

**ALASKA STATE LEGISLATURE**  
**HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE**

April 20, 2023

3:02 p.m.

**MEMBERS PRESENT**

Representative Mike Prax, Chair  
Representative Justin Ruffridge, Vice Chair  
Representative CJ McCormick  
Representative Zack Fields  
Representative Genevieve Mina

**MEMBERS ABSENT**

Representative Dan Saddler  
Representative Jesse Sumner

**COMMITTEE CALENDAR**

**SENATE JOINT RESOLUTION NO. 10**

Encouraging Alaska's Congressional delegation and the federal government to raise Medicare reimbursement rates to meet the actual cost of care for the state's senior citizens.

- 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: SJR 10

SHORT TITLE: MEDICARE REIMBURSEMENT

SPONSOR(S): SENATOR(S) GIESSEL

03/13/23	(S)	READ THE FIRST TIME - REFERRALS
03/13/23	(S)	HSS
03/30/23	(S)	HSS AT 3:30 PM BUTROVICH 205
03/30/23	(S)	Moved SJR 10 Out of Committee
03/30/23	(S)	MINUTE(HSS)
03/31/23	(S)	HSS RPT 4DP 1NR

03/31/23 (S) DP: WILSON, TOBIN, DUNBAR, GIESSEL  
03/31/23 (S) NR: KAUFMAN  
04/11/23 (S) TRANSMITTED TO (H)  
04/11/23 (S) VERSION: SJR 10  
04/12/23 (H) READ THE FIRST TIME - REFERRALS  
04/12/23 (H) HSS  
04/20/23 (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  
03/14/23 (H) Heard & Held  
03/14/23 (H) MINUTE(HSS)  
04/20/23 (H) HSS AT 3:00 PM DAVIS 106

#### **WITNESS REGISTER**

SENATOR CATHY GIESSEL  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As the prime sponsor, introduced SJR 10.

ERIC GURLEY  
Executive Director  
Access Alaska Inc.  
Anchorage, Alaska

**POSITION STATEMENT:** Provided invited testimony in support of SJR 10.

ELIZABETH RIPLEY, President, CEO  
Mat-Su Health Foundation  
Wasilla, Alaska

**POSITION STATEMENT:** Testified in support of SJR 10.

JEROME GEORGE, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SJR 10.

ANGELA HARRIS, representing self  
Anchorage, Alaska

**POSITION STATEMENT:** Provided invited testimony in support of HB 80.

EMMA POTTER, Staff  
Senator Matt Claman  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** During the hearing on HB 80, answered questions on behalf of Senator Claman, prime sponsor of SB 53.

REPRESENTATIVE ANDY JOSEPHSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As the prime sponsor, answered questions on HB 80.

ALEXANDER SCHROEDER, Staff  
Representative Andy Josephson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** On behalf of Representative Josephson, prime sponsor of HB 80, discussed the differences between HB 80 and SB 53.

SENATOR MATT CLAMAN  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** As the prime sponsor of SB 53, testified on HB 80.

#### **ACTION NARRATIVE**

[3:02:55 PM](#)

**CHAIR MIKE PRAX** called the House Health and Social Services Standing Committee meeting to order at 3:02 p.m. Representatives Ruffridge, McCormick, Fields, Mina, and Prax were present at the call to order.

#### **SJR 10-MEDICARE REIMBURSEMENT**

[3:04:06 PM](#)

CHAIR PRAX announced that the first order of business would be SENATE JOINT RESOLUTION NO. 10, Encouraging Alaska's Congressional delegation and the federal government to raise Medicare reimbursement rates to meet the actual cost of care for the state's senior citizens.

[3:04:43 PM](#)

SENATOR CATHY GIESSEL, Alaska State Legislature as the prime sponsor, introduced SJR 10. She explained that SJR 10 encourages Alaska's Congressional delegation and the federal government to raise Medicare's inadequate reimbursement rates to meet the actual cost of care. The inspiration for SJR 10, she said, was the closure of a senior Medicare clinic in Anchorage, which left hundreds of seniors rushing to find a new health care provider.

SENATOR GIESSEL pointed out that Alaska's senior population is the fastest growing in the nation, and at the same time Alaska has the highest health care costs in the nation, and the U.S. has the highest healthcare costs in the world. This "senior tsunami," she said, coupled with inadequate Medicare rates, is resulting in the shutdown of many senior care clinics, or these clinics have stopped accepting new Medicare patients. This leaves Medicare seniors going to emergency rooms and urgent care centers, she stated.

SENATOR GIESSEL related that the federal Medicare Payment Advisory Commission's annual meeting occurred after SJR 10 was written. The commission's [2023] annual report to the U.S. Congress, she continued, stated that Medicare spending in 2022 grew by 7.5 percent, mainly driven by the increasing number of beneficiaries across the country. This report, she further related, recognized that cost increases will be difficult for clinicians to absorb, with primary care physicians versus specialists being the hardest hit by inadequate reimbursement. The repricing for clinical services, she advised, needs to be targeted particularly at primary care. She stated that SJR 10 is meant to send a strong message to Alaska's congressional team and the federal government that this is a huge problem in Alaska and is detrimental to Alaska's clinicians and seniors.

[3:08:35 PM](#)

REPRESENTATIVE RUFFRIDGE commented that the steadily increasing rate of Medicare costs is also tied to an increase in the actual cost of care. He inquired about these increases. He further inquired about whether people might be getting wealthy off the Medicare "dime" given that many insurance companies are creeping into the top 10 Fortune 500 companies.

SENATOR GIESSEL replied that the [Medicare] Payment Advisory Commission identified the growth of the cost at 7.5 percent and projected a cost of care growth of 6 percent to 7 percent next

year. She expressed uncertainty about where this falls in terms of insurance companies.

[3:10:37 PM](#)

ERIC GURLEY, Executive Director, Access Alaska Inc., provided invited testimony in support of SJR 10. He expressed uncertainty concerning Representative Ruffridge's question, as he only has information for the people served by Access Alaska through the [Medicare] waiver, Veterans Directed Care, and private pay. He explained that his service supports in-home medical care needs versus an assisted living model. He noted he is a constituent of Senator Giessel's and works with Senator Tobin and Representative Fields because Access Alaska is located in their districts.

MR. GURLEY pointed out that Access Alaska and Centers for Independent Living are in different parts of the state and are not the same. He related that while doing research to support SJR 10, he found that the number of Alaskans who are 65 and older are expected to increase by 30 percent per the June 2022 report, "Alaska Population Projections 2021-2050," [published by the Alaska Department of Labor and Workforce Development]. Current Medicare reimbursement rates, he further related, do not support seniors' need for access to health care providers. He added that the workforce shortages, clinic closures, and primary care delays all create more significant needs. He advised that a senior waiting for service and for primary care often must go to the emergency room to receive adequate support.

MR. GURLEY urged that SJR 10 be moved forward because it is an absolute need. He further noted that the penalties for seniors who are late in enrolling for Medicare result in a lifelong penalty which has few, if any, remedies for getting fixed.

[3:15:50 PM](#)

REPRESENTATIVE MINA inquired about the percentage of Access Alaska's population who are eligible for both Medicaid and Medicare.

MR. GURLEY replied that in this population, Access Alaska serves about 248 [individuals] across Alaska. He added that this is a little less than half of the total served by Access Alaska with long-term type supports.

REPRESENTATIVE MINA inquired about the number of individuals served by Access Alaska who are dual-eligible for Medicaid and Medicare or whether they all are dual-eligible.

MR. GURLEY responded that [they all are] not necessarily [dual-eligible]. For example, he explained, somebody experiencing an intellectual developmental disability might have been on Medicaid for life and then upon reaching eligibility switches over to Medicare. He said this is a much smaller percentage of the population supported by Access Alaska.

[3:17:38 PM](#)

ELIZABETH RIPLEY, President, CEO, Mat-Su Health Foundation (MSHF) testified in support of SJR 10. She noted that she is a co-owner of the Mat-Su Regional Medical Center [in Palmer], and MSHF invests its share of the hospital's profits back into the community through grants, scholarships, and systems-change work. She said that MSHF supports SJR 10 because the Matanuska-Susitna (Mat-Su) Valley has one of the fastest growing senior populations in Alaska. From 2015-2020 the valley's population of residents 65-plus increased 47.3 percent, she reported, and it will continue to accelerate over the next 10 years.

MS. RIPLEY pointed out that this population is spread across a vast geography that is medically underserved according to the [federal] Health Resources and Services Administration (HRSA). She continued that data from the U.S. Census shows that in 2015 the Mat-Su had 8,271 people enrolled in Medicare, and by 2021 the number grew to 14,527. She reported that the average 65 to 74-year-old only has one chronic disease, while the average 75 to 84-year-old has three. She advised that this increase mandates the need for more medical care by primary care physicians; however, because of Medicare's low reimbursement rates, most providers cap the percentage of Medicare patients they receive. She related that providers report that the current Medicare reimbursement rates are less than the provider's cost; therefore, providers must make the difficult decision to either limit the number of Medicare patients allowed in their practice or to not accept Medicare patients at all.

MS. RIPLEY noted that a patient with multiple payer sources has less trouble finding a physician than a patient who only has Medicare, which is the case for over 3,400 Mat-Su residents. These patients, she continued, often go without a primary care provider, and end up in the emergency room, often for problems which could have been solved through routine care. She related

that according to the Behavior Risk Factor Surveillance System Data, in 2021 more than 9 percent of Mat-Su seniors aged 65 and over did not have a primary care provider. She further noted that only 26.3 percent of women and 39.8 percent of men over 65 in Mat-Su are up to date on receiving core preventative services. She said the Mat-Su Health Foundation has made significant investments in supporting senior services and enhancing workforce development through its focus areas called Healthy Aging and Healthy Futures. But, Ms. Ripley advised, the foundation's efforts alone will not solve the shortage of providers who accept Medicare patients. This is where SJR 10 can help, she said, and MSHF urges that the resolution be moved out of committee.

[3:21:30 PM](#)

REPRESENTATIVE MINA offered her understanding that the Anchorage Neighborhood Health Center and Providence Alaska Medical Center can take in new patients on Medicare. She asked about the number of facilities in the Mat-Su that can take new patients on Medicare.

MS. RIPLEY answered that it is a dynamic situation because, within a physician's practice, people are aging into this category, and Mat-Su is the only place where the in-migration of older adults is greater than the out-migration. She expressed the understanding that the private primary care physicians she knows either do not take Medicare, or limit [the number they will take]. She stated that the three federally qualified health centers (FQHC) in the Mat-Su all take Medicare and Medicaid, and to her knowledge, none of them have a limit. She noted that Mat-Su Regional Medical Center used to own and operate a physician practice specializing in geriatric medicine, but it lost this provider about seven years ago.

REPRESENTATIVE MINA inquired about how the influx of Medicare patients going into these FQHCs has impacted the wait times for other patients trying to get appointments.

MS. RIPLEY expressed uncertainty but offered to report back to the committee.

[3:24:54 PM](#)

JEROME GEORGE, representing self, testified in support of SJR 10. He stated he is 81 years old and a retired State of Alaska employee. He expressed the understanding that the state has the

lowest ratio of doctors to population in the country, and Alaska's underperforming school system discourages doctors from coming to the state. He advised that the University of Alaska [School of Nursing] and Alaska Pacific University [Nursing Program] have problems with clinics and hospitals not accepting their students for internships. He argued that without these internships, students cannot get licensed, yet Alaska is importing nurses and paying them per diem. Problems like this need to be addressed, he stated.

MR. GEORGE argued that besides Medicare, a plethora of other problems plague the system, and these problems are under the control of the legislature. For example, he said, doctors who were in the clinic that went out of business were prevented from practicing within seven miles of the clinic for one year because of noncompetitive clauses. He expressed the understanding that the clinic said it did not enforce this, while the doctors said it did. When noncompetitive clauses are enforced in this manner, he argued, it discourages doctors from coming to Alaska.

MR. GEORGE maintained that one hospital in Anchorage is sending close to 50 percent of its serious cases to Seattle because the hospital does not have the capacity to treat these patients. He urged that this needs to be investigated. In addition to SJR 10, he urged that the legislature investigate other issues, such as the "blackmail clause" in Medicare. Under this clause, he expressed the understanding that if a clinic accepts a person on Medicare who has supplemental insurance, the clinic must also take Medicare patients who do not have supplemental insurance. He pointed out that he has supplemental insurance; however, he cannot find a primary care physician clinic because of this clause. He added that the clinic said it would take him if he paid 100 percent of his bill. He said these things, plus the lower [Medicare] reimbursement rate, cannot be ignored because it discourages Alaska's providers and clinics from serving seniors.

[3:30:51 PM](#)

CHAIR PRAX stated that he imagines the committee will have some more meetings about other things associated with Medicare and Medicaid.

[3:31:08 PM](#)

REPRESENTATIVE FIELDS offered his support for SJR 10. He said his constituents tell him that they cannot find Medicare primary

care. He argued that seniors are an economic benefit to the state, not a burden, and senior care is an important part of growing the state's population. He shared a letter from a constituent in which it was reported that "retired seniors present a positive economic ratio of 10 to 1 for money in to cost out." Therefore, he continued, when considering this resolution and others, committee members should not only be cognizant of seniors, but of [the state's] economic self-interest as well.

[3:32:11 PM](#)

REPRESENTATIVE MINA thanked Senator Giessel for bringing forward SJR 10. She noted that Medicare Part A is [hospital and skilled nursing facilities inpatient care], Part B is [doctor and other health care providers' services outpatient care], and Part D is prescriptions. She asked whether there is a specific need for just centering on Medicare Part B or whether there is a need to increase rates for all aspects of Medicare.

SENATOR GIESSEL expressed uncertainty concerning the specific levels, but she does know the cost of medications and pharmaceuticals is going up.

[3:33:33 PM](#)

CHAIR PRAX announced that SJR 10 was held over.

**HB 80-INCOMPETENCY; CIVIL COMMITMENT**

[Contains discussion of SB 53.]

[3:34:45 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."

[3:35:00 PM](#)

ANGELA HARRIS, representing self, provided invited testimony in support of HB 80. She shared her experience of being stabbed in the spine at the Loussac Library [in Anchorage] on 2/13/2022. Her assailant, Corey Ahkivgak, was arrested later that day while

she was awaiting emergency surgery. She shared that she was left paralyzed from the waist down along with decreased strength and sensation in her upper extremities. She continued that she could not live in her home until it was modified to be handicapped accessible. Her parents came to live with her and her two youngest children for eight months, while her significant other had to quit his job to be the primary caretaker. Her long road to recovery, she stated, has involved physical and occupational therapy, as well as counseling to work through the trauma of her assault.

MS. HARRIS reported that in 2018 Mr. Ahkivgak violently attacked his mother, and in 2021 he attacked two other women, after which he was declared incompetent and non-restorable. After being held for 28 days, he was released back into the public on 1/6/22. She continued that on 2/10/22 he was arrested for trespassing, and after stabbing her on 2/13/22, he was declared incompetent with the possibility of release after a competency hearing next month. She argued that improvements are needed to the state's mental health system, particularly regarding violent offenders; the loopholes in current laws which allow people who commit violent crimes to be released back into the community must be closed. She stressed that it should not be left to victims to pursue a civil commitment.

MS. HARRIS stated that HB 80 is written to target the narrow group of individuals like the man who assaulted her. She expressed her belief that jail is an inappropriate place for Mr. Ahkivgak, given his serious mental illness, but that community placement is not an appropriate option either. She said the rights of the victims to live safely in their communities must be prioritized, while allowing individuals who need long term care to receive it. She expressed the difficulty of living with the reality her assailant could be released at his next 180-day hearing next month. She related that she has attended several hearings and expressed shock that often individuals are released from custody simply because the waitlist for restoration is too long, and civil liberties of the offender would be violated. She urged that the state appropriate money for individuals to regain competency so they can be charged criminally for their violent acts. She further urged that there be a long-term placement option for violent individuals who cannot regain competency, rather than cycling them through the system. For example, she said, her assailant has been in and out of the state's criminal and mental health system for decades.

[3:39:12 PM](#)

MS. HARRIS stated that while continuing to attend occupational and physical therapy appointments to physically heal, she is sharing her story in the hope of reducing the amount of senseless violent assaults. She pointed out that had she not been on active duty with the U.S. Coast Guard at the time of her assault, she would have very limited resources. She argued that while her assailant has more rights, options, and resources at his disposal than she does as his victim. She related that in May 2022, three months after she was assaulted, she filed a request with the [Violent Crimes] Compensation Board and last week, one year later, received her first response of \$3,000 for mental health services. She voiced that this amount of money, along with the amount of time is insulting.

MS. HARRIS said her assault is an example of the need for building out Alaska's mental health facilities and [passing] state laws to provide help to violent offenders and to keep communities safe. She pointed out that the Alaska Psychiatric Institute (API) serves the entire state, yet it operates on the very limited maximum capacity of 80 beds, with only 10 beds designated for restoration. Alaska's inadequate mental health services for violent offenders and their victims must be addressed, she stated. She emphasized that the loopholes allowing violent offenders to victimize more innocent Alaskans must be closed. She suggested that the moment an offender commits a violent act against a fellow citizen, the offender's rights should be weighed against the victim's rights for safety.

MS. HARRIS requested that committee members answer any concerns about HB 80 with a solution to the problem rather than empty words and opposition. She argued that HB 80 is a good starting point and an opportunity to make changes that are beneficial for all Alaskans. She encouraged the committee members to learn more about the issues and find solutions to prevent what happened to her from happening to others.

[3:42:01 PM](#)

REPRESENTATIVE FIELDS inquired about the status of resolving the differences between the bill's two versions, [HB 80 and SB 53]. He questioned whether the committee should advance HB 80 as it is. He advised that a bill should be passed this year.

[3:42:48 PM](#)

EMMA POTTER, Staff, Senator Matt Claman, Alaska State Legislature, during the hearing on HB 80, on behalf of Senator Claman, prime sponsor of SB 53, responded that she is before the committee in support of Ms. Harris, and SB 53 was drafted in response to Ms. Harris's tragic experience. She noted that SB 53 was heard the previous day in the Senate Finance Committee, and it differs from HB 80.

REPRESENTATIVE FIELDS asked whether the differences will be resolved in this committee or in the House Finance Committee.

[3:44:00 PM](#)

REPRESENTATIVE ANDY JOSEPHSON, Alaska State Legislature, as prime sponsor of HB 80, responded that on 3/14/23 he and his staff provided the committee with an overview of the problem and of the bill. He explained that HB 80 and SB 53 are both trying to ensure that maximum efforts are made at restoring people to competency, while identifying those who cannot be restored and considering civil liberties where there could be an involuntary commitment. He pointed out that another factor taken up in SB 53 is AS 12.30 and bail conditions. He expressed the opinion that this is something the committee should consider. People are constitutionally entitled to bail, he stated, but it should be legal and appropriate for different standards, if the person poses a threat. He stressed that misdemeanors should be covered which indicate erratic, random behavior, such as the abuse of animals and random assaults, as these behaviors portend other worse behaviors. For example, he continued, two or three months prior to assaulting Ms. Harris, her assailant committed two misdemeanor assaults, and these portended something worse could come.

[3:46:41 PM](#)

ALEXANDER SCHROEDER, Staff, Representative Andy Josephson, Alaska State Legislature, on behalf of Representative Josephson, prime sponsor of HB 80, discussed the differences between HB 80 and SB 53, with the main difference being the five-year civil commitment process. He explained that the civil commitment process [for both pieces of legislation] would be that the person first goes through a three-day ex parte order; then a 30-day; then a 60-, 90-, and 180-day. If the person is to be kept after the 180 days, it would be a recurring 180 days to prove there is still a danger to self or others. He stated that under SB 53, but not HB 80, a new option would be created for someone found incompetent, where a five-year civil commitment process

would be filed, and the person could be held for five years, with a yearly petition to be released.

MR. SCHROEDER addressed another difference. He noted that under current statute the judge "shall" order restoration for felony charges. He offered his understanding that SB 53 would not change this requirement, but HB 80 would. He explained that Section 5 of HB 80 would create a new subsection (f) which lists the crimes the judge must consider for requiring restoration. He said this change reflects the opinion that currently the resources are being delineated incorrectly.

MR. SCHROEDER stated that SB 53 would, after the six-month initial commitment, require a new type of criteria to hold someone for longer, changing crimes involving force against a person to a felony, under AS 11.41. He continued that HB 80 would get rid of the crime involving force against a person but preserve the substantial probability. He explained that the theory is that someone undergoing required restoration has already committed a crime which would warrant further restoration; therefore, this person would have to meet the substantial probability of further committing a crime.

MR. SCHROEDER said another difference is that both bills extend the restoration period to two years, but each bill does it in a different way. He explained that under HB 80 it would be 180 days after the six months, while under SB 53 it would be an 18-month window.

[3:51:49 PM](#)

REPRESENTATIVE FIELDS inquired about the longest legally defensible period that people can be civilly committed when it is manifestly obvious the person is a danger to society.

REPRESENTATIVE JOSEPHSON answered that there are states which have indefinite periods, but the key here is receiving the general support from the mental health and disability communities. He pointed out that there is concern with the five-year rule, as SB 53 is not limited to five years, and it could be 10 or 15 years. Furthermore, he explained that, as currently written, SB 53 is the more vetted and sophisticated bill, as the burden would be shifted from the state to the patients to make their case for removal from custody. Based on the testimony received, he suggested that the disability community is concerned about this; therefore, it is something to be considered. He advised that SB 53 is "ahead" of HB 80 on the

seamless transition of moving people from being deemed unrestorable to involuntary commitment.

[3:54:10 PM](#)

MR. SCHROEDER stated that both bills deal with the petition process of moving individuals from the criminal to the civil side. He suggested that SB 53 better tackles the intricacies of doing this between the Department of Family and Community Services (DFCS) and the Department of Law (DOL). In this respect the only difference between the bills, he said, is that HB 80 makes DFCS file the petition for civil commitment, because currently this is vague with no requirement, as the petition could be filed by any adult. Under SB 53, he stated that the prosecutor "shall" file the petition and report the filing to DOL.

REPRESENTATIVE JOSEPHSON added that under SB 53 there would not be an instant dismissal the moment a person is found not competent; there would be an intervening, short period, where DOL could file a petition. He expressed the understanding from the court system that it does not want to appear to be the petitioner because this is not the role of the court. The issue, he continued, would be to avoid a situation where a dismissal of a case based on incompetency allowed a potentially dangerous person out on his/her recognizance, and then the person is brought back to civil commitment.

MR. SCHROEDER further explained that under HB 80 the charges must be dismissed, and then a petition is filed; however, the problem is the person's location between these two events. He said that SB 53 would move the discharge until after the petition is filed. The petition, he continued, would be a three-day ex parte order at which that person would undergo a civil commitment proceeding, and this would determine whether the person goes through the 30-day civil commitment process. He pointed out that this would create a seamless process in which the person is not let back out, and the statute is not changed.

[3:57:50 PM](#)

REPRESENTATIVE FIELDS observed that there are four committees of referral for HB 80, with this committee being the first one. He surmised that a leadership discussion is needed to get a bill passed this year. He said he would leave it to [the prime sponsors of the bills] to figure out the best way to merge these concepts.

CHAIR PRAX responded that he is working on this. He said the challenge will be figuring out how to vet and glean the best parts of both bills, and then come out with a finished product.

[3:59:52 PM](#)

REPRESENTATIVE JOSEPHSON related that there is interest in having an upstream committee referral removed, leaving three committees including this one. He said he is inclined to encourage the committee to adopt SB 53. He stated he is personally wedded to ensuring that misdemeanants who act in a particularly erratic and dangerous way and whose competency is questioned are part of this bill, so he would like further opportunity to come before this committee to convey what needs strengthening. He advised, however, that SB 53 is the more sophisticated and vetted bill, and he encouraged the committee to adopt a committee substitute (CS) which this.

[4:01:28 PM](#)

REPRESENTATIVE RUFFRIDGE opined that this is an incredibly important issue, and it should be addressed during this session. He thanked Representative Josephson and Senator Claman for their work and urged that the committee do everything possible to move things along.

[4:02:27 PM](#)

CHAIR PRAX asked whether a similar bill has been filed in previous sessions.

REPRESENTATIVE JOSEPHSON responded that two terms ago Senator Claman worked with Senator Giessel on a short bill that concerned the melding of public safety and health issues. This had looked to a new venue where people with mental health issues would be treated instead of going to prison. He said this was followed up with House Bill 172 [passed during the Thirty-Second Alaska State Legislature], with the Crisis Now provision. He stated that these are only forerunners to the proposed legislation, and not the same. He expressed the understanding that in 2008 a bill by Senator Liesl McGuire was designed to deal with this, and though it was a good effort, it did not do it.

[4:04:40 PM](#)

SENATOR MATT CLAMAN, Alaska State Legislature, testified as the prime sponsor of SB 53. He concurred that the specific issue addressed in the proposed bills was not addressed by prior legislation. He stated that this is addressing people who are incompetent under Title 12, and, based on some level of dangerousness defined in statute, these individuals be immediately put into an involuntary commitment process.

CHAIR PRAX asked whether anything comes to mind from House Bill 172, as there were similar civil rights concerns. He further asked whether the committee could be given documentation concerning this.

SENATOR CLAMAN answered that House Bill 172 dealt with a different timeframe and course of action in the process of dealing with mental illness. He advised that the due process concerns raised by House Bill 172 are not an issue in his proposed bill. He stated he is available to meet with members of the committee and staff to talk about the proposed bill.

[4:06:51 PM](#)

REPRESENTATIVE RUFFRIDGE offered his understanding that the goal of SB 53 and HB 80 would be to fix a loophole concerning what happens when someone is deemed incompetent to stand trial. Under the current mechanism, he continued, individuals would have their charges dismissed; however, after this there is a question mark of what happens next, and the goal here is to remove this question mark. He requested affirmation that this would not destroy people's rights or incarcerate them against their will; rather, it would create a public safety mechanism for both the public and "the patient."

SENATOR CLAMAN responded in the affirmative. He added that under current statute the loophole is when the individuals are deemed incompetent, there is no basis to hold them; therefore, charges are dismissed. From this point the Civil Division of DOL, or another party, has to initiate an involuntary commitment proceeding, which sometimes happens. He stated in the case of Ms. Harris this did not happen. He explained that the structure proposed by the Senate is, prior to dismissal of the criminal case for people who meet a certain statutory definition of "dangerousness," the prosecutor would file a civil commitment petition, which would create a new civil case; the person would be held, the civil commitment process would be initiated, and the Civil Division would continue forward with the civil case.

4:09:33 PM

REPRESENTATIVE RUFFRIDGE, in the case of a crime where the charges are dismissed, asked whether it is solely the responsibility of the Civil Division to file for incompetency or civil commitment. He surmised that in the case of Ms. Harris, an individual cannot apply for the person to be civilly committed.

SENATOR CLAMAN replied that more research would be needed into whether Ms. Harris could have filed a petition against the person who attacked her. He said that, per current statute, the "medical person in charge" can file a petition for involuntary commitment based on what is apparent. He acknowledged that these procedural aspects were touched on in House Bill 17, which is what is in place for having someone involuntarily held, and the authority to do so. A police officer, he noted, can also file an involuntary commitment proceeding.

4:11:32 PM

REPRESENTATIVE JOSEPHSON advised that under current state law anyone can file such a petition. He expressed the belief that the benefit of HB 80 and SB 53 would be to specify these individuals. He said that several experts have cautioned that for this to work properly, more personnel and more facilities would be needed.

SENATOR CLAMAN clarified that there are many court forms, and often these forms will dictate more than anything else. He related that the current form for filing a 48-hour petition lists a psychiatrist, physician, psychologist, registered nurse, therapist, family member, counselor, social worker, psychological associate, other mental health professional, and other interested person who must state his/her interest. He expressed the opinion that this clarifies Representative Josephson's response. The answer is that anyone can file, he continued, and the only requirement is a statement of why he or she has an interest in the person.

4:13:52 PM

CHAIR PRAX clarified that the situation would involve a person who is picked up for an incident and declared incompetent, and then the court dismisses the case. He expressed the understanding that the objective to the proposed legislation is

that a state employee would be required to file and follow up on the individual.

SENATOR CLAMAN answered that in SB 53, before the case is dismissed, the prosecutor would file the civil petition under Title 47. He explained that in statute it would be recognized that before there is a motion to dismiss the prosecutor must prepare the paperwork. He expressed the expectation that there will be a court form, and the prosecutor would ask that the case be held while the form is completed. Once the prosecutor files the civil petition form, the process would start.

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CHAIR PRAX asked whether the civil rights limitations have been considered.

SENATOR CLAMAN replied that once the form is filed, the existing 30-day commitment process would start with all these rights in place. He pointed out that SB 53 would remove the step in the process called the 48-hour exam. This exam entails the police officer filing the petition to bring in the individual, and then the hospital would determine whether to file a petition to hold the individual. Under SB 53, he explained, the person can be held for the existing 72-hour hold procedure and at 72 hours there must be a contested hearing where the defense attorney is present. The attorney from the Attorney General's office on the civil side would be present, he continued, and this attorney would determine how to go forward. These are the current existing rights, he noted, where once an order is placed the person gets 72 hours, and then there is a hearing, at which point the normal civil commitment process goes forward. What the proposed legislation would ensure, Senator Claman advised, is that a person who meets the "dangerousness" criteria would not be released for the first 72 hours.

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CHAIR PRAX questioned the potential number of cases. He offered his understanding that this is referring to misdemeanors and whether there are legitimate reasons in these cases, such as cruelty to animals, which would deserve further evaluation on whether the person is competent to stand trial.

REPRESENTATIVE JOSEPHSON expressed the belief that a person committing cruelty to his/her own pet is chargeable, but because the person has a relationship with the pet, this would not be

reason for a competency hearing or an involuntary commitment. What portends concern for him, he continued, is when a person burns down a building and does not recall doing it or why, or when a person attacks someone's dog for no reason. He stated that this is what is included in [HB 80].

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CHAIR PRAX opined that some good could be done for a person by going through the involuntary civil commitment procedure; however, there is some point where the state may be exceeding the bounds of the rights of the individual. Another consideration, he stated, is that with an overload of cases, there may not be sufficient attention to details.

REPRESENTATIVE JOSEPHSON answered that the committee may want to hear from the court system concerning its data. He related that many hundreds of cases are heard per year, but many of these are deemed competent, and these cases proceed as any other criminal case. This leaves a relatively small number of individual cases which should not be dismissed because the individuals are not well enough for trial. He asserted that, in relation to these cases, there is currently no secondary system to ensure public safety.

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SENATOR CLAMAN added that the court system reported it had 176 cases in the last calendar year which involved questions of competency. Some percentage of these 176 cases will be found competent to stand trial and subject to the criminal system. He specified that HB 80's approach is the inclusion of some misdemeanors which would trigger the mandatory petition for involuntary commitment if the person were found incompetent. He continued that SB 53 does not include misdemeanors. It only includes felony offenses against a person and arson. One reason for this difference, he explained, is because, in a misdemeanor offense the maximum sentence is one year, and per due process, the person who is being held for restoration could be held for a period longer than the potential sentence served if convicted. This becomes an issue, he further explained, if the person spends time in jail for restoration to competence, but because of a lack of the resources to bring the person to competence, the extended time in jail becomes a factor in due process analysis. He advised that this is not a simple analysis. He added that SB 53 has an option of up to a five-year involuntary commitment on the civil side. He explained that SB 53 only uses

felony offenses because there would be the potential of being held for up to a five-year involuntary commitment. He expressed the opinion that one version is not better than the other; however, there are some detailed policy questions.

REPRESENTATIVE JOSEPHSON stated he is working with Senator Claman on this, and he will give this more thought. He voiced the concern that in the case of Mr. Ahkivgak, who prior to his assault on Ms. Harris had not committed a felony, rather he had committed some very "bizarre" misdemeanors. He expressed the belief this is an indication that misdemeanors need to be investigated.

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CHAIR PRAX noted that the question of protecting both society and individual rights has been a topic for decades, and it will take thought. He opined that, if possible, the issue should be addressed this year, and with more thought, more discussion could happen next year. He said the committee will meet with four department representatives where questions can be asked.

[HB 80 was held over.]

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#### **ADJOURNMENT**

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 4:28 p.m.