ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 24, 2023
1:30 p.m.

MEMBERS PRESENT

Representative Sarah Vance, Chair
Representative Jamie Allard, Vice Chair
Representative Craig Johnson
Representative David Eastman
Representative Andrew Gray
Representative Cliff Groh

MEMBERS ABSENT

Representative Ben Carpenter

COMMITTEE CALENDAR

PRESENTATION(S): DEPARTMENT OF LAW CRIMINAL DIVISION

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

JOHN SKIDMORE, Deputy Attorney General
Office of the Attorney General
Criminal Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Gave an overview of the Criminal Division.

ACTION NARRATIVE

1:30:46 PM

CHAIR SARAH VANCE called the House Judiciary Standing Committee meeting to order at 1:30 p.m. Representatives Vance, Allard, Johnson were present at the call to order. Representatives Eastman, Gray, Groh arrived as the meeting was in progress.

PRESENTATION(s): Department of Law Criminal Division

1:31:10 PM

CHAIR VANCE announced that the only order of business would be the Department of Law Criminal Division presentation.

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JOHN SKIDMORE, Deputy Attorney General, Office of the Attorney General, Criminal Division, Department of Law (DOL), introduced himself and shared that he has been working as a prosecutor in DOL for over 25 years. He said he was asked to give an overview of the criminal justice system. He began on slide 1 of the presentation, titled "The Criminal Justice Process,"[hard copy included in committee packet], and said he hopes today's presentation will give committee members a broader perspective on criminal law as bills regarding the subject come to the committee through the legislative session.

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MR. SKIDMORE moved to slide 2 to explain the structure of court systems in the United States. He said that in the American Court System, there are at least two separate courts: federal and state. He noted that state courts in other states can include local elected courts as well. He said different courts have different purposes in that trial courts have litigants present the facts of a case and get an initial decision. However, if there is the belief that a legal decision was made improperly, he said the case then moves up to an appellate court for review.

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MR. SKIDMORE moved to slide 3. He said that in federal courts, the United States Supreme Court is the highest court of jurisdiction, followed by the U.S. Courts of Appeal, U.S. District Courts, U.S. Magistrate Courts, and Specialty Courts. In the Alaska Court System, the highest court is the Alaska Supreme Court. The next court is the Alaska Court of Appeals, which he said handles only criminal matters. He explained the role of the Alaska Superior Court, which has general jurisdiction over civil and felony cases. He said the Alaska District Courts handle misdemeanor crimes, and the Alaska magistrates work during court afterhours. He said the connection between the two systems is that cases will flow through the courts. He explained that criminal cases traveling

through the state court system will elevate to the United States Supreme Court only if there is a federal constitutional concern, whereas a case that covers state law would only be handled in the State Supreme Court. He noted that there are situations where a case is removed to federal court but said that does not happen in criminal cases since those cases are based on state statutes.

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MR. SKIDMORE moved to slide 4 to talk about the goals of the criminal justice system and how those goals are balanced. He said the first goal to balance is societies need to hold offenders accountable, and legislatures determine what is considered criminal conduct. He said the hallmark distinction between criminal and civil law is that in criminal law, the state can deprive an individual of their liberty for their conduct. He highlighted case procedures that must be balanced between offender accountability and constitutional presumed innocence. In criminal justice, he outlined aspects of the Alaska and U.S. Constitutions: search and seizure, right to remain silent, free speech, double jeopardy, due process, speedy trial, confrontation rights, notice to offenders, public jury trials, right to counsel, right to bail, and right to avoid cruel and unusual punishment. He stressed that the procedures put in place by the U.S. and Alaska Constitutions reflect the interest in public participation in the criminal justice system.

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MR. SKIDMORE moved to slide 5. He said the criminal justice system is built upon discretion. He outlined the steps involved in the criminal justice process: investigation, arrest, formal charging, arraignment, preliminary hearing, grand jury, jury selection, trial, sentencing, appeals, and post-conviction remedies. He stressed that the court system has many layers, especially for appeals. Following the appeals process is post-conviction remedies, where if the appeals process did not provide the relief the offender thought was available to them, the offender then can file for post-conviction relief (PCR). Slide 5 depicts the criminal justice process as a funnel; he explained that it is to help people understand that not every incident that may involve criminal conduct gets to the end of the process.

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MR. SKIDMORE presented a diagram on slide 6 showing a simplified flow chart of the criminal justice system. He explained that the diagram outlines an individual's entry into the system after having been reported to have committed a crime: prosecution, pretrial services, adjudication, sentencing, sanctions, corrections, and their exit from system, as well as the case flow of felonies, misdemeanors, and juvenile offenders. He made a distinction between Unified Crime Report (UCR) data and prosecutions, in that UCR data contains just the instances of crime reports made to law enforcement, and further, he said not all reports get referred to DOL for prosecution. He said there are multiple reasons as to why a report does not get referred to DOL, like the case being unfounded or unsolved as examples. In the cases that do reach DOL, filing charges come next. He stated that prosecutors, like law enforcement, wield discretion. He explained that a prosecutor's discretion looks at the burdens of proof and proof beyond a reasonable doubt, whereas law enforcement's discretion looks at probable cause. He said there is a different level of discretion between burden of proof and probable cause. He said he would not go over the chart on slide 6 in depth but wanted it presented to committee members and the public to give a sense of the overall process.

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MR. SKIDMORE moved to slide 7 to describe the criminal justice process in further detail. He explained that when law enforcement is alerted to criminal activity, that is when an investigation begins. Based on reasonable suspicion, officers can perform a "stop and frisk" on an individual; however, he emphasized that reasonable suspicion is the lowest standard of proof that exists in the criminal justice system. If officers are seeking to execute a search warrant or to make an arrest, he said the officers then require probable cause.

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MR. SKIDMORE talked about criminal complaints on slide 8 and listed what is in the complaint document: The charges against the individual, the legal elements of the crime, supporting facts, penalties, and crime classification. He said these items are listed to give notice to the offender what they have done wrong and are also a requirement as per the U.S. and Alaska Constitutions. He said a criminal complaint initiates the criminal case process, and in Alaska, cases can be filed by prosecution as well as law enforcement. He explained that cases filed by law enforcement are still referred to DOL for review

and to determine whether DOL would file charging documents. He said the referred documents from law enforcement are considered "informations," which DOL can use when prosecuting misdemeanors. He said DOL cannot prosecute an individual for a felony without a grand jury returning an indictment against the individual. He summarized that a grand jury comprises 12-18 people who review the evidence the state has and decide if there is sufficient evidence to move a case forward. He spoke about the booking process.

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MR. SKIDMORE moved to slide 9. He spoke to the initial court appearance process and said that a defendant must be brought before a magistrate or judge without unnecessary delay. In Alaska, a defendant must appear before a judge within 24 hours after arrest, where the judge will then inform the defendant of their rights and the charges against them. He said bail is generally considered during initial appearance.

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MR. SKIDMORE moved to slide 10 to explain the process of an arraignment by a district court judge. He said that during arraignment, the defendant is again informed of the charges against them, consideration of bail is - if not already done - appointment of counsel and consideration by the judge whether the alleged facts support probable cause. He explained the three possible pleas the defendant can make: not guilty, no contest, or guilty.

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MR. SKIDMORE explained the preliminary hearing process while on slide 11, which he referred to as "quasi mini trials." Present at such hearings are the judge, the defense attorney, and the defendant. He explained that a preliminary hearing gives the state the opportunity to present its proof on the case, and allows the defense to perform cross-examination of witnesses. He said that the preliminary hearing process is infrequently used in Alaska, and noted that in his own experience, he has held only one such hearing in the last 25 years. He said the grand jury process is typically used instead of preliminary hearings, and explained that a preliminary hearing is conducted only if there has not been a grand jury held. The grand jury must be held within 10 days if the defendant is in custody, or 20 days if out-of-custody. He said defendants can waive their

constitutional rights, and that it is not infrequent for DOL to contact the defendant's defense counsel to engage in negotiations prior to going to grand jury to resolve a case. He said the defense is not required to waive constitutional rights, but that it is an option in the criminal justice process. He pointed out that preliminary hearings are not required in every state. He explained that the questions posed by a grand jury must be answered, and there are consequences if the questions are unanswered. He referred to Alaska criminal rule 6 and 6.1, as well as the Alaska Constitution, to explain where the grand jury process is based. He said there are two functions of the grand jury, the first - and what is focused on - is indictments. Anytime DOL wants to go to trial on a felony case, the case has to go to grand jury, where the state's evidence will be heard to determine if there is enough evidence.

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REPRESENTATIVE ALLARD asked Mr. Skidmore about the grand jury process. She relayed her understanding that, per the constitution, there will always be a grand jury held. She asked if there's been a change in statute in who gets to determine who the prosecutor is, and she asked who determines whether a grand jury is held. She remarked, "you know where I'm going, don't you? I'll just put it with this: Kenai."

MR. SKIDMORE answered with information on slide 11 regarding the investigative function of grand juries. He explained that the grand jury serving the investigative function is not a determination on whether to indict an individual, it is rather an investigation into a case as it relates to a matter of public concern. He used matters of public welfare or safety as examples of what the investigative report could assess. The report is then sent back to the court with its findings and determinations, and is also made publicly available. He said the determination of whether a person has committed a crime is a different function of grand jury: the charging function. In addressing Representative Allard's question, he said that if a person is going to be charged with a felony crime in Alaska, a prosecutor has no authority to make that person go to trial without going through a grand jury. He pointed out that investigative grand juries do not happen often, and said the challenge is that there must be a legal advisor to the grand jury. He said, given how the rules are set up, usually a prosecutor comes in to advise the jury, help serve subpoenas, and provide information. He relayed complaints that DOL has heard in the state, in that the complainants believe that

someone is interfering in a citizen's ability to get to grand jury. He clarified that the complaints are incorrect, and that no one has ever interfered with a person trying to get to grand jury. He explained that there are instances where members of the grand jury share information with one another in a way that does not follow court rules. That is corrected and the rules are explained to the members. He noted that investigative grand juries did not have clearly defined rules until January of this year, which at that time the Alaska Supreme Court amended Alaska criminal rule 6.1 to provide clarity on how investigative grand juries are supposed to function.

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REPRESENTATIVE ALLARD asked if the Alaska Supreme Court has decided to redefine, or further define, what the writers of the Alaska Constitution meant.

MR. SKIDMORE answered that he would not characterize the matter that way. He said the Alaska Supreme Court has not changed what the state constitution says. Instead, the court has provided clarity and guidance on how the investigative grand jury process works. He explained that deciding when to hold an investigative grand jury was missing from the process. He said the constitution indicates that there can be investigative grand juries held, but no further guidance is provided. He said the role of the supreme court - as the third branch of government - is to create rules of court. He pointed to a large red book on a shelf in the committee room that is the book of all the rules for courts, and said that rules inside the book all had to be promulgated by the Alaska Supreme Court. The only other way court rules can be established, as outlined in the constitution, is through the legislature. Court rules, however, require a two-thirds vote in both the House and Senate for a change to be approved.

REPRESENTATIVE ALLARD asked if the language in the Alaska constitution relating to grand juries states the word "can". She also asked, regarding Alaska court rule changes, if the supreme court changed any language recently to read "shall", "will", or "may".

MR. SKIDMORE agreed to follow up with Representative Allard regarding any changes to court rules. In answering a previous question about the language of the state constitution as it relates to grand juries, he referred to Article 1, Section 8 of the Alaska Constitution.

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CHAIR VANCE asked Mr. Skidmore who can request a grand jury.

MR. SKIDMORE answered that a person does not request a grand jury as a charging function. Regarding the charging function process, he explained that it typically begins when a prosecutor brings forward charging documents for a felony crime case, and then the case is requested to be scheduled. Moreover, he said the initial investigative jury process was unclear until the change in Alaska Criminal Code 6.1, and stressed that there was no previous court rule, statute, or language in the constitution that provided guidance on how someone would request an investigative grand jury. He said that the Alaska Supreme Court had changed Alaska Criminal Code 6.1 because the court saw need for direction and, therefore, changed the code to outline how a citizen can request such a jury. He summarized the process under the new criminal code: a citizen can request an investigative grand jury; the request is sent to both DOL and the prosecutor's office; the request is reviewed and, if found that the case has an appropriate basis to make a legal determination, and meets constitutional requirements, an investigative grand jury can be scheduled. He noted that typically the office of criminal justice schedules the juries, as well as handles citizen requests.

CHAIR VANCE inquired about differences between a grand jury and other trial juries that may take place.

MR. SKIDMORE described that at a grand jury there is no defendant, defense attorney, or judge; it is just the 12-18 jurors, a court clerk, a prosecutor, and witnesses from the prosecution. He said the grand jury evaluates the information presented and is charged with deciding whether there is sufficient evidence to move the case to trial. Alternatively, the investigative grand jury looks at information brought to it in order to make a recommendation to the presiding judge, who will receive the recommendation and make it available to the public. He explained how the processes are different compared to a trial jury, in that the trial jury has the defendant, defense attorney, and judge thoroughly examining the case information.

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REPRESENTATIVE EASTMAN asked how the process would be carried out if a citizen were to request an investigative grand jury and requests investigation of the attorney general or chief justices of the Alaska Supreme Court.

MR. SKIDMORE said the challenge in investigating high level state officials is that the state process is not the best process to use. He said sometimes a case like Representative Eastman described needs to be referred to the federal government and the U.S. Department of Justice. However, he pointed out that it is possible to have DOL individuals investigated, including attorney generals, and noted a current case that involves a former Alaska attorney general via an appointed special prosecutor. He noted another past instance where an investigative grand jury was formed to investigate a governor, who was in office at the time. He said the investigations are possible but underlined that protections or "walls" are needed so that the information does not reach the target of the investigation. He summarized the two options: the investigation is done by a special prosecutor - or another mechanism within the state DOL or, if it cannot, then it should be addressed at the federal level. As for state judges and state court system personnel, Mr. Skidmore shared that he has experience prosecuting both. He said what would be difficult to address is whether the case involves just an individual, or alleges systemwide corruption, because individuals would likely argue that the case is flawed because it was influenced by corrupt individuals. He reiterated that a case of that nature should be referred to the federal level.

REPRESENTATIVE EASTMAN stated his belief that the topic merits further committee time in the future.

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REPRESENTATIVE ALLARD asked about the special prosecutor's office.

MR. SKIDMORE responded that there is an Office of Special Prosecutions, which functions as a division and reports to the division director as well as to himself. Further, he explained that DOL has special prosecutors that are appointed outside of the department, and there are two instances of that currently.

REPRESENTATIVE ALLARD asked if the Office of Special Prosecutions is the entity that decides whether a grand jury is needed or not within an investigation.

MR. SKIDMORE answered that it would be DOL overall. He said the department usually involves the office of special prosecutions in investigative grand jury cases. He explained that the office is involved because such juries are not held frequently and handling this uncommon request effects workload capacity.

REPRESENTATIVE ALLARD interjected and rose concern that the ability for an Alaska citizen to request an investigative grand jury has been taken away and given to a state entity that, in the future, a citizen may want to have investigated. She asked Mr. Skidmore if he thinks that is fair, and whether he sees conflict of interest in that process. She stated, "Before we were just advising, now we're saying, 'You know what? Unless we tell you it's okay, you're not going to be able to do an investigation.'"

MR. SKIDMORE stated that he had not indicated any part of what was just asked.

REPRESENTATIVE ALLARD replied, "No, I'm not saying you did; I'm saying that's what it sounds like though."

MR. SKIDMORE asked Representative Allard to clarify what she means by "that" in "that's what it sounds like."

REPRESENTATIVE ALLARD asked about the revisions to Alaska Criminal Code 6.1.

MR. SKIDMORE explained the changes, he said the Alaska Supreme Court provided guidance about how an individual can request an investigative grand jury.

REPRESENTATIVE ALLARD relayed her understanding of the criminal code 6.1 changes, in that the investigative grand jury request process has been taken away from Alaskans and instead the state now decides when to hold one.

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CHAIR VANCE encouraged members to review Alaska court rules and statute. She said there will likely be another meeting on criminal justice.

REPRESENTATIVE ALLARD relayed her agreement with Representative Eastman's previous statement [regarding the need for further

discussion of the topic] and suggested that the committee form a subcommittee on the topic.

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REPRESENTATIVE GRAY posed a question regarding the grand jury request process. He read out a part of Article 1, Section 8, of the Alaska Constitution, "Indictment may be waived by the accused. In that case the prosecution shall be by information."

MR. SKIDMORE confirmed that Representative Gray's understanding is correct, in that if a person waives indictment then the case does not go to grand jury.

REPRESENTATIVE GRAY inquired about the indictment waiving process by posing a hypothetical. He asked when in the process, if he were a defendant, he would say he would not like a grand jury and would rather like the case to be just "by information."

if he were a defendant, when in the process would he say he would not like a grand jury and would rather like the case just be by information.

MR. SKIDMORE responded that, if he were a defense attorney, he would never advise a client to waive grand jury. He said that in his 25 years of experience he has never had an individual waive grand jury to go to trial. However, he has seen instances where grand jury is waived to enter a plea, allowing the person to plea guilty or no contest to a felony charge. He said waiving at this time makes it so the court system is not forced to use more resources since the defendant is willing to acknowledge or admit their plea. He stated that that scenario is the only case where he sees waiving grand jury coming into play.

REPRESENTATIVE GRAY asked if allowing plea deals is why the language in Article 1 Section 8 is in the constitution.

MR. SKIDMORE said he could not answer why the authors of the constitution chose to use this particular language, but agreed with Representative Gray that the language is in the constitution and stated that his explanation to the last question is how he has seen the section operated in the last 25 years.

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MR. SKIDMORE returned to the PowerPoint presentation on slide 12 to describe pretrial motions and evidentiary hearings. He said that once charges have been filed, there are numerous opportunities for the defendants to bring charges and "test things." He said that a motion to suppress or a motion in limine are actions made to set up rules on how a trial is conducted. A motion to dismiss charges is for when there might be an aspect of case that is improper, or when there is insufficient evidence. Double jeopardy is when an individual has already been placed in jeopardy by the case before. A change of venue motion determines where the trial occurs. A motion for severance is for when there are multiple charges and it is recognized that the charges, or defendants, shouldn't be tried together. The slide depicts a fully written out court motion.

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MR. SKIDMORE talked about criminal discovery on slide 13. He said discovery is the exchange of information relevant to the charges and evidence that will be presented at trial. He said the slide depicts what court files used to look like a decade ago with paper files and compact discs (CDs). He explained that the constitution obligates prosecution to provide whatever information it has on a case to the defense for review and preparation for trial. He pointed out however that in Alaska, reciprocal discovery is not required, meaning that the defense is not required to tell the prosecution anything. He said the Alaska Supreme Court decided that defendants are not required to tell the state anything about anything the state wants to present at trial. He noted that if the defense wants to bring forward an expert witness, that requires prior notification. Further, he said the defense attorney has to claim or argue a defense, but do not need to elaborate on how that will be carried out. He stated that a trial is a search for truth rather than a competitive sporting contest. He spoke on the Brady Rule, Brady v Maryland, a U.S. Supreme Court case that determined that the accused has constitutional right to have all exculpatory information the prosecutor possesses.

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MR. SKIDMORE detailed the types of evidence in criminal discovery, while on slide 14. He said the evidence includes dash cams, body cams, mobile devices, and social media. He said these are areas from which the prosecution can gather information.

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MR. SKIDMORE moved to slide 15 to state that with new types of evidence come new challenges. He explained that, just because something is caught on camera, it does not mean everything that is necessary is caught on camera. For example, he said DOL has seen homicide cases in which there are arguments about self-defense but the only thing that is recorded is the gun firing off camera. He noted methods of discovery and courtroom presentation. On storage unit disposal, he said the old system was paper, but on the present system, everything is on computer.

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CHAIR VANCE asked, regarding storage until disposal, how long records are kept. She also asked about the digital age's impact on that process.

MR. SKIDMORE answered that there is a records retentions schedule. He said the schedule is only influenced by statute in cases that have or involve DNA evidence, DNA evidence is kept for 50 years. He detailed the record retention schedule for other closed cases: three years for misdemeanors and 10 years for felonies. He clarified that a closed case is when there is no appeal and the defendant is no longer on probation; only then does the "clock start" in terms of disposing the files. He explained that DOL maintains records post-conviction for future reference in situations including an appeal or post-conviction relief. He said DOL does dispose of files at a point in time because they cannot hold on to them indefinitely.

CHAIR VANCE asked about records for ongoing unsolved cases. She used a missing person case as an example.

MR. SKIDMORE stated that DOL never destroys records relating to an open case.

CHAIR VANCE shared her thoughts on the evolution of record keeping in DOL. She applauded DOL for being able to navigate the digital age transitions as it relates to case records, especially having to hold some records for 50 years.

MR. SKIDMORE clarified that it is DNA records that are kept for 50 years. In response to a question about the retention length for other case records, he explained that, after the case is closed, records for misdemeanor cases are kept for three to five

years depending on the type of misdemeanor, and records on a felony case are kept for 10 years. He stressed that if DNA is involved, DOL does not have the ability to set a records retention schedule separately because it is determined by statute.

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REPRESENTATIVE GRAY shared his thought that, since paper files do not need to be kept anymore, keeping records is not as cumbersome as it used to be. He asked if it would be the same challenge to keep the records longer.

MR. SKIDMORE answered that he manages a division that sees 25-30,000 cases a year. He characterized the accumulation of digital evidence as "watching the terabytes grow." He said the challenge comes when considering the exponential growth in case records that occurs over several years, which showed that DOL cannot hold on to everything indefinitely, even in the digital age.

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MR. SKIDMORE moved to slide 16 to discuss plea bargaining, which he said is a voluntary agreement from a defendant, and made between the defense and the prosecution. The plea agreement involves the defendant agreeing to plead guilty and waive their rights to a trial, as well as other rights, in return for a benefit from the prosecution, including dismissal of charges, sentence recommendation, and an agreement to not seek additional charges.

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MR. SKIDMORE moved to slide 17 to describe the criticisms of plea bargaining: disparity; defendants who are innocent but are admitting to the charges to make the charges go away; plea bargaining as an administrative convenience; the nature of criminal charges and the fluidity of charges; whether there is factual basis for the plea; and whether or not plea bargaining is voluntary. He told members that studies and statistics show that over 95 percent of all cases are resolved in plea negotiations, and said that that is not just in Alaska but in the federal system and every other state system. He stated that the justice system could and would not function without engaging in plea negotiations. He noted that there is nothing wrong with an individual saying they are willing to take ownership and

responsibility for what they have done wrong, and in those circumstances, he said, the prosecution gives the defendant some benefit for accepting that responsibility. He said that scenario is the whole concept behind plea bargaining.

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MR. SKIDMORE talked about the criminal justice process on slide 18, including the jury selection and the trial itself. On jury selection, he said jurors are randomly selected and are a fair cross section of the community where the crime occurred. He shared with members that potential jurors are drawn from the permanent fund dividend (PFD) list, and a simple way to avoid jury is to just not sign up for a PFD. He explained the term "voir dire," which is the questioning of prospective jurors to determine if they have bias. Trials, he said, consist of opening statements, the prosecution presenting the case-in-chief, a rebuttal period, a closing, jury deliberations, and then the verdict.

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REPRESENTATIVE GRAY, referring back to the topic of plea bargains, asked if poor people might plea bargain because being put on trial is expensive and are pressured to plea bargain so that the person does not need to pay as much money.

MR. SKIDMORE said the Alaska and Federal Constitutions appoint counsel for those that cannot pay for counsel themselves. The cost of trial is borne from the agencies, and so the defendant does not have to pay. In terms of the effect litigation will have on the defendant's ability to make a living, he explained that there's a process where the defendant elects to plea bargain and accept responsibility because the pain will be worse if they go to trial. He reiterated that, in general, 95 percent of cases are resolved through plea negotiations.

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REPRESENTATIVE EASTMAN referred to a past bill that came to the committee dealing with individuals who had their conviction overturned and whether the person is allowed to receive past PFDs. He illustrated a hypothetical: someone is innocent of the charges before them, and do not have much resources so engage in plea bargaining, but the prosecution does not convict the person. He asked if there is an individual that reviews

information and gets the person their missing PFDs or their lost job.

MR. SKIDMORE responded that, in a situation where someone has been charged and goes to trial, he does not know if there is an individual that attempts to get the person their job back. He said that is why the system is designed with probable cause determination, in that judges review the information, motions are filed, and, if a felony, the case goes to grand jury. He said these actions are checks and balances to ensure that before being entered into the criminal justice system, there is a good faith basis before moving forward. In terms of retrieving lost PFDs due to incarceration, he said he does not know whether someone is eligible to get a PFD, and if they are, how they go about retrieving the PFDs.

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MR. SKIDMORE returned to the PowerPoint to slides 19-22, to detail the process around "burdens of proof." Slide 19 illustrates the spectrum of certainty and lists the level of certainty from "absolute certainty" to "mere speculation." Slide 20 details jury instruction as it relates to proof beyond a reasonable doubt and what is required. He said that slide 21 covers clear and convincing evidence as well as preponderance of evidence. He said these are not jury trial determinations but rather other types of cases. Slide 22 addresses probable cause and reasonable suspicion.

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MR. SKIDMORE moved to slide 23 to talk about the sentencing process. He explained Alaska Criminal Rule 32.1 to members, which covers the presentence report for a felony case, and noted that these can be waived if there is a plea agreement. He spoke on the sentencing hearing process, which involves the right of allocution, a judge's consideration of a broad range of information to determine the appropriate sentence, victims coming forward with their impact statement and restitution request, and presumptive sentencing. He noted sentencing guidelines, which he said are not present in Alaska but rather in the federal court system.

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MR. SKIDMORE ended his presentation on slide 24 to outline what occurs after a person is convicted. He said that one action is

to appeal, and listed the grounds the appeal can be under: motion to suppress, double jeopardy, sufficiency of evidence, speedy trial, violation of constitutional rights, and consistency of verdicts. He said that if the appellate courts believe there was a mistake made in a lower court, and it was a mistake that impacted the outcome of the trial, then the whole case is undone and the process must be done over. He explained that the question for prosecutors, after a case is returned, is whether to continue to seek conviction and retry the case. He stated that the decision to try again is complicated, with prosecutors taking several factors, like resources and crime severity, into account. He noted interlocutory appeals, which are taken up before a person is convicted. He said that an appeal can be made on the grounds of improperly determined bail or a question of competency, without waiting for conviction. He concluded and opened to any further questions.

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REPRESENTATIVE C. JOHNSON asked, in reference to testimony made at a previous meeting, about a city in Alaska that never filed a driving while under the influence case because it was known that the cases, after making it to trial, would be overturned by a jury. He said the troopers have said that in those cases the prosecutors say they won't take the case because they know they can't get a conviction. He shared his thoughts on the system, in that it is flawed. He asked if there is a method to try those cases outside of the community.

MR. SKIDMORE said the answer is complicated, but the short answer is no, there is no mechanism in which the case could be taken to another community. He said that is because, as a constitutional right, the defendant is entitled to a jury of their peers, thus requiring the case to be heard in the community. He said to Representative C. Johnson that the person who provided the information he is talking about may be talking about the concept of jury annulment. He explained that juries are able to say, no matter what the prosecution presents, "not guilty." He said juries are generally instructed that they are supposed to convict if the evidence supports the conviction, but there is nothing that can be done to force a jury to convict. He said he has been in communities where it's hard to pin down a conviction, but he doesn't see that as a reason to not bring forward the charges. However, he said that prosecutors need to account for resources available, and if he were the prosecutor in this circumstance, a public campaign to educate the community about why certain charges are important would need to be

undertaken. An example he shared was that, when he started, there was difficulty in getting convictions on domestic violence cases because people thought it was just an issue between the two people in their home. He said education is needed in showing that there are other issues in a conviction like that. On the example of a driving under the influence charge, he said such cases did not get much attention and people did not want to convict, but after the advent of Mothers Against Drunk Driving and discussions around DUIs, a change was seen in the number of driving under the influence convictions. He said these are larger societal issues rather than just a legal system issue.

REPRESENTATIVE C. JOHNSON said that, to him, this is where the plea bargain would come into play. He asked if there are standards of plea bargains between communities.

MR. SKIDMORE responded, having worked around the state, there are different standards. For example, in DUI cases, there were differing amounts of suspended time imposed. He said the legislature had adopted mandatory minimums based on the number of convictions a person has. On plea bargaining, he said that Representative C. Johnson is correct, in that it is a mechanism prosecutors use to navigate those areas. He said the department does try to set standards in these cases, but it is ultimately up to the individual prosecutor on the agreements they enter into, unless there is a policy instructing them to get permission first.

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CHAIR VANCE thanked Mr. Skidmore for today's presentation.

2:32:21 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:32 p.m.