being on the shorter end of this; however, the state does have flexibility to change the timeframe. He continued that O'Connor v. Donaldson 422 U.S. 563 (1975) sets down the civil commitment criteria, which is different than competency criteria. If an individual is to be involuntarily committed, a civil commitment would require the person has to be a danger to self or others, or gravely disabled. He stated that Sell v. United States 539 U.S. 166 (2003) set down the criteria for involuntarily medicating an individual for the purposes of bringing the individual to competency to stand trial. He added that this would not be for treatment or civil commitment, but for exceptional cases where there is grave danger to the public.

[4:58:20 PM](#)

MR. SCHROEDER, referencing the need for the proposed legislation, moved to slide 5 and recapped the assault on Ms. Harris. He moved to slide 7 which covered Mr. Ahkivgak's assaults on two other victims two months prior to the assault on Ms. Harris. After these two assaults, Mr. Ahkivgak was deemed incompetent to stand trial, unrestorable, and released. He pointed out that his erratic behavior is random but predictable, as it can be traced back to 2009. From researching court records, he displayed highlights listed on slide 8 from Mr. Ahkivgak's file. He pointed out that in 2009 Mr. Ahkivgak's competency had been an issue; however, he had been found to be competent. Reviewing the incidents on the slide, he stated that in 2010 Mr. Ahkivgak threatened his mother, and in 2013 he erratically waived a large hunting knife at a transit center. After this incident he was found not competent and subsequently restored. He voiced that competency is fluid, depending on the individual's state of mind at the time of the crime. He listed several other examples of Mr. Ahkivgak's erratic behavior, including Ms. Harris's 2021 assault.

5:01:54 PM

MR. SCHROEDER indicated that slide 9 shows two cases from 2022 where competency issues were raised. The cases involved two different individuals, both committing violent crimes. He stated that he is pointing out these instances to reinforce that the problem is recent, ongoing, and constant in the state. He moved to slide 10 which addresses Clayton Charlie, the individual who stabbed and killed Michael Greco, the zookeeper in Anchorage. He said, since the crime, Mr. Charlie has received treatment out of state, been declared competent, returned to Alaska, and been convicted of murder. Moving to slide 11, he pointed out Mr. Charlie's extensive court file, which included the diagnosis of paranoid schizophrenia. The list of Mr. Charlie's assaults includes the threat of murder against his own family. Mr. Charlie's competency had been raised multiple times and restored. He pointed out that in 2018, after the murder of Mr. Greco, Mr. Charlie's stepfather had been quoted in the case file as saying, "Michael Greco's murder illustrates grave shortcomings in the mental health care and judicial system's dealing with Clayton's mental illness I have long realized and voiced that I thought someone would die as a result of his psychosis" The case file shows that he had assaulted someone at API. At that time Mr. Charlie was charged with assault, found incompetent to stand trial, and released.

5:04:53 PM

MR. SCHROEDER, moving to slide 12, pointed out the various recent clippings from news articles concerning the problems at API. On slide 13 he pointed out that API's average wait time is almost six months. He noted that [for a misdemeanor charge] the maximum time someone can spend in restoration is six months. In other words, he said, restoration could be ordered, but if the individual could not get into API within a reasonable amount of time, restoration would be dropped. He stated that slide 14 highlights the seriousness of the issue in the country. In light of the U.S. Supreme Court cases, he said, the problem is not unique to Alaska. Lawsuits across the country have been brought up by advocacy organizations over the wait times, with the most notable cases being in the State of Washington, as it has paid out over \$86 million from lawsuits.

MR. SCHROEDER continued to the sectional analysis reviewed in slides 15 to 24. He stated that HB 80 would reduce the evaluation wait times by expanding evaluation options. The bill

would refine who can do a forensic evaluation, as Section 1 and Section 2 synchronize the language by adding the adjective "qualified" in front of "psychologist". He stated that "qualified" is already listed in front of "psychiatrist", and these terms would be defined in Section 7. He stated that this portion of the bill is directly from House Bill 304 [heard during the Thirty-First Alaska State Legislature]. Referring to [Section 4] of the bill, he stated that it is specified that previously conducted evaluations can be used concerning [misdemeanor cases], and this would speed up the process. He stated that [Section 5] would allow telephonic evaluations. He argued that because Alaska is a large state with very few forensic psychologists, telephonic evaluations would reach more people. He reasoned that this could possibly allow psychologists from out of state to do evaluations. He noted that other sections in the statute allow for teleconferencing.

[5:08:56 PM](#)

MR. SCHROEDER moved to slide 19, which addressed Section 4 of the proposed legislation. In this section dismissal rates would be reduced by moving from one year to two years for restoration. He added that this timeframe is still much shorter than most of the country. He stated that a qualification has been added which would prevent a person from being in restoration longer than the sentencing for the crime committed. Additionally, he said, a two-year restoration period would reflect the type of crime committed. He continued that the current exception in the statute of limitations would be removed. He stated that the force against the person as a barrier to further restoration was removed; instead, different sets of criteria for restoration would be included. He continued that in [Section 5] of the proposed legislation a felony requirement for restoration would shift to a different set of laws. He expressed the opinion that some felonies do not deserve to require restoration, while some misdemeanors do. He stated that Section 6 puts existing case law and practice into statute by codifying Sell v. United States.

[5:11:28 PM](#)

MR. SCHROEDER, moving to slide 5, stated that HB 80 would create a seamless process by requiring DFCS to file a civil commitment upon the dismissal of charges. He added that the legislation would create a three-day window to allow this to take place. He continued that [Sections 8, 9, and 10] would give victims access to commitment proceedings. He shared that Ms. Harris has

requested this provision because she does not know if [Mr. Ahkivgak] is currently "on the street" or not. In conclusion, he stated that HB 80 would protect the public and effectively bring defendants to competency or commitment. He stated that wait times for defendants to receive treatment would be reduced as much as possible, with restoration required only for those with alarming charges, as individuals should not serve time longer than for the crime they committed.

[5:13:18 PM](#)

CHAIR PRAX questioned, "Which is the group that's going to file all the lawsuits once this bill is passed?"

[5:13:37 PM](#)

REPRESENTATIVE JOSEPHSON responded that the group may be the Disability Law Center. He stated that HB 80 would direct [a state agency] to commit "dangerous" people, but it would not delineate the process like SB 53. He suggested this should be left to the psychologist and expressed the opinion that, because of this, the Disability Law Center would "like" HB 80 more than SB 53.

CHAIR PRAX commented that the proposed legislation is difficult, and the civil rights side would need to be considered ahead of time.

REPRESENTATIVE JOSEPHSON commented that the current law allows anyone to petition to have another person civilly committed. He stated that the proposed legislation would appoint the person who would oversee the process. He expressed the opinion that this is not a huge step from the current law.

[5:15:23 PM](#)

CHAIR PRAX announced that HB 80 was held over.

[5:16:05 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 5:16 p.m.