ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
May 10, 2023
3:21 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 53(FIN) AM
"An Act relating to competency to stand trial; relating to involuntary civil commitments; and relating to victims' rights during certain civil commitment proceedings."

- HEARD & HELD

HOUSE BILL NO. 4
"An Act relating to elections."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 53
SHORT TITLE: COMPETENCY; INVOLUNTARY CIVIL COMMITMENTS
SPONSOR(s): SENATOR(s) CLAMAN

02/01/23	(S)	READ THE FIRST TIME - REFERRALS
02/01/23	(S)	HSS, JUD
02/21/23	(S)	HSS AT 3:30 PM BUTROVICH 205
02/21/23	(S)	Heard & Held
02/21/23	(S)	MINUTE(HSS)
02/28/23	(S)	HSS AT 3:30 PM BUTROVICH 205
02/28/23	(S)	Heard & Held
02/28/23	(S)	MINUTE(HSS)

03/09/23	(S)	HSS AT 3:30 PM BUTROVICH 205
03/09/23	(S)	Moved CSSB 53(HSS) Out of Committee
03/09/23	(S)	MINUTE(HSS)
03/10/23	(S)	HSS RPT CS 3NR 2AM NEW TITLE
03/10/23	(S)	AM: WILSON, TOBIN
03/10/23	(S)	NR: DUNBAR, GIESSEL, KAUFMAN
03/10/23	(S)	JUD AT 1:30 PM BUTROVICH 205
03/10/23	(S)	Heard & Held
03/10/23	(S)	MINUTE(JUD)
03/15/23	(S)	JUD AT 1:30 PM BUTROVICH 205
03/15/23	(S)	<Bill Hearing Canceled>
03/22/23	(S)	JUD AT 1:30 PM BUTROVICH 205
03/22/23	(S)	<Bill Hearing Canceled>
03/24/23	(S)	JUD AT 1:30 PM BUTROVICH 205
03/24/23	(S)	<Bill Hearing Canceled>
03/29/23	(S)	JUD AT 1:30 PM BUTROVICH 205
03/29/23	(S)	Heard & Held
03/29/23	(S)	MINUTE(JUD)
04/05/23	(S)	JUD AT 1:30 PM BUTROVICH 205
04/05/23	(S)	Moved CSSB 53(JUD) Out of Committee
04/05/23	(S)	MINUTE(JUD)
04/07/23	(S)	JUD RPT CS 2DP 1NR 2AM NEW TITLE
04/07/23	(S)	DP: CLAMAN, KAUFMAN
04/07/23	(S)	NR: GIESSEL
04/07/23	(S)	AM: TOBIN, KIEHL
04/11/23	(S)	FIN REFERRAL ADDED AFTER JUD
04/19/23	(S)	FIN AT 1:30 PM SENATE FINANCE 532
04/19/23	(S)	Heard & Held
04/19/23	(S)	MINUTE(FIN)
05/03/23	(S)	FIN AT 9:00 AM SENATE FINANCE 532
05/03/23	(S)	Heard & Held
05/03/23	(S)	MINUTE(FIN)
05/03/23	(S)	FIN AT 1:30 PM SENATE FINANCE 532
05/03/23	(S)	Scheduled but Not Heard
05/04/23	(S)	FIN AT 9:00 AM SENATE FINANCE 532
05/04/23	(S)	Moved CSSB 53(FIN) Out of Committee
05/04/23	(S)	MINUTE(FIN)
05/08/23	(S)	FIN RPT CS 3DP 1NR 2AM NEW TITLE
05/08/23	(S)	DP: HOFFMAN, OLSON, BISHOP
05/08/23	(S)	NR: KIEHL
05/08/23	(S)	AM: WILSON, MERRICK
05/08/23	(S)	TRANSMITTED TO (H)
05/08/23	(S)	VERSION: CSSB 53(FIN) AM
05/09/23	(H)	READ THE FIRST TIME - REFERRALS
05/09/23	(H)	JUD, FIN
05/09/23	(H)	JUD WAIVED PUBLIC HEARING NOTICE, RULE 23

05/10/23 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 4
SHORT TITLE: ELECTIONS: REPEAL RANKED CHOICE VOTING
SPONSOR(s): REPRESENTATIVE(s) VANCE

01/19/23	(H)	PREFILE RELEASED 1/9/23
01/19/23	(H)	READ THE FIRST TIME - REFERRALS
01/19/23	(H)	STA, JUD
05/02/23	(H)	STA AT 3:00 PM GRUENBERG 120
05/02/23	(H)	Heard & Held
05/02/23	(H)	MINUTE(STA)
05/09/23	(H)	STA AT 3:00 PM GRUENBERG 120
05/09/23	(H)	Moved HB 4 Out of Committee
05/09/23	(H)	MINUTE(STA)
05/10/23	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

SENATOR MATT CLAMAN
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: As prime sponsor, presented CSSB 53(FIN) AM.

EMMA POTTER, Staff
Senator Matt Claman
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Offered the sectional analysis for CSSB 53(FIN) AM on behalf of Senator Claman, prime sponsor.

ANGELA HARRIS, representing self
Anchorage, Alaska
POSITION STATEMENT: Provided invited testimony in support of CSSB 53(FIN) AM.

JOHN SKIDMORE, Deputy Attorney General
Central Office
Criminal Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: Answered questions during the hearing on CSSB 53(FIN) AM.

NANCY MEADE, General Counsel
Administrative Staff

Office of the Administrative Director
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: Answered questions during the hearing on CSSB 53(FIN) AM.

JAKE ALMEIDA, Staff
Representative Sarah Vance
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented HB 4 on behalf of Representative Vance, prime sponsor.

ACTION NARRATIVE

3:21:17 PM

CHAIR SARAH VANCE called the House Judiciary Standing Committee meeting to order at 3:21 p.m. Representatives Carpenter, Gray, Allard, and Vance were present at the call to order. Representatives Groh, Eastman, and C. Johnson arrived as the meeting was in progress.

SB 53-COMPETENCY; INVOLUNTARY CIVIL COMMITMENTS

3:21:56 PM

CHAIR VANCE announced that the first order of business would be CS FOR SENATE BILL NO. 53(FIN) am, "An Act relating to competency to stand trial; relating to involuntary civil commitments; and relating to victims' rights during certain civil commitment proceedings."

3:22:22 PM

SENATOR MATT CLAMAN, Alaska State Legislature, presented CSSB 53(FIN) AM, as the prime sponsor. He paraphrased the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

> Senate Bill 53 expands involuntary commitment law in Title 47 by adding the option of an up to two-year involuntary commitment for a limited number of individuals who: (1) have been found incompetent to stand trial on a felony offense against the person or felony arson, (2) have been previously subject to involuntary commitment orders, (3) have a history of a

felony offense against the person or arson, (4) present a danger to themselves or others, and (5) present a danger to the public.

In February 2022, Angela Harris was returning books at the Loussac Library in Anchorage when a man stabbed her in the back. The perpetrator had been found incompetent to stand trial two months earlier for attacks on other women. SB 53 addresses the problem presented by Angela's experience. First, it creates a duty for the Department of Law to file for involuntary commitment when a person is found incompetent to stand trial on what are identified as "dangerous" crimes in the legislation. This process will ensure that individuals who have committed crimes for which they cannot be tried will be moved from the criminal system, upon dismissal of changes due to incompetency, to the civil system for involuntary commitment. The process improves public safety by filling gaps that previously allowed the individual to be released to the public.

Second, it amends involuntary commitment statute to allow the state to seek two-year involuntary commitment of individuals who have been found incompetent to stand trial, have a history of a felony offense against the person or arson, and have already been subject to 30, 90 and 180-day involuntary holds. Individuals committed under these provisions may petition the court for early discharge. A petition for early discharge requires that the respondent presents some evidence demonstrating that they are no longer a danger to themselves or others.

The legislation adds provisions for notification of the victim in the dismissed criminal case of: the time and place of the civil commitment hearing; the length of time for which the respondent is committed; and when the respondent is discharged from commitment. It allows the victim in the dismissed criminal case to attend the civil commitment hearings.

SB 53 also reduces the number of psychiatrists and psychologists required for evaluation under the insanity defense from two to one; adds a requirement that the court must make findings of fact and conclusions of law when it orders a competency exam;

and provides that the court can release defendants on bail for competency examination, evaluation, and treatment.

Language was added to the legislation in response to the Alaska Supreme Court decision In re Abigail B (April 28, 2023). This language does not relieve the state of its duty to comply with all terms of Disability Law Center v. State (2020).

3:25:28 PM

EMMA POTTER, Staff, Senator Matt Claman, Alaska State Legislature, on behalf of Senator Claman, prime sponsor, gave the sectional analysis for CSSB 53(FIN) AM, which read as follows [original punctuation provided]:

Section 1
AS 12.47.070. Psychiatric examination
Amends subsection (a) to reduce the number of qualified psychiatrists or psychologists from two to one for evaluation under the affirmative defense of insanity. Removes the requirement that the psychologist is certified by the American Board of Forensic Psychology.

Section 2
AS 12.47.100. Incompetency to proceed
Amends subsection (b) by adding the requirement that the court make findings of fact and conclusions of law that justify an examination when ordering the defendant examined for competency.

Section 3
AS 12.47.100. Incompetency to proceed
Adds a new subsection (i), which states that the court may order a defendant on bail to be examined at an outpatient clinic or other facility under AS 12.30. This section includes requirements that the court shall consider, in addition to applicable requirements under AS 12.30, for the conditions of a defendant's release under this section: (1) any medical information provided by the Department of Family and Community Services; (2) the defendant's mental condition; (3) the defendant's level of need for evaluation and treatment under this chapter; (4) the defendant's ability to participate in outpatient

treatment; and (5) the defendant's history of evaluation and treatment under this chapter.

Adds a new subsection (j) which states that when a qualified psychiatrist or psychologist is conducting an examination for competency under (b) of this section, they may, at the same time, evaluate the defendant to determine whether the defendant meets the standards for involuntary commitment.

Adds a new subsection (k) which states that a court may rely on a defense attorney's representation, including privileged information provided at an ex parte hearing, in making its findings of fact and conclusions of law when having the defendant examined for competency.

Section 4
AS 12.47.110. Commitment on finding of incompetency
Adds a new subsection (f), which states that the court may order a defendant on bail to receive further evaluation and treatment at an outpatient clinic or other facility under AS 12.30. This section includes requirements that the court shall consider, in addition to applicable requirements under AS 12.30, for the conditions of a defendant's release under this section: (1) any medical information provided by the Department of Family and Community Services; (2) the defendant's mental condition; (3) the defendant's level of need for evaluation and treatment under this chapter; (4) the defendant's ability to participate in outpatient treatment; and (5) the defendant's history of evaluation and treatment under this chapter.

Adds a new subsection (g), which states that, upon the court finding that the defendant charged with a felony offense against a person or felony arson remains incompetent at the expiration of the period for competency restoration, the prosecutor shall: (1) file a petition seeking involuntary commitment under the new AS 47.30.706 before dismissal of charges; (2) notify the civil division of the Department of Law within 24 hours after filing the petition; and (3) provide the court's findings to the civil division of the Department of Law within 24 hours after the court's ruling.

Section 5
AS 47.30.705. Emergency detention for evaluation
Adds new subsection (e), which states that the department shall promptly deliver a person who is detained awaiting transport for evaluation for commitment to a crisis residential center or evaluation facility. The person may not be detained for more than 10 days while awaiting transportation unless a court extends under (f) of this section.

Subsection (f) states that the department or facility detaining a person under (a) or (e) of this section may file a request to extend the detention based on the on the person meeting the standards for commitment and continued need for hold. The request must include a verified or certified statement of a mental health professional and be served on related parties including the respondent. When the court decides to request to extend the detention pending transportation, the court shall consider the following factors: (1) the length of time the person has been detained; (2) the reason the person has not yet been transported; (3) the person's current medical and psychiatric condition; (4) whether the person is gravely disabled or is likely to cause serious harm to self or others; and (5) whether the person is receiving treatment at their current placement.

Subsection (g) states that the court shall schedule hearings if requested by the respondent under (f) of this section, which shall be held no later than 72 hours after the expiration of the 10-day detention period.

Subsection (h) states that at any time during the detention period, the mental health professional at the detaining facility may release the respondent based on their finding that the person does not meet the standards for commitment. The facility shall notify related parties if the respondent is released.

3:29:00 PM

REPRESENTATIVE ALLARD interjected to highlight a deviation between the language in the sectional analysis and Ms. Potter's reading of it. She sought to clarify whether a detaining

facility "may" release the respondent or "shall" release the respondent, per Section 5, subsection (h).

3:29:48 PM

MS. POTTER directed attention to subsection (h) on page 5, line 7 of the bill, which stated that the respondent "shall" be released.

REPRESENTATIVE ALLARD noted that the sectional analysis said "may."

MS. POTTER acknowledged the error in the sectional.

3:31:10 PM

MS. POTTER resumed the sectional analysis [included in the committee packet], which read as follows [original punctuation provided]:

> Section 6
> AS 47.30.706. Commitment after finding of incompetence
> Creates a new section AS 47.30.706: Commitment after finding of incompetence. Subsection (a) states that if a person who has been charged with a felony offense against a person or felony arson has been found incompetent to proceed with criminal charges, and before the charges are dismissed, an attorney with the Department of Law shall petition the court to have the person delivered to the nearest evaluation facility for an evaluation.
>
> Subsection (b) states that upon receiving the petition under (a) of this section, the court shall: unless the presumption is successfully rebutted, issue an ex parte order stating that there is probable cause to believe the respondent is mentally ill and that condition causes the respondent to present a likelihood of serious harm or self to others; appoint an attorney to represent the respondent; and may direct that a peace officer take the respondent into custody and deliver the respondent to the nearest appropriate facility for evaluation. The court shall set a date, time, and place for a 30-day commitment hearing, to be held within 72 hours.

Subsection (c) states that a person taken into custody for evaluation under this section may not be placed in a jail or other correctional facility except for protective custody purposes and only while awaiting transportation to an evaluation facility.

Subsection (d) states that an individual charged with a felony offense against a person or felony arson who is found to be incompetent to stand trial is rebuttably presumed to be mentally ill and present a likelihood of serious harm to self or others. This creates the basis upon which the court can issue the ex parte order and initiate the 30-day commitment proceedings. This section states that in its evaluation whether a defendant is likely to cause serious harm, the court may consider the conduct with which the defendant was charged.

Section 7
AS 47.30.710. Examination; hospitalization
Adds reference to the new section AS 47.30.706: Commitment after finding of incompetence to subsection (a) of AS 47.30.710. Section 8 AS 47.30.725. Rights; notification Adds new subsections (g) and (h), which create notification provisions for the victim of the dismissed criminal case. Subsection (g) states that the victim shall be notified of: the time and place of a civil commitment hearing; the length of time for which the respondent is committed and findings of fact made by the court; and when the respondent is discharged from commitment. Additionally, (g) states that a victim in a dismissed criminal case may attend the civil commitment hearing of the respondent. Subsection (h) states that this section does not give a victim in a dismissed criminal case the right to access confidential records under AS 47.30.845.

Section 9
AS 47.30.727. Provision of records and notice following a finding of incompetency in a criminal case
Creates a new section addressing the release of records to the criminal division of the Department of Law by the civil division during the involuntary commitment of an individual who was found incompetent to stand trial. Subsection (a) states that every 30 days after a respondent is found incompetent to proceed and committed involuntarily, the civil

division of the Department of Law shall provide all information and records obtained during the civil commitment to the criminal division of the Department of Law.

Subsection (b) states that records disclosed to the criminal division are confidential and may not be disclosed to anyone unless disclosure is required by a court order or the respondent provides written consent to the disclosure. The records are to be filed as sealed documents by the moving party if they are used in a criminal proceeding.

Subsection (c) states that the facility housing a respondent found incompetent to proceed and involuntarily committed shall provide notice to the prosecutor in the criminal case of all hearings scheduled by the court in the civil commitment case. This subsection states that the prosecutor or their staff member may attend civil commitment hearings but may not participate as a party.

Section 10
AS 47.30.735. 30-day commitment; hearing
Amends subsection (b) to allow victims in dismissed cases where the respondent was charged with a felony offense against a person or felony arson to attend civil commitment proceedings of the respondent.

Section 11
AS 47.30.771. Additional two-year commitment
Adds a new section creating an additional involuntary commitment of up to two years. Two-year commitment petitions are filed at the expiration of 180-day commitments for individuals who meet the following criteria: the respondent is mentally ill and as a result is likely to cause harm to self or others; the respondent has a history of a felony offense against a person under AS 11.41 or felony arson; the respondent has been found incompetent to stand trial under AS 12.47.100 and 12.47.110 for a felony offense against a person under AS 11.41 or arson; commitment of the respondent for greater than 180 days but not greater than two years is necessary to protect the public; and the period of commitment is necessary to protect the public.

Clarifies that findings of fact relating to the respondent's behavior made at 30-day, 90-day, and 180-day commitment hearings shall be admitted as evidence in subsequent hearings. States that successive commitments are permissible on the same ground and under the same procedures as the original commitment. Instructs the department to submit an annual report to the attorney general, public defender, public advocate, Alaska Court System, and the attorney of record of the respondent detailing how many respondents are committed under this section and how much time remains on each order of commitment.

Section 12
AS 47.30.780. Early discharge
Amends subsection (a) to include reference to new subsection (c) of AS 47.30.780.

Section 13
AS 47.30.780. Early discharge
Adds new subsections (c), (d) and (e). Subsection (c) states that the professional person in charge may not discharge respondents, who meet the standard of dangerousness set forth in the legislation, from 180-day or up to two year involuntary commitment orders unless: the court enters an order officially terminating the involuntary commitment and the court gives the prosecuting authority 10 days' notice of the discharge. Subsections (d) and (e) state that a respondent who is committed under an up to two-year commitment order may petition the court for early discharge at any time, with a 180-day limit on frequency, during the commitment if they present some evidence demonstrating that the respondent is no longer likely to cause serious harm to self or others. The court is required to grant early discharge unless the state proves by clear and convincing evidence that there is a factual and medical basis to believe the respondent remains likely to cause serious harm to self or others.

Section 14
AS 47.30.805. Computation, extension, and expiration of periods of time
Amends section (a) to include two-year commitments. States that a two-year commitment period expires at

the end of two years after the 180-day period of treatment.

Section 15
AS 47.30.845. Confidential records
Amends section (a) to include the criminal division of the Department of Law under section 8 of this legislation.

3:37:49 PM

CHAIR VANCE opened invited testimony.

3:38:05 PM

ANGELA HARRIS, representing self, testified in support of SB 53. She explained that she was stabbed while returning borrowed items at the Loussac Library on February 13, 2022. She provided details of her experience, which ultimately left her paralyzed from the waist down. She noted that she was unable to live in her home until modifications were made to make it handicap accessible and safe for her to navigate. Further, her significant other had to quit his job on the North Slope to become her primary caretaker. She outlined her long road to recovery, which included physical and occupational therapy, and counseling. She shared that her assailant, Corey Ahkivgak, had a history of assaulting women, including his mother who he attacked with a frying pan. After violently attacking two more women, he was declared incompetent and released back into the public just 38 days before attacking Ms. Harris. Again, after her stabbing on February 13, he was declared incompetent and may be released back into the public after a competency hearing. She emphasized the need for improvements to the state's mental health system, particularly regarding violent offenders. Further, she asserted that the loophole allowing people to be released back into the community after committing a violent crime needed to be closed. She said SB 53 would close the loophole and target a narrow group of violent individuals, she said. She believed that jail was an inappropriate placement for Mr. Ahkivgak given his mental illness. She addressed the concerns about protecting civil liberties, noting that she shared those concerns. She indicated that many state agencies had been involved with the proposed legislation and made important changes to strengthen the bill. She discussed the difficulties of knowing that her assailant may be released back into the community. She said she was appalled upon learning that many individuals release from custody due to the waitlist

for restoration, thereby violating the civil liberties of the offender. She opined that there should be a long-term placement option for repeat violent offenders who cannot retain competency, adding that it was unfair to both offenders and victims to allow them to continuously cycle through the system with no improvements to their mental health. Perpetrators, such as Mr. Ahkivgak, she said, had more resources at his disposal than she, as his victim. She was ultimately offered just $3,000 for mental health services from the Victims Crime Compensation Board nearly one year after her initial request, which she characterized as insulting. Victoria Shanklin, former executive director of Victims For Justice, shared that an outdated system and limited budget had caused the organization to fall embarrassingly behind. Ms. Harris stated that her assault exemplified the need to address the common element of inadequate mental health services for violent offenders and their victims; further, that her experience exposed a loophole in statute with a deadly impact on Alaska communities. She said the bill was an opportunity for elected officials to make changes that were beneficial for all Alaskans.

3:47:00 PM

CHAIR VANCE thanked Ms. Harris for her advocacy for victims.

3:47:13 PM

REPRESENTATIVE ALLARD expressed concern that an individual could be "sucker punched" and claim mental illness. She asked how the bill could "encompass all." She acknowledged the importance of the proposed legislation, while emphasizing the need to make it airtight.

SENATOR CLAMAN replied that the legislation sought to strike the best balance possible between requiring individuals with an appropriate level of violent criminal history to be put into the process of an involuntary commitment. He acknowledged the challenge of protecting the community from individuals who may be suffering from significant mental illnesses and engaging in criminal conduct. He added that the constitutional protections for incompetency would remain.

REPRESENTATIVE ALLARD said she wanted to include mentally ill individuals who physically "lash out" in the bill to ensure that their behavior would not continue.

SENATOR CLAMAN shared his belief that the bill would close the gap for those individuals with a history of felony conduct.

REPRESENTATIVE ALLARD recalled that Ms. Harris had mentioned Victoria Shanklin in her testimony. She asked which department [Victims For Justice] fell under.

MS. HARRIS replied that after working for [Victims For Justice], Ms. Harris took a job with the state doing the same type of work. She shared her understanding that Victims For Justice was a nonprofit.

REPRESENTATIVE ALLARD asked whether the $3,000 that was awarded to Ms. Harris was delayed by Victims For Justice.

MS. HARRIS clarified that she had filed her claim through a state website.

3:51:30 PM

SENATOR CLAMAN shared his understanding that Victims For Justice was a nonprofit, whereas the compensation was granted by the Victims Compensation Fund, which was a state run fund.

REPRESENTATIVE ALLARD asked whether the Victims Compensation Fund was run by the [Department of Health] (DOH).

MS. HARRIS explained that the systems used by Ms. Shanklin were outdated. She shared an example. She agreed that the processing system was inadequate; however, it was not addressed in the proposed legislation. She added that she intended to return next session to address that issue.

3:54:14 PM

REPRESENTATIVE GRAY expressed his sympathy for Ms. Harris and apologized in advance for the questions he would need to ask in vetting the proposed legislation. Referencing Section 13, he sought to confirm that the professional person in charge was forbidden [from issuing] an early discharge.

SENATOR CLAMAN clarified that the professional person in charge was required to provide 10 days' notice before releasing [the respondent].

REPRESENTATIVE GRAY asked whether the provision was restating existing statute.

SENTOR CLAMAN explained that it was taking the same standard in existing statute and applying it to this situation.

REPRESENTATIVE GRAY sought to confirm that the provision was a safeguard against ruling an individual as safe for release.

SENATOR CLAMAN shared his understanding that when discharging an individual who had engaged in serious criminal conduct, the idea was to give the prosecutor time to decide whether to refile charges based on the belief that the person may be competent. The 10-day period would allow the prosecutor's office to file criminal charges and make a determination, he said.

REPRESENTATIVE GRAY asked Mr. Skidmore whether Senator Claman's understanding was correct.

3:58:45 PM

JOHN SKIDMORE, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), agreed with Senator Claman, indicating that the 10-day period provided time for a petition or charges to be filed for someone discharging civilly. He added that the purpose behind the timeframe allowed prosecutors time to determine various factors and make an informed decision on refiling charges.

REPRESENTATIVE GRAY asked whether this type of detention was occurring at present.

SENATOR CLAMAN recalled that there were 10 individuals who had been involved in criminal conduct and were believed to be dangerous. Those individuals were subject to involuntary commitment and continuously repeating 180-day commitment cycles. One such individual had been in custody for approximately nine years, he noted. He confirmed that people were being held involuntarily based on their psychiatric conditions and being dangerous to themselves and others.

REPRESENTATIVE GRAY sought to confirm that Ms. Harris's assailant was not held for 180 days.

SENATOR CLAMAN clarified that Mr. Ahkivgak was one of the 10 individuals subject to involuntary commitment and had not been released since attacking Ms. Harris.

4:02:27 PM

REPRESENTATIVE GRAY shared his understanding that Mr. Ahkivgak had assaulted a person just months before assaulting Ms. Harris. He asked why Mr. Ahkivgak had not been detained after the first assault.

MS. HARRIS explained that her family was persistent in communication with the district attorney (DA) and the attorney general (AG), at which point the state informed them of the civil commitment request. She credited her family's efforts for Mr. Ahkivgak's continued stay in custody.

4:03:39 PM

CHAIR VANCE believed that Representative Gray was trying to identify the loophole in statute, which was the nexus for the bill. She asked Senator Claman to describe the bigger picture.

SENATOR CLAMAN cited Section 6 of the bill, which contained the new statute AS 47.30.706. The new statute would fill the gap in current law by requiring the prosecutors of felony assaults or felony arson to file the petition that initiates the commitment process before the charges were dismissed. Were the bill in place when Mr. Ahkivgak committed the assault prior to attacking Ms. Harris, civil law would have required that a civil commitment petition be filed.

CHAIR VANCE inferred that in essence, the bill would put the responsibility [of filing the petition] onto the state instead of the victim.

SENATOR CLAMAN confirmed that the bill would put the responsibility of filing the petition squarely on the prosecutor.

4:07:24 PM

REPRESENTATIVE CARPENTER asked Mr. Skidmore why involuntary commitment paperwork was not filed for all defendants found incompetent to stand trial.

MR. SKIDMORE stated that not everyone found incompetent to stand trial would meet criteria for civil commitment. He shared an example. He reiterated that the bill would require prosecutors in the criminal division to file a petition to have an evaluation conducted of the defendant to determine whether the

criteria for civil commitment was met before the case was dismissed.

4:09:59 PM

REPRESENTATIVE CARPENTER rephrased his question. He asked why DOL would choose not to file involuntary commitment on all of the cases in which the defendant was being tried for a violent crime and found incompetent to stand trial.

MR. SKIDMORE suspected that in the instances that did occur, it was likely that prosecutors had not been trained to file such petitions. He reiterated that the bill would place the responsibility on the department to ensure that prosecutors were trained on the process and filing petitions.

REPRESENTATIVE CARPENTER asked whether the statute needed to be changed in order for prosecutors to be trained on filing the petitions when necessary.

MR. SKIDMORE replied that the law did not need to be changed in order to conduct training; however, if filing the petitions was to become the prosecutor's duty, the law needed to be changed because currently, it was not a requirement.

REPRESENTATIVE CARPENTER said he was failing to understand why the law needed to be changed in order to force the department to do something it was already capable of doing.

MR. SKIDMORE explained that placing the responsibility on members of DOL would make it an obligation. Without the new statute, he said, anyone can file the petition, thereby making it an additional duty that was not specifically assigned to [prosecutors]. He further noted that the fiscal note would provide the appropriate resources to ensure that [petitions were filed].

REPRESENTATIVE CARPENTER questioned the purpose of the two-year commitment.

4:14:42 PM

SENATOR CLAMAN replied that the purpose was to provide a greater level of assurance to victims; allow the Alaska Psychiatric Institute to provide a better, long-term treatment plan to offenders; and assure the public that [the legislature] was paying attention to the public safety factors of the most

dangerous individuals. He noted that the two-year commitment was involuntary commitment, at which point the offender had been found incompetent to stand trial and the criminal charges were dismissed. He noted that at the conclusion of the civil commitment, another [competency hearing] may be sought; however, providers had indicated that a return to competency was unlikely.

4:17:21 PM

REPRESENTATIVE CARPENTER asked why the original charges would be dropped if there was a chance that the offender could be deemed competent again. He asserted that the purpose of the commitment should be to make the offender competent enough to stand trial.

SENATOR CLAMAN clarified that the civil commitment was not a criminal process, adding that it was only arrived at after being unable to restore the person to competence. He deferred to Mr. Skidmore for a more detailed explanation.

MR. SKIDMORE confirmed that the two-year commitment was not for purposes of restoring competency. The civil commitment process, he said, was about the individual being a danger to themselves or others and consequently, involuntarily committed to treat the mental illness that makes them such. He added that it was possible for the mental illness to be treated while still being incompetent. The bill would allow the criminal division to evaluate the competency of an individual whose mental illness had been treated, such that they are no longer a danger to themselves or others.

REPRESENTATIVE CARPENTER sought to confirm that if a person [who had been involuntarily committed] was deemed competent, he/she would not be charged for the original crime.

MR. SKIDMORE said if someone was restored to competency before the criminal case was dismissed, the prosecution would continue. Alternatively, if the civil commitment was determined to be no longer necessary because the person was not a danger, the criminal division would evaluate whether to prosecute based on a host of factors.

4:21:14 PM

REPRESENTATIVE GROH sought to better understand the size of "the universe" of relevant cases.

SENATOR CLAMAN responded that were this law in place when Ms. Harris was assaulted, the state would have been required to file an involuntary petition upon dismissal, thereby initiating [the commitment process] rather than releasing Mr. Ahkivgak back into the community due to his violent history. He directed the question of statistics to Ms. Meade.

4:24:06 PM

NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, sought to clarify which data was sought by Representative Groh.

REPRESENTATIVE GROH requested the number of people in continuous cycles of involuntary commitment, in addition to the precise number of people that had been found to be incompetent and released from custody, similar to Mr. Ahkivgak.

MS. MEADE reported that 70 to 100 cases in fiscal year 2022 (FY 22) were dismissed after undergoing a competency evaluation. Should the bill pass, those individuals would be ushered into an evaluation for a civil commitment after the criminal case was dismissed. She noted that there were approximately 400 competency hearings [in FY 22] of which 140 were felonies. She noted that very few of those individuals were sent to API, due to a lack of beds. In the meantime, individuals found incompetent to stand trial were put on a four-month wait list for one of the 10 available beds. Many of those cases were ultimately dismissed.

REPRESENTATIVE GROH inquired about the relationship between the law and the services.

MS. MEADE clarified that API had 80 beds, of which 10 were used in open criminal cases for individuals deemed incompetent, termed "criminal restoration beds." She noted that many of those criminal cases were dismissed due to either the four-month wait or because the person could not be restored to competency. Under the proposed legislation 100 of the dismissed cases would be sent to the 70 beds at API, or a number of other facilities, for an evaluation. She highlighted the different standard between that of incompetency to stand trial and being mentally committed.

4:29:17 PM

REPRESENTATIVE GROH asked how many cases were similar to Mr. Ahkivgak's.

MS. MEADE replied that the court system did not have data on that.

REPRESENTATIVE GROH asked how the proposed legislation would address treatment of individuals who posed a risk to themselves.

SENATOR CLAMAN clarified that suicide was not a felony crime. He explained that the proposed legislation distinguished between those that were a risk to others versus a risk to themselves. People that were a risk to others would be eligible for the two-year involuntary commitment, whereas people that were a risk to themselves would qualify for the six-month rotating involuntary commitment.

4:33:29 PM

REPRESENTATIVE EASTMAN asked to what extent the legislature should be focusing on the law versus human actors in the justice system who make mistakes.

MS. HARRIS asked Representative Eastman to narrow the question.

REPRESENTATIVE EASTMAN asked Ms. Harris whether, in her case, judges were at fault, prosecutors were at fault, or whether fixing this law would have solved the problem.

MS. HARRIS stated that this piece of legislation regarding prevention was the only thing she had the "band width" to dive into. She shared that she had learned about a "large elephant" of inadequacies within the system that need to be addressed to alleviate the situation.

4:38:36 PM

REPRESENTATIVE EASTMAN asked whether the statute of limitations were in any way "tolled" during the period in which a person was incompetent to stand trial.

MR. SKIDMORE replied that there was nothing about a civil commitment or attempts to restore somebody that tolls the statute of limitations.

REPRESENTATIVE EASTMAN shared his understanding that the bill would dispense with the requirement for two psychologists

instead of one. He inquired about the motivation for this change.

4:41:03 PM

SENATOR CLAMAN noted that Section 1 was a cleanup provision that was largely unrelated to the bill, as it addressed an affirmative defense for insanity. He said there were two reasons for the change. Firstly, Alaska did not have a psychologist that met the American Board of Forensic Psychology standards. Secondly, when raising the defense of insanity, he indicated that the second court-appointed expert [hired to evaluate the defendant's psychiatric state] was unnecessary, as the prosecutor and defense often hired their own experts. He noted that the changes in Section 1 reflected a discussion between his office and DOL.

REPRESENTATIVE EASTMAN considered a scenario in which a person was likely to be found incompetent, in which case, the criminal charges would be dropped. He suggested that the prosecutor may want to preserve his/her win/loss record by only pursuing confident convictions, adding that "there's less reason for them to maybe be as careful."

SENATOR CLAMAN said he couldn't imagine a circumstance in which a state or federal prosecutor in Alaska would try to handicap his/her win/loss record based on a concern that somebody would be found incompetent. He deferred to Mr. Skidmore.

4:47:58 PM

MR. SKIDMORE discussed the safeguards in place to protect against the conduct described by Representative Eastman. He clarified that prosecutors have ethical responsibilities to only file charges in cases with appropriate evidence to support them. Additionally, the courts have an obligation to review the factual basis and determine whether there is probable cause to support the charges. Lastly, he assured Representative Eastman that DOL did not want its prosecutors to file charges unless they could prevail beyond a reasonable doubt. Filing charges without sufficient evidence could result in employment action on behalf of the department, he added.

4:49:57 PM

REPRESENTATIVE ALLARD stated her belief that the minor statutory changes in the proposed legislation would not have changed Ms.

Harris's circumstances. Further, she opined that the people who enforce the law failed Ms. Harris, not the law itself. She concluded that Ms. Harris persevered because of her parents, her character, and the Coast Guard. She applauded Ms. Harris for being here and characterized her case, which slid through the cracks, as obscene. She questioned the difference between a psychologist and a psychiatrist and expressed concern about Section 1 of the bill.

4:51:40 PM

SENATOR CLAMAN indicated that the difference between a psychologist and a psychiatrist was medical school and the ability to prescribe medication.

REPRESENTATIVE ALLARD reiterated her concern about Section 1 of the bill, which changed the requirement from two qualified psychiatrists or psychologist to one.

SENATOR CLAMAN reiterated that the insanity defense had nothing to do with the evaluation process for competency to stand trial. The process for competency to stand trial only required an evaluation by one psychologist or psychiatrist, which would not be changed by the proposed legislation. With regard to the affirmative defense for insanity, he emphasized that there were always at least two opinions, noting that there were sometimes up to four experts [hired by the defense or prosecution]. He indicated that the opinion given by the court-appointed psychiatrist or psychologist was typically followed up by one or more experts hired by the defense or prosecution team. He approximated that the defense of insanity had been raised at trial less than 5 times in the last 30 years.

4:55:04 PM

REPRESENTATIVE ALLARD questioned the meaning of the language on page 12, lines 4-5 of the bill.

SENATOR CLAMAN stated that paragraph (10) in Section 15 of the bill provided that DOL had a responsibility to maintain the confidentiality of confidential records obtained as part of this process.

REPRESENTATIVE ALLARD asked who would be responsible for enforcement and ensuring that this wouldn't happen to someone else.

SENATOR CLAMAN replied that the responsibility would fall on the prosecutor to make sure that civil charges were initiated for people with a history of violent crimes that were found incompetent to proceed.

4:58:00 PM

MS. POTTER, in response to Representative Allard, noted that Section 4 outlined the criminal code and the duties of the prosecutor while Section 6 listed the civil code and the evaluation procedure for civil commitment.

4:58:50 PM

REPRESENTATIVE GRAY asked whether, at the end of the 24-month commitment period, the commitment would be continually renewed.

SENATOR CLAMAN replied that nothing prevented the department from filing another civil commitment petition at the 24-month mark.

REPRESENTATIVE GRAY asked where people on the 4-month waitlist for API went during the wait period.

SENATOR CLAMAN clarified that the 4-month waitlist was for restoration beds, not to be confused with involuntary commitment beds. He explained that it depends on whether the individual was out on bail or in jail. He expounded on provisions in Section 3 and Section 4 of the bill, which expanded the capacity of the evaluation and restoration process in an outpatient setting.

REPRESENTATIVE GRAY sought to verify that Alaska had numerous facilities to accommodate those individuals on 24-month commitment.

5:01:07 PM

SENATOR CLAMAN noted that API, through the Department of Family and Community Services (DFCS), did not submit a fiscal note indicating that no additional cost would be associated with longer periods of commitment.

5:03:14 PM

CHAIR VANCE announced that CSSB 53(FIN) AM was held over.

5:03:21 PM

The committee took an at-ease from 5:03 p.m. to 5:06 p.m.

HB 4-ELECTIONS: REPEAL RANKED CHOICE VOTING

5:06:56 PM

CHAIR VANCE announced that the final order of business would be HOUSE BILL NO. 4, "An Act relating to elections."

5:07:14 PM

JAKE ALMEIDA, Staff, Representative Sarah Vance, Alaska State Legislature, presented HB 4 on behalf of Representative Vance, prime sponsor. He stated that HB 4 was a 62-section bill that would repeal ranked choice voting (RCV), which was passed in 2020 as a ballot initiative [Ballot Measure 2, Top-Four Ranked-Choice Voting and Campaign Finance Laws Initiative (2020)]. Ballot Measure 2 instituted a ranked choice voting system, created a one ballot primary system, and established protections for financial disclosures related to dark money. He noted that the bill would exclude from repealing the dark money provisions that were included in the ballot initiative. He stated that according to the bill sponsor, the number one issue raised by Alaskans was to repeal RCV. The issue rose above the conversation of the base student allocation (BSA) and the permanent fund dividend (PFD), he added. He proceeded to paraphrase the sponsor statement [included in the committee packet], which read as follows [original punctuation provided]:

> **House Bill 4** repeals rank choice voting and open primaries, returning the election process to the way Alaskans voted prior to Ballot Measure 2 of 2020 except for areas in statute the courts have found unconstitutional. This bill attempts to remedy the constitutional issues by providing for combined open primaries and omitting the requirement that party nominees be registered as a member of that party.
> The ballot measure that transformed Alaska's election system in 2020 passed by a narrow margin of less than 1 percent. The campaign led Alaskans to believe the ballot measure would do away with "dark money" only and that it would give them "more options" in voting. Most Alaskan's did not know that it would upend our way of voting that has always been one person equals

one vote. Many voters have expressed buyer's remorse since passage. In fact, recent polling shows that that majority of Alaskans strongly agree to repeal rank choice voting.

This bill allows combined open primaries when two parties request jointly, and implements court decisions in *State v. Democratic Party*, from 2018 holding that requirement that candidates register with a party when seeking party nomination violates parties' free speech associational rights and *State v. Green Party of Alaska* in 2005 holding that prohibition on parties combining primary ballots under the system established in AS 15.25.010, 15.25.014, and 15.25.060 is unconstitutional.

House Bill 4 seeks to implement the will of Alaskans by returning us to the historical and trusted election process where one person equals one vote.

5:10:50 PM

MR. ALMEIDA reported that one in eight rural Alaskans' ballots were rejected in the special congressional primary of 2022 with up to 17 percent of ballots being rejected due to a lack of signature or identifier. He stated that RCV added more complication to an already disenfranchised voting population. He referenced studies that showed that jurisdictions with higher proportions of older voters were more likely to report ballot marking mistakes, increasing the potential for a rejected ballot. Furthermore, Fair Vote, a proponent of RCV, found that the prevalence of ranking three candidates was lowest among African Americans, Latinos, voters with less education, and those whose first language was not English. He purported that RCV had failed to increase voter turnout or provide more options to voters as promised. Instead, it increased voter confusion and disenfranchisement that caused the lowest voter turnout in decades. He urged the legislature to return to the trusted process of "one person equals one vote" and concluded by sharing a quote from the report, titled "A False Majority," by the Maine Heritage Policy Center [included in the committee packet].

5:14:13 PM

CHAIR VANCE thanked Mr. Almeida and announced that, due to time constraints, she would not be taking committee questions today. She reiterated that the bill would return Alaska's election

system to [the system that was in place before RCV was instituted] except for areas deemed unconstitutional by the courts, while leaving the dark money provisions in place. Aside from that, no additional policy decisions were made, she said.

[HB 4 was held over.]

5:16:48 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 5:17 p.m.